

AT A REGULAR MEETING OF THE DUMFRIES TOWN COUNCIL HELD ON DECEMBER 3, 2019, IN COUNCIL CHAMBERS, 17739 MAIN STREET, SUITE 200, DUMFRIES, VIRGINIA: ON A MOTION DULY MADE BY MS. NEVILLE, AND SECONDED BY MS. WILLIS, THE FOLLOWING ORDINANCE WAS ADOPTED BY THE FOLLOWING VOTE:

Charles C. Brewer, yes;
Brian K. Fields, yes;
Selonia B. Miles, yes;
Cydney A. Neville, yes;
Monaé S. Nickerson, yes;
Melva P. Willis, yes;
Derrick R. Wood, yes;

**AN ORDINANCE TO ENACT CHAPTER 27 OF THE CODE
OF THE TOWN OF DUMFRIES, VIRGINIA
RE: COMMERCIAL PROPERTY ASSESSED CLEAN
ENERGY FINANCING PROGRAM**

BE IT ORDAINED by the Town Council of the Town of Dumfries, Virginia that the following Chapter 27, a new chapter of the Code of the Town of Dumfries, Virginia, is enacted, to read as follows:

**CHAPTER 27 - COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY
(C-PACE) FINANCING PROGRAM**

ARTICLE I. - GENERAL

Sec. 27-1. Purpose

The purpose of this chapter is to create a “Town of Dumfries Commercial Property Assessed Clean Energy (C-PACE) Financing Program,” in accordance with the Commonwealth of Virginia’s Clean Energy Financing Law, § 15.2-958.3 of the Code of Virginia of 1950, as amended (hereinafter the “Act”). The C-PACE Program will facilitate loans made by Capital Providers to Borrowers to finance renewable energy production and distribution facilities, energy efficiency improvements, or water usage efficiency improvements. Subject to the limitations set forth in this chapter, the Act, or other applicable law, each C-PACE Loan, inclusive of principal, interest, and any financed fees, costs, or expenses, will be secured by a voluntary special assessment lien on the property that is the subject of such Loan.

Sec. 27-2. Definitions

Act means Virginia’s “financing clean energy programs” law, § 15.2-958.3 of the Code of Virginia of 1950, as amended.

Amendment means an amendment of the C-PACE Lien as permitted under the

Loan Documents and Program Guide.

Assignment means an assignment of the Loan Payments and/or C-PACE Lien pursuant to the terms of the assignment document.

Council means the Town Council of the Town of Dumfries, Virginia.

Borrower means (A) the owner(s) of Eligible Property who obtain(s) a C-PACE Loan from a Capital Provider in accordance with the Program Guide; or (8) a successor in title to the Borrower.

Capital Provider means (A) a private lending institution that has been approved by the Program Administrator in accordance with the Program Guide to originate a C-PACE Loan and its successors and assigns; or (8) the current holder of a C-PACE Loan.

Commonwealth means the “Commonwealth of Virginia.” “Town” means the town of Dumfries, Virginia.

C-PACE means Commercial Property Assessed Clean Energy.

C-PACE Program Agreement means the Agreement between the Borrower, Town, and Capital Provider, and their respective successors and assigns, which includes the terms and conditions for participation in the C-PACE Program; the Borrower’s acknowledgment and consent for the Town to impose a voluntary special assessment and record a C-PACE Lien Certificate against the Borrower’s Eligible Property; and a summary of the terms of the C-PACE Loan. A copy of the draft C-PACE Program Agreement is included herein as Appendix A-1.

C-PACE Lien or Lien means the voluntary special assessment lien levied against the Property as security for the C-PACE Loan.

C-PACE Lien Certificate means the voluntary special assessment lien document duly recorded among the Land Records against an Eligible Property to secure a C-PACE Loan.

C-PACE Loan or Loan means a loan from a Capital Provider to a Borrower to finance a Project, in accordance with the Program Guide.

C-PACE Program or Program means the program established by the Town through this chapter, in accordance with the Act, that facilitates the financing of Eligible Improvements and provides for a C-PACE Lien to be levied and recorded against the Property to secure the C- PACE Loan.

Delinquent Payment means any C-PACE Loan payment that was not paid by a Borrower in accordance with the Loan Documents.

DMME Guidelines means the Uniform Statewide Financial Underwriting

Guidelines for C-PACE Loans, issued on December 1, 2015, by the PACE Stakeholder Committee organized by the Virginia Department of Mines, Minerals, and Energy (DMME), as amended from time to time.

Eligible Improvement means the initial acquisition and installation of clean energy, energy efficiency, or water efficiency improvements for both existing properties and new construction, as further prescribed in this chapter and the Program Guide.

Eligible Property or Property means real property located within the Town other than residential property or a condominium as defined in Virginia Code§ 55-79.2.

Financing Agreement means the written agreement, as may be amended, modified, or supplemented from time to time, between a Borrower and a Capital Provider, regarding matters related to the extension and repayment of a C-PACE Loan to finance Eligible Improvements.

Land Records means the land records of the Clerk of the Prince William County Circuit Court.

Loan Amount means the aggregate amount of a Loan, inclusive of principal, interest, and any financed fees, costs, or expenses, all as provided for in the Loan Documents.

Loan Documents means the C-PACE Program Agreement, Financing Agreement, a C- PACE Lien Certificate, and any other document, agreement, or instrument executed in connection with a C-PACE Loan.

Loan Payment means the periodic installment payments of the C-PACE Loan by a Borrower, due and payable to the Town or Capital Provider as permitted by the Act in such amounts and at such times as described in the Loan Documents.

Program Administrator means the person or entity retained by the Town to administer the Program in accordance with the requirements of the Act, this chapter, and the Program Guide.

Program Fee(s) means the fee(s) authorized by the Act and charged to participating Borrowers to cover the costs to design and administer the Program, including compensation of the Program Administrator and recovery of expenses incurred by the Town.

Program Guide means a comprehensive document setting forth the procedures, eligibility rules, restrictions, Program Fee(s), responsibilities, and other requirements applicable to the governance and administration of the Program.

Program Manager means the Town Manager, or such person designated in

writing by the Town Manager, to supervise the Program and act as liaison with the Program Administrator.

Project means the construction or installation of Eligible Improvements on Eligible Property.

Residential Property means improved real property used or occupied, or intended to be used or occupied, for residential purposes.

Stabilized Value means the market value of the Property after it reaches stabilized occupancy as evidenced by an appraisal of the Property.

Stabilized Occupancy means the occupancy level that an income producing Property is expected to achieve after the property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar properties.

Subordination Agreement means a written agreement executed by the holder of each existing lien, mortgage, or deed of trust on Eligible Property that is the subject of a C-PACE Loan, which allows the C-PACE lien to have senior priority to the existing mortgage or deed of trust.

Useful Life means the normal operating life of the fixed asset as determined by Generally Accepted Accounting Principles (GAAP).

Sec. 27-3. Effective Date

This chapter shall become effective immediately following its adoption.

ARTICLE II. **PROGRAM STRUCTURE**

Sec. 27-4. C-PACE Program; Eligible Improvements

(a) C-Pace Program: The C-PACE Program shall be available throughout the Town of Dumfries, provided that the Borrower, the Property, and the proposed Eligible Improvements all qualify for the Program. The following types of Eligible Improvements may be financed with a C-PACE Loan:

- (1) Renewable energy production and distribution facilities (e.g., solar photovoltaic, solar thermal, wind, wave and/or tidal energy, and the storage and/or distribution of the energy produced thereby);
- (2) Energy usage efficiency systems (e.g., high efficiency lighting and building systems, heating, ventilation, and air conditioning (HVAC) upgrades, air duct sealing, high efficiency hot water heating systems, building shell or envelope improvements, reflective roof, cool roof, or green roof systems, and/or

weather-stripping);

- (3) Water usage efficiency improvements (e.g., recovery, purification, recycling, and other forms of water conservation);
- (4) Construction, renovation, or retrofitting of a Property directly related to the accomplishment of any purpose listed in subsections (1), (2), or (3) above, whether such Eligible Improvement was erected or installed in or on a building or on the ground, it being the express intention of the Town to allow Eligible Improvements that constitute, or are a part of, the construction of a new structure or building to be financed with a C-PACE Loan; or,
- (5) Any other category of improvement approved by the Program Administrator with the consent of the Program Manager as qualifying for financing under the C-PACE Act and the Program.

- (b) Use of C-PACE Loan Proceeds. The proceeds of a C-PACE Loan may be used to pay for the construction, development, and consulting costs directly related to Eligible Improvements, including without limitation, the cost of labor, materials, machinery, equipment, plans, specifications, due diligence studies, consulting services (e.g., engineering, energy, financial, and legal), Program Fees, C-PACE Loan fees, capitalized interest, interest reserves, and C-PACE transaction underwriting and closing costs.
- (c) Program Applications; Prioritization: The Program Administrator will develop a Program application process that allows for the review and approval of proposed Eligible Improvements and C-PACE Loan Documents. Program applications will be processed on a first come, first serve basis; provided, however, that the applicant meets eligibility requirements as set forth in the Program Guide.

Sec. 27-5. C-PACE Loan Requirements; Program Fees; Reporting; Program Administrator; Program Guide

- (a) Source of Loans: C-PACE Loans shall be originated by Capital Providers. The Town shall have no obligation to originate or guarantee any C-PACE Loans.
- (b) C-PACE Loan Amount Thresholds: The minimum Loan Amount that may be financed for each Project is fifty thousand dollars (\$50,000). The maximum Loan Amount that may be financed for each Project is twenty-five million dollars (\$25,000,000) or thirty percent (30%) of the Stabilized Value of the Property, whichever is greater. The Program Administrator may also accept other forms of valuation including, but not limited to, assessed value or value derived from a minimum assessment agreement. There shall be no limit on the total value of all C-PACE Loans issued under the Program.
- (c) C-PACE Loan Interest: The interest rate of a C-PACE Loan shall be as set forth

in the Loan Documents.

- (d) C-PACE Loan Term: The term of a C-PACE Loan shall not exceed the Useful Life of the Project Improvement with the longest Useful Life or thirty (30) years, whichever is less.
- (e) C-PACE Loan Amortization: The amount of the C-PACE Loan shall be fully amortized in the C-PACE Payments over the term of the C-PACE Loan as agreed by the Borrower and the Capital Provider.
- (f) Apportionment of Costs: All of the costs incidental to the financing, administration, collection, and enforcement of the C-PACE Loan shall be borne by the Borrower.
- (g) Financing Agreements: Capital Providers may use their own Financing Agreements for C-PACE Loans, but the Financing Agreement may not conflict with the provisions of this chapter, the Act, or the C-PACE Program Agreement. To the extent of any conflict, this chapter, the Act, and the C-PACE Program Agreement shall prevail.
- (h) C-PACE Program Agreement: In order to participate in the C-PACE Program, Borrower and Capital Provider shall enter into a C-PACE Program Agreement with the Town, which sets forth certain terms and conditions for participation in the Town's C-PACE Program. This Agreement shall be binding upon the parties and their respective successors and assigns until the C-PACE Loan is paid in full. Each C-PACE Program Agreement shall be in substantially the form provided herein in Appendix A-1. The C-PACE Program Agreement may be modified as necessary to further the Program's purpose and to encourage Program participation, including such additions, deletions, or alterations as may be approved by the Program Manager and Town Attorney, so long as such modifications do not conflict with the Program Guide, this chapter, or the Act.
- (i) Repayment of C-PACE Loan; Collection of Loan Payments: C-PACE Loans will be repaid by the Borrower through Loan Payments made in the amounts and at such times as set forth in the Loan Documents and Program Guide. The Capital Provider shall be responsible, subject to and in accordance with the terms of the C-PACE Program Agreement and other Loan Documents, for the servicing of the C-PACE Loans and the collection of Loan Payments. In the alternative, C-PACE Loans may be serviced by the Program Administrator. For Loans serviced by the Program Administrator, the Borrower shall remit all Loan Payments to the Town. The Town shall remit Loan Payments it receives from Borrowers to the Capital Provider within thirty (30) days of receipt.
- (j) C-PACE Loan Assumed: The Borrower shall assume the obligation to repay all remaining unpaid Loan Payments, whether it obtained ownership of the Property voluntarily or involuntarily, which are due upon acquisition of the Property, if any, and which accrue during Borrower's period of ownership. Only the current Loan

Payment and any Delinquent Payments, together with any costs of collection, shall be payable at the settlement of a Property upon sale or transfer, unless otherwise agreed to by the Capital Provider.

- (k) *Transfer of C-PACE Loans:* C-PACE Loans may be transferred, assigned, or sold by a Capital Provider to another Capital Provider at any time until the C-PACE Loan is paid in full provided that Capital Provider shall (i) notify the Borrower and Program Administrator prior to the billing date of the next Loan Payment due, (ii) record a C-PACE Loan Assignment among the Land Records, and (iii) deliver a copy of the recorded C-PACE Assignment to the Borrower, Town, and Program Administrator as set forth in the C-PACE Program Agreement and Program Guide. Recordation of the C-PACE Assignment shall constitute an assumption by the new Capital Provider of the rights and obligations of the original Capital Provider contained in the Loan Documents.
- (l) *Program Fees:* The Program Fee(s) and its effective date shall be set by a resolution of the Town Council and may be amended from time to time in the same manner. The Program Guide shall include the most current Program Fee(s) in effect. Program Fee(s) shall be designed to cover the Town's and Program Administrator's costs to administer the Program and shall be paid by the Borrower as set forth in the Loan Documents. If the Program Fee is implemented in whole or in part as a component of the C-PACE Loan's interest rate, it may be capped at a dollar amount designed to encourage participation in the Program.
- (m) *Notification of Proposed Loan and Closing:* The Program Guide will set forth the C-PACE Loan notification requirements and Loan closing process.
- (n) *Reporting:* The Town may require the Capital Provider and/or the Program Administrator to provide a written report with summary information regarding the C-PACE Loan Program, the portfolio performance of participating Capital Providers, or other Program statistics as required in the Program Guide.
- (o) *Program Administrator:* The Town will enter into a contract with a Program Administrator pursuant to the Town's procurement process and in accordance with any requirements of the Virginia Public Procurement Act. The Program Administrator's duties shall be those set forth in its contract with the Town, which may include, but not be limited to: (i) creating the Program Guide and revising and updating the Guide, as necessary; (ii) coordinating the billing and collection process by serving as a servicer for C-PACE Loans or subcontracting with a qualified C-PACE Loan servicer; (iii) processing C-PACE applications to determine Project eligibility; (iv) ensuring compliance with the requirements of the C-PACE Program; and (v) performing marketing and outreach with regard to the C-PACE Program.
- (p) *Program Guide:* The Program Guide shall be developed by the Program Administrator under the direction of, and in consultation with the Program Manager. The Program Guide and any subsequent amendments thereto shall become effective only (i) to the extent that the Program Guide and such

amendments do not contravene this chapter or the Act, and (ii) after review by the Town Attorney and written approval by the Program Manager. The Program Guide may incorporate the DMME Guidelines or other appropriate underwriting guidelines consistent with this type of Program. The Program Guide will be designed to create an open, competitive, and efficient Program. The Program Administrator may modify the Program Guide from time to time subject to the approval of the Program Manager and in accordance with the intent and purpose of the C-PACE Program as approved by the Town Council.

Sec 27-6. Levy of Assessment; Recordation; Priority; Amendment; Enforcement and Collection Costs

- (a) Levy of Voluntary Special Assessment Lien: Beginning on the effective date of this chapter and for each C-PACE Loan made under the Program, the Town Council hereby levies a voluntary special assessment (C-PACE Lien) against each Property benefitting from Eligible Improvements financed with C-PACE Loans, in an amount equal to the C-PACE Loan, upon recordation of the C-PACE Lien Certificate.
- (b) Recordation of C-PACE Lien Certificate: Each C-PACE Loan shall be secured by a C- PACE Lien as evidenced by the recordation of the C-PACE Lien Certificate among the Land Records. The Program Manager, on behalf of the Town, is hereby authorized to execute the C- PACE Lien Certificate prior to recordation. The C-PACE Lien Certificate shall be filed in the Land Records upon execution of the Loan Documents and funding of the Project.
- (c) Priority: The C-PACE Lien shall have the same priority as a real property tax lien and priority over any previously recorded lien, mortgage, or deed of trust, as evidenced by Subordination Agreement(s) obtained from each prior lien holder, mortgagee, or trustee(s) of any deed(s) of trust. Only the current Loan Payment and any Delinquent Payments shall constitute a first lien on the Property.
- (d) Amendment of Lien: Upon written request by a Capital Provider in accordance with the Program Guide, the Program Manager may execute an amendment of the C-PACE Lien after the closing of a C-PACE Loan. The Amendment will be recorded in the Land Records.
- (e) Enforcement and Collection Costs: In the event of Borrower's default under the terms of the Loan Documents, the Town shall enforce the C-PACE Lien for the amount of the Delinquent Payments, penalties, interest, and any costs of collection in the same manner that a property tax lien against real property may be enforced. In the alternative, the Town may assign the C-PACE Lien to the Capital Provider by executing a C-PACE Lien Assignment and recording the Assignment in the Land Records. Upon such assignment, the Capital Provider may enforce the C-PACE Lien according to the terms of the Loan Documents. All collection and enforcement costs, expenses, interest, and penalties incurred by the Town or Capital Provider, as applicable and consistent with the Act, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount

sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider from enforcing the C-PACE Lien to the fullest extent permitted by the Loan Documents, the Act, or general law.

Sec 27-7. Role of the Town; Limitation of Liability

By executing the Loan Documents including the C-PACE Program Agreement, or by otherwise participating in the Program, the Borrower and Capital Provider acknowledge and agree that as a condition of participation in the Program: (i) the Town undertakes no obligations under the Program except as expressly stated herein or in the C-PACE Program Agreement; (ii) in the event of a default by a Borrower, the Town has no obligation to use Town funds to make Loan Payments to any Capital Provider including, without limitation, any fees, expenses, and other charges and penalties, pursuant to a Financing Agreement between the Borrower and Capital Provider; (iii) no C-PACE Loan, Loan Payment, C-PACE Lien, or other obligation arising from any Loan Document, the Act, or the chapter shall be backed by the credit of the Town, the Commonwealth, or its political subdivisions, including, without limitation, Town taxes or other Town funds; (iv) no C-PACE Loan, Loan Payment, C-PACE Lien or other obligation arising from any Loan Document, the Act, or the chapter shall constitute an indebtedness of the Town within the meaning of any constitutional or statutory debt limitation or restriction; (v) the Town has not made any representations or warranties, financial or otherwise, concerning a Borrower, Eligible Property, Project, Capital Provider, or C-PACE Loan; (vi) the Town makes no representation or warranty as to, and assumes no responsibility with respect to, the accuracy or completeness of any Loan Document, or any Assignment or amendment thereof; (vii) the Town assumes no responsibility or liability in regard to any Project, or the planning, construction, or operation thereof; (viii) each Borrower or Capital Provider shall, upon request, provide the Town with any information associated with a Project or a C-PACE Loan that is reasonably necessary to confirm that the Project or C-PACE Loan satisfies the requirements of the Program Guide; and (ix) each Borrower, Capital Provider, or other participant under the Program, shall comply with all applicable requirements of the Program Guide.

Sec. 27-8. Additional Provisions

- (a) Required Program Guide Provisions: The Program Guide, including any amendments thereto, shall contain the following provisions:

"This Program Guide (this "Guide" has been prepared for purpose of providing a more detailed description of the requirements, rules, procedures, and fees applicable to the Town of Dumfries Commercial Property Assessed Clean Energy (C-PACE) Financing Program (the "Program"). This Guide and all provisions hereof are subject to the applicable chapter of The Code of the Town of Dumfries, Virginia (the "Chapter"), in all respects including, without limitation, the provisions of the Chapter governing the amendment of this Guide. In the case of any

conflict between the provisions of this Guide and the provisions of the Chapter, the provisions of the Chapter shall control."

"THIS GUIDE IS ONLY A REFERENCE DOCUMENT AND CREATES NO LEGAL RIGHTS IN FAVOR OF ANY BORROWER, CAPITAL PROVIDER, CONTRACTOR, OR ANY OTHER PERSON, NOR DOES IT IMPOSE ANY LEGAL DUTY OR OBLIGATION ON THE TOWN OF DUMFRIES, VIRGINIA."

- (b) Severability: The provisions of this chapter are severable. If a court of competent jurisdiction determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the chapter or provision to any person or circumstance is invalid, the remaining provisions of the chapter shall not be affected by that decision and continue in full force and effect.

APPENDIX A-1

TOWN OF DUMFRIES COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING PROGRAM

C-PACE PROGRAM AGREEMENT

THIS C-PACE PROGRAM AGREEMENT (the "Agreement") is made and entered into as of the date it is fully executed (the "Effective Date"), by and between the TOWN OF DUMFRIES, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the "Town"), (the "Borrower"), and (the "Capital Provider"), and their respective successors and assigns (collectively, the "parties").

RECITALS

WHEREAS, Virginia's "financing clean energy programs" law, § 15.2-958.3 of the Code of Virginia of 1950, as amended (the "Act") authorizes Virginia localities to adopt a Commercial Property Assessed Clean Energy ("C-PACE") Program (the "Program"); and

WHEREAS, the Town's C-PACE Program facilitates C-PACE Loans provided by Capital Providers for renewable energy production and distribution facilities; energy usage efficiency systems, water usage efficiency systems, and other similar improvements as authorized by the Act and the Program; and

WHEREAS, each C-PACE Loan is secured by a voluntary special assessment lien (the "C-PACE Lien") authorized and given voluntarily by the Borrower to the Town to ensure repayment of the C-PACE Loan; and

WHEREAS, pursuant to Chapter 27 of the Code of the Town of Dumfries, Virginia (the "Ordinance") and the Act, the Town, Borrower, and Capital Provider are required to enter into a written agreement specifying the terms and conditions for participating in the Town's C-PACE Program;

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and in order to effectuate the purposes of the Act and Ordinance, the parties agree as follows:

Section 1 - Definitions.

Unless otherwise defined herein, capitalized terms in this Agreement shall have the same meanings as set forth in the Ordinance.

Section 2 - Representations.

- (a) Borrower is the legal and record owner of the Eligible Property more particularly described in Exhibit A (the "Property").
- (b) Borrower applied to participate in the Town's C-PACE Program and desires to obtain a C-PACE Loan to install certain Eligible Improvements ("Project" or "Project Improvements") on the Property.
- (c) Borrower has or will enter into a Financing Agreement with the Capital Provider that sets forth the terms of the C-PACE Loan. A summary of the terms of the C-PACE Loan, including an Assessment Payment Schedule, are set forth in Exhibit B ("Loan Terms"). Borrower and Capital Provider acknowledge and agree that the Financing Agreement may include only those costs and fees for which a C-PACE Lien may be imposed under the Act and Ordinance.
- (d) The parties acknowledge and agree that should Borrower default on the C-PACE Loan, the Town will enforce the C-PACE Lien for the benefit of Capital Provider according to the Loan Documents, the Act, and Ordinance. In the alternative, the Town may assign the C-PACE Lien to the Capital Provider for enforcement according to the terms of the Loan Documents.
- (e) Borrower and Capital Provider confirm that they have obtained Subordination Agreements for each deed of trust or mortgage lien against the Property.

Section 3 – Program Terms and Conditions.

The parties agree as follows:

- (a) C-PACE Loan. Capital Provider will provide financing for the Project in accordance with the C-PACE Loan Documents. The Loan Terms are summarized in Exhibit B.
- (b) Program Fee(s): Borrower agrees to pay Program Fee(s) in the amount of \$_____ as follows:

- (c) Imposition of C-PACE Lien. In consideration for the C-PACE Loan provided to Borrower under the Program, Borrower hereby requests and authorizes Town to levy a C-PACE Lien against the Property in the Loan Amount set forth in the Loan Terms (Exhibit B). As evidence of the C-PACE Lien, Borrower requests that the Town execute a C-PACE Lien Certificate that will be recorded in the Land Records of Prince William County, Virginia.

- (d) Loan Payments. The C-PACE Loan is due and payable to the Capital Provider [or Town for the benefit of the Capital Provider] as set forth in the Loan Terms (Exhibit B) and remitted as follows:

[Program Fee(s) shall be deducted from Loan proceeds at funding or from Loan Payments in accordance with the Loan Documents and Program Guide.] Upon notice from the Program Administrator or Capital Provider that all amounts owing have been paid in full, the Town will execute a release of the C-PACE Lien. Thereafter, the Program Administrator or Capital Provider will record the release.

- (e) Town's Remittance of Loan Payments to Capital Provider: The Town will remit all payments to the Capital Provider within thirty (30) days of receipt, subject to Program Fees as set forth in the Loan Documents as follows:

- (f) Maintenance of Assessment. The Town agrees to maintain and continue the C-PACE Lien on the Property for the benefit of Capital Provider until the C-PACE Loan, including all interest, fees, penalties, costs, and other sums due, is paid in full.

- (g) Assignment. Capital Provider shall have the right to assign the C-PACE Loan and C-PACE Lien to a successor Capital Provider, provided all of the following conditions are met:

- (1) The assignment or transfer is made pursuant to the requirements of the Ordinance and Program Guide;

- (2) The Program Administrator and Borrower are notified in writing of the assignment or transfer and provided the address where future Loan Payments should be mailed at least 30 days before the next Payment is due according to the Assessment Payment Schedule; and

- (3) The assignee or transferee, by operation of the Assignment or otherwise, assumes Capital Provider's obligations under the Loan Documents. Upon written notice to the Program Administrator and Borrower of an assignment or transfer of the right to receive the Loan Payments that meets all of these conditions, the assignor shall be released of all of the obligations of the Capital Provider under the Loan Documents accruing after the date of the assignment. Any attempt to assign or transfer the C-PACE Loan or C- PACE Lien that does not meet all of these conditions is void.

- (4) The Town shall not be obligated to remit C-PACE Loan Payments to a

new Capital Provider assuming the C-PACE Loan until a recorded copy of the Assignment has been provided to the Town at the following address:

Town Manager	Copy to:	Town Attorney
[Address]		[Address]

(h) Lien Priority and Enforcement. Pursuant to Act, Ordinance, and Program Guide:

- (1) Delinquent Installments of the C-PACE Loan will incur interest and penalties as set forth in the Loan Documents.
- (2) The C-PACE Lien, together with any penalties and interest thereon:
 - (i) has the same priority status as a lien for Town real estate taxes;
 - (ii) has superior lien status to all subordinated liens against the Property from the date on which the C-PACE Lien Certificate is filed in the Land Records of Prince William County, Virginia, until the financing secured by the C-PACE Lien and any penalties and interest are paid in full;
 - (iii) shall run with the land, and any portion of the C-PACE Lien that has not yet become due under the Loan Documents is not eliminated by foreclosure of: (i) a Town property tax lien, or (ii) the lien for any past due portion of the C-PACE Loan.
 - (iv) In the event of a sale or transfer of the Property by Borrower, the obligation for the C-PACE Lien and Borrower's obligations under the Loan Documents will be transferred to the succeeding owner.
- (3) In the event of a default by Borrower for failing to make the Loan Payments called for by the Loan Documents and upon written request by the Capital Provider, the Town will enforce the C-PACE Lien in the same manner as a property tax lien against real property may be enforced by a locality in Virginia as set forth in Title 58.1, Chapters 32 and 39 of the Code of Virginia. Capital Provider agrees to cooperate with Town in its enforcement of the C-PACE Lien by providing all necessary documents and information concerning the delinquent C-PACE Loan as requested by the Town Attorney.
- (4) In a suit to collect Delinquent Payments, the Town will be entitled to recover the Delinquent Payments, penalties, and interest due, and the costs and expenses of collection, including attorney's fees, all as set forth in the Loan Documents.

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

(1) After the C-PACE Lien Certificate is recorded, Borrower waives the right to contest the Lien on the basis that the Project Improvements are not Eligible Improvements as such terms are defined herein and in the Ordinance;

(2) Borrower waives all defenses, affirmative or otherwise, to a foreclosure action brought as a result of Borrower's default for failing to pay the Loan Payments due pursuant to the Loan Documents;

(3) To the extent permitted by the Financing Agreement, Borrower waives all defenses to the imposition of personal liability for corporate officers as permitted under section 58.1-3965(F) of the Code of Virginia;

(4) Borrower shall provide a confession of judgment if requested by the Capital Provider.

(j) Written Contract Required by the Act and Ordinance. This C-PACE Program Agreement constitutes the written contract specifying the terms and conditions for C-PACE Program participation as required by § I 5.2-968.3(A)(7) of the Act.

(k) Transfer of Project Improvements. Borrower agrees that all Project Improvements purchased, constructed, and/or installed through financing obtained pursuant to the C-PACE 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.

(l) No Cost to Town. No provision of this Agreement requires the Town to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

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

Section 4 - Indemnification.

Without limiting any other obligation or liability of the Borrower, or any right or remedy of the Capital Provider or Town, Borrower agrees to indemnify and hold harmless the Capital Provider and Town, their directors, officers, employees, agents, subsidiaries, and affiliates (each, an "Indemnified Party"), from and against all damages, losses, settlement payments, obligations, liabilities, claims, suits, penalties, assessments, citations, directives, demands, judgments, actions or causes of action, whether created

by statute or common law, including all costs and expenses, including attorneys' fees, arising from or associated with this C-PACE Loan transaction. This section shall survive the expiration of the Term of this Agreement.

Section 5 – Miscellaneous Provisions.

- (a) Construction and Definitions. This Agreement is to be construed in accordance with and with reference to the Act, Ordinance, and Program Guide. Capitalized terms used herein shall have the same meanings ascribed to them in the Ordinance.
- (b) Further Assurances. Borrower further covenants and agrees to do, execute, and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this Agreement as may be reasonably necessary or required.
- (c) Severability. If the C-PACE Act, the Ordinance, and/or any clause, provision, or section of this Agreement, is challenged and held by a court of competent jurisdiction to be unenforceable by the Town or Capital Provider, Borrower agrees to continue to make the Loan Payments required under the Loan Documents and agrees to execute any and all documentation to perfect and enforce the C-PACE Loan as required by the Town or Capital Provider. 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.
- (d) 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.
- (e) Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, or overnight delivery service, to the parties, as follows:

If to the Town:

Town Manager	Copy to:	Town Attorney
[Address]		[Address]

If to the Borrower:

[Address]

If to the Capital Provider:

[Address]

- (f) Amendment and Waivers. Except as otherwise set forth in this Agreement, any

amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed by the parties.

- (g) Applicable Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. In any action, in equity or at law, with respect to the enforcement or interpretation of this Agreement, venue shall be in Prince William County, Virginia.
- (h) Successors and Assigns. This Agreement is binding upon and made for the benefit of Borrower, Capital Provider, and Town and their respective successors and permitted assigns.
- (i) Entire Agreement. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement.
- (j) Headings. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.

IN WITNESS WHEREOF, the Town, Borrower, and Capital Provider have each caused this Agreement to be executed on the date(s) entered below:

TOWN OF DUMFRIES, VIRGINIA

BORROWER:

By: _____

By: _____

Name/Title: _____

Name/Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

CAPITAL PROVIDER:

By: _____

By: _____

Town Attorney

Name/Title: _____

Date: _____

Date: _____

Exhibit A


Property Description

Exhibit B

Loan Terms and Assessment Payment Schedule

This ordinance shall become effective upon adoption.

By Order of Council:



Derrick R. Wood, Mayor

ATTEST:



Retta Ladd, Deputy Town Clerk

Ordinance Number O-2019-012