**COMMERICAL PROPERTY ASSESSED**

**CLEAN ENERGY (C-PACE) FINANCING PROGRAM**

**PROGRAM AGREEMENT**

**THIS PROGRAM AGREEMENT** (“Agreement”) is made and entered into as of thedate of the County’s signature (“Effective Date”), by and among the **COUNTY OF** **ARLINGTON, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the“County”), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Property Owner”); and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a [*state of organization*] [*type of business entity*] (the “Lender”), and their respective successors and assigns (collectively, the “Parties”).

**RECITALS:**

**WHEREAS**, the Clean Energy Financing Law (Virginia Code § 15.2-958.3), authorizeslocalities to, by ordinance, authorize contracts to provide Loans for the initial acquisition, installation, and refinancing of Eligible Improvements located on eligible properties by free and willing property owners of such eligible properties.

**WHEREAS,** the County adopted an ordinance pursuant to the Clean Energy FinancingLaw, which is codified in Chapter 68 of the Arlington County Code (“Ordinance”); and

**WHEREAS**, the County’s Program facilitates Lenders making Loans to Property Ownersto enable the Property Owners to make Eligible Improvements to Eligible Properties; and

**WHEREAS,** each Loan is secured by a Property Owner’s voluntary grant of a Lien on anEligible Property to the County; and

**WHEREAS**, pursuant to the Ordinance, the Parties are required to enter into a writtenagreement specifying the terms and conditions for participating in the Program;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forthherein and to implement the purposes of the Clean Energy Financing Law and the Ordinance, the Parties hereby agree as follows:

**Section 1 - Definitions.**

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

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**Section 2 – Representations and Covenants.**

1. Property Owner represents and covenants that it is the fee simple record owner of the Eligible Property more particularly described in Exhibit A hereto (the “Property”).
2. Property Owner represents and covenants that (i) it has applied to participate in the Program, (ii) the Administrator has given notice to the County of its approval of Property Owner’s application for financing under the Clean Energy Financing Law and (iii) desires to obtain a Loan to construct or install certain Eligible Improvements on the Property.
3. Property Owner represents and covenants that it has entered into a Financing Agreement with the Lender that sets forth the terms of the Loan. The Assessment Payment Schedule for the Loan is set forth in Exhibit B hereto. Property Owner and Lender acknowledge and agree that the Financing Agreement includes only those costs and fees (including Program Fees) for which a Lien may be imposed under the Clean Energy Financing Law and the Ordinance.
4. The Parties acknowledge and agree that: (a) pursuant to the Ordinance and as authorized by the Clean Energy Financing Law, the Lender is responsible, subject to and according to the terms of the Financing Agreement, for all billing, collection, enforcement and administrative duties in respect to the Loan, the Assessment Payments and the Lien; and (b) should Property Owner default on the Loan, pursuant to the Clean Energy Financing Law, the Ordinance, the Certificate of Levy and Lien of Special Assessment, and the Assignment of Special Assessment Lien, the Lender may enforce the Lien.
5. Property Owner and Lender confirm that they have obtained Lender Consents subordinating each deed of trust or mortgage lien against the Property to the lien to be created by this Loan.

**Section 3 – Program Terms and Conditions.**

1. Loan. The Lender will provide financing for the Property Owner’s Eligible Improvements in accordance with the Loan Documents.
2. Program Fee(s): The Lender shall collect the Program Fees from the Property Owner at Loan closing and shall remit any such Program Fees so collected to the Administrator within ten (10) days of the date of such closing, without requiring demand or notice from the Administrator.

(c) Imposition of Lien. In consideration for the Loan provided to Property Owner under the Program, Property Owner hereby requests and authorizes the County to levy a Lien against the Property which secures and ensures repayment of not only the principal of the Loan but also any financed fees, costs or expenses provided for in the Financing Agreement (including, without limitation, Program Fees).

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

Once the Loan, including any financed fees, costs or expenses provided for in the Financing Agreement (including, without limitation, Program Fees) has been satisfied and paid in full, Lender (which shall furnish certification of such payment in full to the County) shall execute a release of the Lien Certificate, and the Lender shall Record the release in the Land Records and deliver a copy of the recorded release to Property Owner and the County.

1. Remittance of Assessment Payments to Lender: The Loan shall be serviced by the Lender, and Property Owner’s Assessment Payments shall be paid directly to its Lender.
2. Maintenance of Assessment. The Lender and Property Owner acknowledge that the Lender is required by the Ordinance to Record an Assignment of Special Assessment Lien document immediately after the Lender Records the Certificate of Levy and Lien of Special Assessment document. The Lender and Property Owner acknowledge that the Assignment of Special Assessment Lien document causes the Lender to be named as the holder of the Lien in the land records of the County. After assignment of the Lien pursuant to the Assignment of Special Assessment Lien document, the Lender agrees to maintain and continue the Lien on the Property for the benefit of Lender until the Loan, including all principal, interest, fees, other types of fees, penalties, collection costs and Program Fees and other sums due, is paid in full.
3. Assignment. Lender shall have the right to assign the Loan and Lien to a successor lender by the execution, delivery and recordation of an assignment document in the Arlington County, Virginia land records, provided all of the following conditions are met:
   1. The assignment is made pursuant to the requirements of the Ordinance;
   2. The requirements of section 5.10 of the draft Financing Agreement attached to the Ordinance are met; and
   3. The assignee or transferee, by operation of the assignment document or otherwise, assumes Lender’s obligations under the Loan Documents.

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

(h) Lien Priority and Enforcement. Pursuant to the Clean Energy Financing Law and the Ordinance:

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

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1. The Lien, together with any penalties and interest thereon:
   * 1. has priority over any previously recorded mortgage or deed of trust lien on the Property only if a written subordination agreement is executed by the holder of each such previously recorded lien;
     2. has superior lien status to all subordinated liens against the Property from the date on which the Lien Certificate is filed in the Land Records until the financing secured by the Lien and any penalties and interest are paid in full;
     3. shall run with the land and, notwithstanding Va. Code Sec. 58.1-3967, any portion of the Lien that has not yet become due under the Loan Documents is not eliminated by the foreclosure of: (i) a County property tax lien, or (ii) the lien for any past due portion of the Loan; and
     4. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Lien and Property Owner’s obligations under the Loan Documents will be assumed by and transferred to the succeeding owner.
   1. Upon Recordation of the Assignment of Special Assessment Lien to the

Lender, the Lender may enforce the Lien according to the terms of the Loan Documents, in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39, Article IV of the Virginia Code, and this right to enforce expressly includes authorization for the Lender to engage legal counsel to advise the Lender and conduct all aspects of such enforcement. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees and penalties incurred by the Lender, as applicable and consistent with the Clean Energy Financing Law and the Virginia Code, shall (i) collected in addition to the Assessment Payments being collected, (ii) become part of the aggregate amount sued for and collected, and (iii) be secured by the Lien. Nothing herein shall prevent the Lender to which the Lien has been assigned from enforcing the Lien to the fullest extent permitted by the Loan Documents, the Clean Energy Financing Law or general law. The Property Owner of an Eligible Property being sold to pay delinquent Assessment Payments, or other interested party, may redeem the Eligible Property at any time prior to the Eligible Property’s sale, in accordance with Va. Code Secs. 58.1-3974 and 58.1-3975.

(c) Property Owner’s Waiver of Certain Defenses; Confession of Judgment: By

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executing this Agreement, Property Owner acknowledges and agrees as follows:

* + 1. After the Certificate of Levy and Lien of Special Assessment is Recorded, Property Owner waives the right to contest the Loan, the Assessment Payments, the Lien, or the Program Fees on any basis including, without limitation, that the improvements funded with the Loan are not Eligible Improvements;
  1. Property Owner waives all defenses, affirmative or otherwise, to any enforcement or collection action brought as a result of Property Owner’s default in the payment of the Assessment Payments due pursuant to the Loan Documents;
     1. Property Owner shall provide a confession of judgment if requested by the Lender.

1. Written Contract. This Program Agreement constitutes a written contract specifying terms and conditions of Program participation as authorized by §15.2-958.3(B)(7) of the Clean Energy Financing Law.
2. Transfer of C-PACE Funded Improvements. Property Owner agrees that all Eligible Improvements purchased, constructed, or installed through financing obtained pursuant to the Program shall be permanently affixed to the Property and will transfer with the Property to the transferee in the event of and sale or assignment of the Property; provided, however, that if Eligible Improvements become obsolete or the Property Owner otherwise determines they need to be replaced with other Improvements of equal or greater value, such Eligible Improvements may be removed and other Eligible Improvements of equal or greater value installed.
3. The County. No provision of this Agreement requires the County to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder. By executing a Program Agreement, including this Agreement, a Financing Agreement or any other Loan Document, or otherwise participating in the Program, each Property Owner and Lender acknowledges and agrees, for the benefit of the County and as a condition of participation in the Program, that: (i) the County undertakes no obligation, express or implied, under or in respect of any Program Agreement, including this Agreement, Loan Document or the Program Guide, and under no condition, circumstance or interpretation shall any covenant or obligation (express or implied) be asserted or attributed to County), (ii) regardless of any default by Property Owner, the County has no obligation to make Assessment Payments to any Lender, or any other payments in respect of any Loan, including, without limitation, any fees, expenses and other charges described in a Financing Agreement or other document, including this Agreement or any Loan Document, (iii) none of any Program Agreement, including this Agreement, Loan, Assessment Payment, Lien or other obligation arising from any Program Agreement, including this Agreement, Loan Document, the Act, or the Ordinance shall be backed by (A) any credit of the County, (B) any credit of the Commonwealth or its political subdivisions, including, without limitation, the County, or (C) any taxes or governmental funds, (iv) none of any Loan, Assessment Payment, Lien or other obligation arising from any Loan Document, the Act, or the Ordinance shall constitute an indebtedness within

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the meaning of any constitutional or statutory debt limitation or restriction, (v) the County has not made any representations, financial or otherwise, in respect of Borrower, the Property or the Project, (vi) **THE COUNTY MAKES NO REPRESENTATION OR WARRANTY AS TO, AND**

**ASSUMES NO RESPONSIBILITY WITH RESPECT TO, THE ACCURACY OR COMPLETENESS OF ANY LIEN, OR ANY ASSIGNMENT OR AMENDMENT THEREOF**, (vii) the County assumes no responsibility or liability in respect of any Project, or theplanning, construction or operation thereof, (viii) each Property Owner, Lender and Contractor shall, upon request, provide the County with any information associated with the Project or the Loan that is reasonably necessary to confirm that the Project or Loan meets all requirements of the Clean Energy Financing Law, the Ordinance and the Program Guide and (ix) each Property Owner, Lender, Contractor and other participant under the Program shall comply with all applicable requirements of the Clean Energy Financing Law, the Ordinance and the Program Guide.

(l) Term of the Agreement . The term of this Agreement shall commence upon the Effective Date and shall be in full force and effect until the Loan has been irrevocably paid in full.

**Section 4 – Indemnification.**

Without limiting any other obligation or liability of the Property Owner, or any right or remedy of the Lender or the County, Property Owner agrees to save, defend, indemnify, and hold harmless County and Lender and their representatives, directors, officers, employees, agents, subsidiaries, or affiliates (each an “Indemnified Party” for the purposes of this Section 4) from and against all losses and claims, demands, suits, actions or causes of action, whether statutorily created or under common law, including all costs or expenses (including reasonable fees and disbursements of attorneys, engineers, or consultants) payments, damages, obligations, liabilities, penalties, assessments, citations, directives, judgments, or all other liabilities whatsoever (including liabilities under any applicable environmental laws, regulations, or rules) arising from personal injury or otherwise, brought or recovered against an Indemnified Party by reason of any act, negligence, or omission of Property Owner or which shall at any time or times be incurred, suffered, sustained, or required to be paid by an Indemnified Party in the execution of the obligations under this Agreement or in relation to or in any way in connection with any transactions contemplated by, associated with, or ancillary to this Agreement, or any definitive 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 other document are ultimately consummated. This paragraph shall survive the expiration or termination of this Agreement. The Property Owner shall promptly pay all amounts due pursuant to this Section 4 upon demand from an Indemnified Party.

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**Section 5 - Miscellaneous Provisions.**

1. Construction. This Agreement is to be construed in accordance with and with reference to the Clean Energy Financing Law, the Ordinance, and the Program Guidelines.
2. Further Assurances. Property Owner further covenants and agrees to do, execute and deliver, or cause to be done, executed and delivered all such further acts for implementing the intention of this Agreement as may be reasonably necessary or required.
3. Severability. If the Clean Energy Financing Law, the Ordinance, or any clause, provision, or section of this Agreement, is challenged and held by a court of competent jurisdiction to be unenforceable by the County or Lender, Property Owner agrees to continue to make the Assessment Payments required under the Loan Documents and agrees to execute any and all documentation to perfect and enforce the Loan as required by the County or Lender. The invalidity of any clause, provision, or section of this Agreement shall not affect any remaining clauses, provisions, or sections of this Agreement, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision, or section had not been included herein.
4. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.
5. Notices. All notices, requests, consents and other communications (collectively, “Notices”) shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, or overnight delivery services, to the Parties, as follows:

If to the County:

And

And

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If to the Property Owner:

[Address]

If to the Lender:

[Address]

If to the Program Administrator:

[Address]

All Notices are effective when received.

1. Amendment and Waivers. Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed by the authorized representatives of the Parties.
2. Applicable Law. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to its conflict of laws principles.
3. Forum and Venue Choice. Any and all disputes, claims, and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court for Arlington County, Virginia. The Property Owner and the Lender accept the personal jurisdiction of any court in which an action is brought pursuant to this Agreement for purposes of that action and waives all jurisdiction and venue-related defenses to the maintenance of such action.
4. Successors and Assigns. This Agreement is binding upon and made for the benefit of the Property Owner, the Lender, the County and their respective successors and permitted assigns.
5. Entire Agreement. This instrument constitutes the entire agreement between the Parties and supersedes all previous discussions, understandings and agreements between the Parties relating to the subject matter of this Agreement.
6. Headings. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.
7. No Waiver of Sovereign Immunity. Neither anything in this Agreement, nor any action taken by the County pursuant to this Agreement, nor any action taken by the Lender or Property Owner pursuant to this Agreement, nor any document that arises out of this Agreement, shall constitute or be construed as a waiver of the County’s sovereign

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immunity or the governmental immunity of the County or its officers, employees, and elected or appointed officials.

1. Individuals Acting on Behalf of the County. Lender and Property Owner agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the County are acting within the scope of their official authority and capacity, and Lender and Property Owner agree that the Lender or Property Owner shall not bring a suit or assert a claim against any official, officer, or employee of the County in their individual or personal capacity for breach or violation of the terms of this Agreement or otherwise to enforce the terms and conditions of this Agreement. The foregoing notwithstanding, nothing in this Subsection shall prevent the enforcement of the terms and conditions of this Agreement by or against any party in a court of law authorized by this Agreement.
2. No Third-Party Beneficiary. No provision of this Agreement is intended to, nor must it in any way, inure to the benefit of any third party so as to constitute any such person a third-party beneficiary under this Agreement, or of any one or more of the terms of this Agreement or otherwise give rise to any cause of action in any person not a Party of this Agreement.
3. Authority. Each individual executing this Agreement on behalf of a Party hereto hereby represents that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full legal authority.
4. Exhibits. All exhibits attached hereto are hereby incorporated in and shall become a part of this Agreement.
5. Recitals. The Parties agree that the Recitals set forth above are true and correct and are incorporated into this Agreement by reference.
6. Interpretation. In this Agreement, unless the context requires otherwise, words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall also be deemed to include the other, references to sections, regulations or statutes shall be construed to include all regulatory or statutory provisions succeeding, replacing, amending, or supplementing the section, regulation or statute; references in this Agreement to sections or appendices means and refers to the sections contained in, or appendices attached to, this Agreement; references to a Party to this Agreement include their successors and permitted assigns; references to a document or agreement, including this Agreement, includes a reference to that document or agreement and all subsequent amendments and other modifications to such instruments; the words “including,” “includes” and “include” shall be deemed to be followed by the words “but not limited to” or “without limitation” or words of similar import; the word “or” is not exclusive.

(SIGNATURES ON FOLLOWING PAGES)

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**IN WITNESS WHEREOF**, the County, the Property Owner and the Lender have eachcaused this Agreement to be executed on the date(s) entered below:

**ARLINGTON COUNTY, VIRGINIA**

By:

Name:

Title:

Date:

APPROVED AS TO FORM:

By:

Name:

Title:

Date:

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

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[PROPERTY OWNER’S SIGNATURE PAGE TO PROGRAM AGREEMENT]

**PROPERTY OWNER:**

[insert Property Owner’s name]

By:

Name:

Title:

Date:

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

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[LENDER’S SIGNATURE PAGE TO PROGRAM AGREEMENT]

**LENDER:**

[insert Lender’s name]

By:

Name:

Title:

Date:

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**Exhibit A**

**Property Description**

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**Exhibit B**

**Assessment Payment Schedule**

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