

**COUNTY OF LEHIGH, PENNSYLVANIA  
COMMISSIONERS BILL 2020 - 25  
SPONSORED BY COMMISSIONER BRACE  
REQUESTED DATE: AUGUST 5, 2020  
ORDINANCE NO. 2020 -**

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**APPROVING AN AMENDED AND RESTATED ADMINISTRATION  
AGREEMENT AND AMENDING APPENDIX D OF THE PROGRAM  
GUIDELINES (FORM STATEMENT OF LEVY AND LIEN AGREEMENT) IN  
CONNECTION WITH THE LEHIGH COUNTY PROPERTY ASSESSED CLEAN  
ENERGY PROGRAM (C-PACE)**

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**WHEREAS**, Title 12 of the Pennsylvania Consolidated Statutes, 12 Pa.C.S.A. Section 4301, *et seq.*, as amended, authorizes counties and municipalities to establish a Commercial Property Assessed Clean Energy program (“Program”); and

**WHEREAS**, Section 4303 of Title 12 authorizes a county to establish the Program by adopting a resolution establishing the Program, defining an area or group of real properties designated for the purpose of establishing the Program, and provide other operational standards and guidelines; and

**WHEREAS**, the Board of Commissioners established the Program, known as the Lehigh County C-PACE Program, on December 11, 2019, as set forth in Ordinance No. 2019 - 134; and

**WHEREAS**, the Board of Commissioners entered into an Administration Agreement with Sustainable Energy Fund (SEF) for the administration of the Program; and

**WHEREAS**, the Board of Commissioners adopted Program Guidelines on June 24, 2020, as set forth in Ordinance No. 2020 – 114; and

**WHEREAS**, the Board of Commissioners now desires to approve an Amended and Restated Administration Agreement and Appendix D of the Program Guidelines (Form Statement of Levy and Lien) as set forth herein.

**NOW, THEREFORE, IT IS HEREBY ENACTED AND ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LEHIGH, PENNSYLVANIA, THAT:**

1. The foregoing Whereas clauses are incorporated herein as if set forth in their entirety.

2. The Board of Commissioners adopts the Amended and Restated Amended Administration Agreement attached hereto as Exhibit “A”, which shall replace the Administration Agreement previously adopted via Ordinance No. 2019 – 134. The Board of Commissioners authorizes the Lehigh County Executive to execute the Amended and Restated Administration Agreement.

3. The Board of Commissioners adopts the Amended Form Statement of Levy and Lien attached hereto as Exhibit “B”, which shall replace the Form Statement of Levy and Lien previously adopted as Appendix D of the Program Guidelines adopted via Ordinance No. 2020 – 114.

4. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action, including any necessary transfers of funds, and execute additional documents as they may deem appropriate to carry out the purposes of this Ordinance.

5. In the event any provision, section, sentence, clause, or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause, or part of this Ordinance, it being the intent of the Board of Commissioners that such remainder shall be and shall remain in full force and effect.

6. The County Executive shall distribute copies of this Ordinance to the proper officers and other personnel of Lehigh County whose further action is required to achieve the purpose of this Ordinance.

7. Any Ordinance or part of any Ordinance conflicting with the provisions of this Ordinance is hereby repealed insofar as the same affects this Ordinance.

8. This Ordinance shall become effective in ten (10) days after enactment.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the

following vote:

**Commissioners**

**AYE**

**NAY**

Geoff Brace  
Nathan Brown  
Percy H. Dougherty  
Bob Elbich  
Marc Grammes  
Dave Harrington  
Dan Hartzell  
Zakiya Smalls  
Amy Zanelli

ATTEST: \_\_\_\_\_  
Clerk to the Board of Commissioners

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Phillips M. Armstrong  
Lehigh County Executive

ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**County of Lehigh-AMENDED AND RESTATED SEF ADMINISTRATION**  
**AGREEMENT**

**THIS ADMINISTRATION AGREEMENT** (the “**Agreement**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the **County of Lehigh** (the “**County**”), a Home Rule County of the Third Class organized under the laws of the Commonwealth of Pennsylvania, and **PP&L Sustainable Energy Fund** (“**SEF**”), a Pennsylvania non-profit (non-stock) corporation (each a “**Party**” and collectively the “**Parties**”).

**RECITALS**

**WHEREAS**, Section 4301, *et. seq.* of Title 12 of the Pennsylvania Consolidated Statutes, 12 P.S. §4301, *et seq.*, authorizes counties to establish property assessed clean energy programs; and

**WHEREAS**, Property Assessed Clean Energy Programs are designed to facilitate low-cost, long-term financing to owners of agricultural, commercial and industrial properties for energy efficiency, water conservation and renewable energy projects; and

**WHEREAS**, in accordance with Section 4302 of Title 12, the Lehigh County Board of Commissioners (the “**Board**”) has adopted Ordinance No. 2019-134 on December 11, 2019 establishing a Property Assessed Clean Energy Program (the “**Lehigh County C-PACE Program**”) and authorizing the County to contract with a third party to administer the Lehigh County C-PACE Program; and

**WHEREAS**, the County entered into an Administration Agreement with SEF for the administration of the Lehigh County C-PACE Program on or about \_\_\_\_\_; and

**WHEREAS**, the Board now desires to amend and restate the Administration Agreement in its entirety, as more fully set forth herein.

**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 30 of 2018, of the General Assembly of the Commonwealth of Pennsylvania, (12 P.S. § 4301 et seq.), it is hereby agreed as follows:

**Section 1. Definitions.** Capitalized terms used in this Agreement shall have the meanings assigned to them in this Agreement. In addition to the words and terms defined elsewhere in this Agreement, each of the following words and terms used in this Agreement shall have the following meanings unless the context or use clearly indicates another or different meaning or intent:

- (a) "*Alternative Energy System.*" Energy generated from alternative energy sources as defined under the act of November 30, 2004 (P.L.1672, No.213), known as the Alternative Energy Portfolio Standards Act. In addition to these energy sources, programs may recognize alternative energy sources not included in the Alternative Energy Portfolio Standards Act when approving qualified project applications.
- (b) "*Assessment.*" A charge against the Real Property within the County which is levied and collected by the County.
- (c) "*Board.*" The Board of Commissioners of Lehigh County.
- (d) "*Bond.*" The term includes any public or private financing note, mortgage, loan, deed of trust, instrument, refunding note or other evidence of indebtedness or obligation used to finance a Qualified Project.
- (e) "*Business.*" A corporation, partnership, sole proprietorship, limited liability company, business trust or other commercial entity.
- (f) "*Clean Energy Project.*" A project which does any of the following:
  - (1) Replaces or supplements an existing energy system that utilizes nonrenewable energy with an energy system that utilizes alternative energy.
  - (2) Facilitates the installation of an Alternative Energy System in an existing building or a major renovation of a building.
  - (3) Facilitates the retrofit of an existing building to meet high-performance building standards.
  - (4) Installs equipment to facilitate or improve energy conservation or energy efficiency, including heating and cooling equipment and solar thermal equipment.
- (g) "*District.*" The County of Lehigh.
- (h) "*Program.*" The Lehigh County C-PACE Program.
- (i) "*Qualified Party.*" A contractor or subcontractor that meets the following standards:
  - (1) Possesses all technical qualifications and resources, including equipment, management, technical and craft labor personnel, and financial resources necessary to perform the contracted responsibilities, or will obtain the contracted responsibilities through the use of qualified subcontractors.
  - (2) Possesses all valid, current licenses, registrations or other certificates required for the contractor or its employees by Federal, State or local law necessary for the type of work required for the project.

- (3) Does not have any outstanding liability to the locality in the form of tax obligations, fines or other fees, unless the contractor or subcontractor has entered into and is in compliance with a payment agreement with the locality for such taxes, fines or fees.
  - (4) Meets all bonding requirements, as required by applicable law or contract specifications, and all insurance requirements as required by applicable law or contract specifications, including general liability insurance, workers' compensation insurance and unemployment insurance requirements.
- (j) "*Qualified Project.*" The installation or modification of a permanent improvement fixed to Real Property that is a Clean Energy Project, Water Conservation Project or Alternative Energy System, which generates measurable energy savings or reductions in water usage and the installation is performed by a Qualified Party in a District. The term includes installation of alternative energy-generating equipment affixed to the land or building.
- (k) "*Real Property.*" Any agricultural, commercial or industrial land or building owned by an individual, partnership, limited liability corporation, corporation or nonprofit. The term does not include multifamily housing or any residential property.
- (l) "*Water Conservation Project.*" A project that reduces the usage of water or increases the efficiency of water usage.

## **Section 2. Obligations of SEF.**

### **(a) Program Guidelines.**

- (1) SEF has developed C-PACE Program Guidelines, which the Board adopted via Ordinance No. 2020-114 on June 24, 2020 and amended via Ordinance No. 2020-\_\_\_ on August \_\_\_, 2020.
- (2) SEF shall provide notice of updates to the C-PACE Program Guidelines and provide 14-day review period by the County Executive or designee. At the end of review period SEF will provide an Amendment to this Agreement that updates the Program Guidelines, Exhibit A.

### **(b) Applications.**

- (1) SEF shall accept and review pre-application and applications submitted by Real Property owners within the District in the form and manner established by the Program Guidelines.
- (2) SEF shall notify County staff of pre-applications and shall provide a copy of the pre-application to County staff that includes disclosure of other holdings of the property owner.

- (3) SEF shall approve or disapprove such applications in accordance with the Program Guidelines.
- (4) Copies of the Approved Applications along with Tax Certifications shall be provided to the County.

(c) Project Requirements.

- (1) If a property owner requests financing through the Program for a Qualified Project, SEF shall require:
  - i. With the application, a scope of work, energy baseline or water usage baseline and the projected energy savings or water usage reductions in order to establish the viability of the Qualified Project and projected energy savings or water usage reductions.
  - ii. After a Qualified Project is completed, verification from the property owner and from an independent professional inspector or building code official that the Qualified Project was properly completed.
- (2) Pursuant to Section 4304 of Title 12, SEF shall provide notification to any financial institution (as defined in Section 4301 of Title 12) and receive written consent from the financial institution that the Real Property may participate in the Program. SEF shall provide a copy of the written consent to the owner of the Real Property and the County.
- (3) Provide notice to the County, which will be posted online and made available to the public, containing all of the following:
  - i. Legal description of the property;
  - ii. Name of each property owner;
  - iii. Total amount of the Qualified Project;
  - iv. Complete description of the Qualified Project;
  - v. Assessment needed to satisfy the Bond;
  - vi. A reference to the statutory assessment lien provided under Chapter 43 of Title 12, 12 P.S. §4301, *et. seq.*

(d) Assessments.

- (1) SEF, in conjunction with the entity providing the financing (“Lender”), shall determine the amount of the Assessment to be levied against the Real Property associated with the Qualified Project.
- (2) SEF and the Lender shall disclose to the property owner the costs and risks associated with participating in the Lehigh County C-PACE Program, including risks related to the failure of the property owner to pay the Assessment provided for in the Assessment Agreement.
- (3) SEF and the Lender shall disclose to the property owner the effective interest rate on the Assessment, including Program application and other fees and charges



imposed by SEF to administer the Lehigh County C-PACE program, fees charged by the County for collection, as well as any fees charged by the Lender, and the risks associated with variable interest rate financing, if applicable.

- (4) SEF shall cause to be prepared and certified to the County a Lehigh County C-PACE Assessment roll for each Real Property participating in the Program. The Assessment roll shall specify the amount of the outstanding debt obligation, the amount to be included on the County property tax bill and the date on which the debt obligation is expected to be paid in full. The Assessment roll shall be provided to the County annually but no later than November 30 of each year.
- (5) Upon receipt of the Assessment collected by the County, SEF shall be responsible for remitting the Assessment to the Lender in payment of the debt obligation.

- (e) SEF shall apprise the County of any changes in Law or Regulation. This Agreement is subject to such modifications as may be required by change in federal or Pennsylvania state law, or their implementing regulations. Any such required modification shall automatically be incorporated into and made a part of this Agreement on the effective date of such change, as if fully set forth herein.

### **Section 3. Obligations of the County.**

- (a) Assessment Agreement. The County shall enter into an Assessment Agreement with the owner of Real Property and the Lender. This agreement is required by Section 4308 of Title 12 of the Pennsylvania Consolidated Statutes, 12 P.S. §4308.
- (b) Billing of the Assessment. Upon receipt of the Assessment roll, the County shall add the amounts required to be paid by owners of Real Property participating in the program to the property tax bills of the respective Real Property. The County shall bill the Assessment in the same manner and at the same time it bills its real property taxes. The Assessment shall be a separate clearly defined line item and shall be due on the same dates as the County's real property taxes.
- (c) Collection of the Assessment. Billed Assessment amounts shall be collected in the same manner as the County's real property taxes, including, in the event of default or delinquency, with respect to any penalties, fees and remedies, and lien priorities as provided in Sections 4307 and 4308 of Title 12 of the Pennsylvania Consolidated Statutes, 12 P.S. §4307 and 4308.
- (d) Remittance of the Assessment. The County shall remit the Assessment to SEF.
- (e) Delinquency. In the event of failure by the owner of Real Property to pay the Assessment, the County may enforce the Assessment lien in the same manner that a

property tax lien against real property may be enforced by the County to the extent the enforcement is consistent with the laws of this Commonwealth.

- (f) Promotion of the Program. The County shall use good faith efforts to assist SEF in local marketing efforts and outreach to the local business community to encourage participation in the Program.

#### **Section 4. Term and Termination.**

The term of this Agreement shall commence upon the date first written above. This Agreement shall be in full force and effect until all Assessments have been paid in full or deemed no longer outstanding. The County may terminate this Agreement at any time with 120 days written notice to SEF. As to any outstanding Assessments owed, the County shall continue to meet its obligations under this Agreement until any and all Assessments have due have been paid in full and distributed to SEF.

#### **Section 5. Default.**

Each Party shall give the other Party written notice of any breach of any covenant or agreement under this Agreement and shall allow the defaulting party 30 days from the date of its receipt of such notice within which to cure any such default or, if it cannot be cured within the 30 days, to commence and thereafter diligently pursue to completion, using good faith efforts to effect such cure and to thereafter notify the other Party of the actual cure of any such default. The Parties shall have all other rights and remedies by law, including, but not limited to, specific performance.

#### **Section 6. Miscellaneous Provisions.**

- (a) Severability. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, in validity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.
- (b) 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:
  - (1) If to the County:

Lehigh County Department of Community and Economic Development  
17 S. 17<sup>th</sup> Street  
Allentown, PA 18101

With a copy to:  
Lehigh County Fiscal Officer  
17 S. 17<sup>th</sup> Street  
Allentown, PA 18101

(2) If to SEF:  
John Costlow, President  
Sustainable Energy Fund  
4110 Independence Drive  
Schnecksville, PA 18078

- (c) Amendment. Except as otherwise set forth in this Agreement, any amendment to any provision of this Agreement must be in writing and mutually agreed to by the County and SEF.
- (d) 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. In the event of any conflict between the Program Guidelines and this Agreement, the Program Guidelines shall control.
- (e) Changes in Law or Regulation. This Agreement is subject to such modifications as may be required by change in federal or Pennsylvania state law, or their implementing regulations. Any such required modification shall automatically be incorporated into and made a part of this Agreement on the effective date of such change, as if fully set forth herein.

IN WITNESS WHEREOF, each Party to this Agreement has caused this Agreement to be duly executed on its behalf by one or more of its authorized officers or members of its governing body, and its seal to be hereunto affixed and attested by an authorized officer, all as of the day and year first above written.

**COUNTY OF LEHIGH**

By: \_\_\_\_\_  
Phillips M. Armstrong, County Executive

**SEF**

\_\_\_\_\_  
John Costlow, President, SEF

**STATEMENT OF LEVY, LIEN AND ASSESSMENT AGREEMENT**  
**COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (“C-PACE”)**

**THIS STATEMENT OF LEVY AND LIEN OF ASSESSMENT AGREEMENT** (“the Agreement”) is made and entered into as of the [DAY]day of [MONTH], 20\_\_\_, (the “Effective Date”) by and between Lehigh County, Pennsylvania (the “County”), [PROPERTY OWNER] (the “Property Owner”) and [CAPITAL PROVIDER] (the “Capital Provider”).

**RECITALS**

**WHEREAS**, C-PACE is a program to facilitate loan financing for clean energy or water conservation improvements to commercial properties utilizing an assessment mechanism to provide security for repayment of the loan.

**WHEREAS**, 12 Pa.C.S.A. §4301 et.al., authorizes the establishment of a property assessed clean energy program to ensure that owners of agricultural, commercial and industrial properties can obtain low-cost, long-term financing for energy efficiency, water conservation and renewable energy projects.

**WHEREAS**, the County, pursuant to 12 Pa. C.S.A. §4303, has established the Lehigh County C-PACE Program (“the Program”) via Ordinance **Exhibit A**, attached hereto and incorporated herein.

**WHEREAS**, the County has entered into a Cooperation Agreement with the Sustainable Energy Fund providing that the Sustainable Energy Fund will serve as the third-party administrator of the Program (the “Program Administrator”).

**WHEREAS**, Property Owner owns real property located at [ENTER ADDRESS], Lehigh County, Pennsylvania, described in **Exhibit B**, attached hereto and incorporated herein (the “Property”).

**WHEREAS**, in accordance with the requirements of the Program, Property Owner proposes to renovate or retrofit the Property to increase energy efficiency, water conservation, or to install a renewable energy system to service the Property (the “Project”).

**WHEREAS**, Property Owner has applied for and has been approved by Capital Provider for financing for the Project, memorialized in the Memorandum Summary of the C-PACE Financing Agreement. and attached as **Exhibit C** (the “Memorandum”).

**WHEREAS**, the Capital Provider and Property Owner desire the County to collect and receive for the benefit of Capital Provider the sums payable under the C-PACE Financing Agreement, by levying a voluntary special assessment against the Property (the “Assessment”) and remitting the sums collected and any applicable fees and interest due pursuant to the C-PACE Financing Agreement, to the Program Administrator, or its authorized successor, assignee or designated payment agent.

**NOW, THEREFORE**, the County, Property Owner, and Capital Provider (collectively referred to as the “Parties”) do hereby agree as follows:

**Section 1. Construction.** Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the singular the plural and the part the whole and “or” has the inclusive meaning represented by the phrase “and/or”. References in this Agreement to Lehigh County and County shall be interchangeable. The words “hereof”, “herein”, “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not any particular provision of this Agreement. The section and other headings contained in this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation hereof in any respect. Section and subsection references are to this Agreement unless otherwise specified.

**Section 2. Levy of Assessment.** As of the effective tax year [YEAR] upon receipt of the Notice To Lehigh County To Commence Collection Of Assessment For C-Pace Program (the “Notice”), attached as **Exhibit E**, and during the Term, the Assessment, which runs with the land with respect to the Property, will be added to the Property’s Tax Bill on account #[ENTER PROPERTY TAX ID] by the County. Property Owner agrees that the Assessment will be included on the Property’s Tax Bill and agrees to pay the Assessment and the County’s and Program Administrator’s administrative costs through the Assessment which is due and payable on the same date as the Property’s Tax Bill.

The amount of the Assessment, as determined by the Capital Provider, are as follows: an installment payment plan is in effect and is based on the principal amount financed \$ [AMOUNT], with interest thereon at a fixed rate equal to [INTEREST RATE]% per annum, plus (a) any capitalized interest, (b) any additional fees and expenses agreed upon in the C-PACE Financing Agreement and (c) fees and costs of the Program Administrator as set forth in its Pennsylvania C-PACE Program Guidelines, with installments of principal and interest due and payable pursuant to the C-PACE Special Assessment Payment Schedule attached hereto as **Exhibit D**.

As evidenced in **Exhibit D**, the Term will be [YEARS] years. Program Administrator, its successors, or its permitted assignees must submit a request for collection of each Assessment amount to the County no later than [DATE] of each year. Program Administrator, on a yearly basis, shall provide the County with a reminder on this and other Assessments by [DATE] of each year. In the event the Program Administrator ceases to act as the Program Administrator and there is no successor, then the Capital Provider may submit the request for collection of the Assessment amount to the County, through the Department of [DEPARTMENT], prior to [DATE] of each year.

**Section 3. Assessment Billing, Collection and Disbursement to Capital Provider.** The County agrees to collect the Assessment and payment will be enforced in the same manner that a property tax lien against real property is enforced in the local unit of government. Assessment payments received by the County shall be remitted to Program Administrator or its designated payment agent no later than 30 days after the end of the month in which the County receives said payments. The Program Administrator shall, or shall cause its payment agent to, remit payment to the Capital Provider within 10 business days (Monday- Friday). In the event Program Administrator ceases to act as the Program Administrator and there is no successor Program Administrator then serving, the County hereby agrees to forward the payments to the Capital Provider within 30 days after the end of the month in which the payments are received by the County. The Capital Provider shall have a contractual lien on any Assessment payments made by the Property Owner, regardless of whether such Assessment payments may be in the possession

of the County, the Program Administrator, or their designees or a payment agent, and may, consistent with this Agreement, assign such lien to a third-party.

**Section 4. Collections.** The Parties hereby acknowledge that the Assessment and any accrued interest and/or penalties constitute a first lien on the Property that has priority over prior or subsequent liens in favor of private parties, and that the Assessment will continue as a lien on the Property from the date it becomes payable until the unpaid Assessment, all interest and penalties on the Assessment are paid in full, regardless of a change in ownership of the Property, whether voluntary or involuntary.

**Section 5. Delinquencies.**

5.1 Notice. In the event Property Owner fails to make an Assessment payment when due, the County, pursuant to the Agreement, shall provide written notice to Program Administrator, its successors, of such delinquency within thirty (30) days. In the event Program Administrator ceases to act as the Program Administrator and there is no successor, the County hereby agrees to provide written notice to Capital Provider of any delinquency within thirty (30) days.

5.2 Enforcement. The Parties hereby acknowledge and agree that an overdue Assessment will be enforced in the same manner that a property tax lien against a real property is enforced. The delinquent Assessment shall incur interest and penalties in the same manner as delinquent property taxes. The County may recover costs and expenses, including attorney fees and costs, in a suit to collect a delinquent Assessment in the same manner as in a suit to collect a delinquent property tax. Funds collected by the County for the payment of the overdue Assessment, including any penalties and interest, shall be paid to Program Administrator, its successors, or its permitted assignees or payment agent no later than thirty (30) days after the end of the month in which the amounts are received. In the event there is no Program Administrator serving, the County hereby agrees to remit all funds it collects for the payment of the overdue Assessment, including the penalties and interest due to the Capital Provider as outlined in the C-PACE Financing Agreement, to Capital Provider no later than thirty (30) days after the end of the month in which the County receives said funds.

5.3 Interest and Penalties. Interest assessed and collected on delinquencies shall be forwarded to the Capital Provider through the Program Administrator or its payment agent within thirty (30) days after delinquent interest payment is received.

5.4 Continuation of Future Assessments. The portion of the annual assessment determined by the assessment term stipulated in C-PACE Special Assessment Payment Schedule (**Exhibit D**) that has not yet become due is not eliminated by foreclosure of a property tax lien.

5.5 Acceleration. The assessment cannot be accelerated nor extinguished until fully repaid.

**Section 6. Amendment of Assessment.** In the event that the Property Owner wishes to prepay the assessment in part, the Property Owner must submit a request for partial prepayment no later than thirty days prior to the Cutoff Date, as defined below. Within seven days of receipt of a prepayment request, the Capital Provider shall provide a payoff statement to the Property Owner and the Program Administrator, showing the effective date of the prepayment (the "Payoff Date"), the amount of the prepayment, including principal, accrued but unpaid interest, and any

prepayment premium, and shall contain an amendment to the Special Assessment Payment Schedule (an "Amendment"). Receipt of any prepayment funds by the County, the Program Administrator, or the Capital Provider shall constitute evidence of Property Owner's consent to the Amendment. The any prepayment funds must be received by the Payoff Date, which shall be no later than [DATE] of the year in which the next payment is due (the "Cutoff Date"). Program Administrator shall forward any Amendment of the Special Assessment Payment Schedule that it receives from Capital Provider to the County. Upon receipt of an Amendment, the County shall amend the Assessment to reflect the adjustment and file the Amendment of the Special Assessment Payment Schedule on the property records of the Property. In the event there is no Program Administrator serving the County, the Capital Provider may submit an Amendment directly to the County, through the Department of [DEPARTMENT], no later than [DATE] of the year in which the next payment is due and the County shall amend the Assessment to reflect the adjustment and file the Amendment of on the property records of the Property.

**Section 7. Memorandum.** The Memorandum of the Financing Agreement **Exhibit C** shall include (a) the legal description of the property; (b) the name of each property owner; (c) the total amount of the of the qualified project and a complete description of the qualified project; (d) the assessment (annual payment) need to satisfy the financing; (e) a reference to the statutory assessment lien; (f) the financing rate; (g) total amount of financing; (h) any finance charges associated with financing; (i) method for calculating any late fees.

**Section 8. Change in Property Ownership.** Upon change in ownership of the Property that occurs after the date of recordation of the Assessment, all Assessment obligations as set forth herein are the responsibility of the new property owner. To the extent that Assessment obligations became due and payable prior to the change in ownership, such Assessment obligations may be apportioned by the buyer and seller in the same way as real property taxes, or in any other manner not inconsistent with federal, state, or local law. The Assessment runs with the land and the original property owner is released from all Assessments at time of sale, which shall become the responsibility of the new property owner.

**Section 9. Assignment.** The County may not assign or transfer its rights or obligations under this Agreement without prior written consent of Property Owner and Capital Provider. Capital Provider may not assign any or all its rights arising under this Agreement without providing 45 days' written notice to the County and Program Administrator. The County has 30 days from receipt of Capital Provider's notice to provided written objection to the transfer but the assignment which shall not be unreasonably withheld, conditional or delayed. The Capital Provider may provide a response within the 45-day window to any objection. Assignment may be included in the Financing Agreement with the Property Owner. The Capital Provider shall provide the Property Owner with 45 days' written notice of assignment. The Property Owner has 30 days to provided written objection to the transfer but the assignment which shall not be unreasonably withheld, conditional or delayed. The Capital Provider may provide a response within the 45-day window to any objection. The County, Property Owner and Capital Provider hereby agree that this Agreement shall inure to the benefit of, and shall be binding upon the County, Property Owner and Capital Provider and their successors and permitted assignees. Any assignment shall be documented in the form provided as **Exhibit F** to this Agreement, and recorded in the same manner as this Agreement.

**Section 10. Release. Property Owner and Capital Provider (the “Releasing Parties”)** do hereby fully and completely remise, exonerate, release and forever discharge the County, its commissioners, officers, employees, agents, solicitors and advisors (the "Released Parties") of and from any and all matters, things, events, claims, demands, all actions, causes of action, claims, suits, controversies, trespass, damages, judgments, verdicts, interest, penalties and demands in any form whatsoever, at law or in equity, arising from or by reason of any and all known or unknown, foreseen or unforeseen, suspected or unsuspected, matured or unmatured, Releasing Parties at any time had or have against the Released Parties including, without limitation any matters arising from, in respect of, or in connection with the Agreement, Pennsylvania C-PACE Program Guidelines, the C-PACE process and approval, the Project, the C-PACE Financing Agreement, the Cooperation Agreement, the Assessment, the Assessment amount, the Assessment Levy, or an Amendment of Assessment.

Notwithstanding the foregoing, the Program Administrator and the County agree that the billing, liening, collecting, and/or remitting amounts in accordance with this Agreement are ministerial acts, and the Capital Provider may bring an action in mandamus, a claim for specific performance, or any similar action or remedy (except an action seeking monetary damages from the Program Administrator or the County) against any necessary party to ensure the necessary billing, liening, collecting, and remittance of any amounts due under this Agreement.

**Section 11. Counterparts.**

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

**Section 12. Representations and Warranties.**

12.01 Qualification. Property Owner is duly organized [COMPANY TYPE] authorized to conduct business and is in good standing in the Commonwealth of Pennsylvania. Capital Provider is duly organized [COMPANY TYPE] to conduct business and is in good standing in the Commonwealth of Pennsylvania.

12.02 Authority and Authorization. Property Owner and Capital Provider have the power and authority to execute and deliver this Agreement, to make the transaction provided for herein, to execute and deliver the Statement of Levy and Lien in evidence of such indebtedness, to which Property Owner and Capital Provider are a party and to perform their respective obligations hereunder and all such action has been duly and validly authorized by all necessary action on their respective part.

**Section 13. Miscellaneous.**

13.01. Severability. The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

13.02 Notices. All communication (“notices”) under the provisions of this Agreement shall be in writing unless otherwise expressly permitted hereunder and shall be sent by first class, or first class express mail, overnight express carrier or by telex with confirmation in writing



mailed first class, with postage or charges prepaid, any such properly given notice shall be effective when received. All notices shall be sent to the applicable party at the address set forth in the Memorandum, **Exhibit C**, or in accordance with the last unrevoked written direction from party to the other party hereto.

13.03 Amendments and Waivers. The provisions of this Agreement may from time to time be waived in writing by the County at its sole discretion. All amendments hereto must be in writing, executed by all parties hereto.

13.04 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania. The venue of any action brought under this Agreement and jurisdiction with respect to this Agreement and the parties hereto shall be in the Court of Common Pleas of Lehigh County, Pennsylvania. Property Owner and Capital Provider hereby consents and submits to the exclusive jurisdiction of the Court of Common Pleas of Lehigh County, Pennsylvania with respect to any claim, matter or dispute with respect to this Agreement.

13.05 Special Revenues. The County and the Program Administrator each agree that any Assessment payments made by the Property Owner, whether received by the County, by the Program Administrator, or by any payment agent of the Program Administrator or County, constitute "special revenues" as that term is defined in 11 U.S.C. § 902(2), and agree, to the greatest extent possible, are exempt from any automatic stay of bankruptcy, and that, furthermore, shall be paid in a manner consistent with this Agreement, notwithstanding the bankruptcy of any party.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF the County has executed this Agreement on the Effective Date by its duly authorized representative:

**LEHIGH COUNTY, PENNSYLVANIA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF PENNSYLVANIA,

COUNTY OF LEHIGH, to wit:

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the subscriber, a Notary Public of the State of Pennsylvania, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Lehigh County, who acknowledged himself/herself to be, and being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of.

As Witness: my hand and notarial seal.

My commission expires:

\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF the County has executed this Agreement on the Effective Date by its duly authorized representative:

[PROPERTY OWNER]  
AUTHORIZED REPRESENTATIVE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_, to wit:

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the subscriber, a Notary Public of the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_, who acknowledged himself/herself to be, and being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of.

As Witness: my hand and notarial seal.

My commission expires:

\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF the County has executed this Agreement on the Effective Date by its duly authorized representative:

[CAPITAL PROVIDER]  
AUTHORIZED REPRESENTATIVE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_,

COUNTY OF \_\_\_\_\_, to wit:

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the subscriber, a Notary Public of the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_, who acknowledged himself/herself to be, and being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of.

As Witness: my hand and notarial seal.

My commission expires:

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**ORDINANCE**

**EXHIBIT B**  
**LEGAL DESCRIPTION OF THE PROPERTY**

**EXHIBIT C**  
**MEMORANDUM of C-PACE FINANCING AGREEMENT**

Regarding the financing agreement between \_\_\_\_\_, property owner and the capital provider/ lender \_\_\_\_\_ ; dated and executed on \_\_\_\_\_

1. 12 Pa.C.S.A. §4301 et.al., authorizes the establishment of a property assessed clean energy program to ensure that owners of agricultural, commercial and industrial properties can obtain low-cost, long-term financing for energy efficiency, water conservation and renewable energy projects.
2. Lehigh County, pursuant to 12 Pa. C.S.A. §4303, has established the Lehigh County C-PACE Program (“the Program”) via Resolution/Ordinance \_\_\_\_\_ and incorporated herein (the “Property”).
3. The property referenced is located at [ENTER ADDRESS], Lehigh County, Pennsylvania.
4. The Property Owner has requested that it be allowed to participate in the Program, and the Program Administrator has determined (a) that the Property Owner and the Project qualify for participation in the Program, and (b) the capital provider will advance funds to the Property Owner for the Project.
5. The Property Owner’s obligation to repay funds advanced to it under the Program will be paid through a voluntary special assessment imposed on the Property pursuant to the C-PACE Act 30 of 2018, the County, pursuant to 12 Pa. C.S.A. §4303, has established the Lehigh County C-PACE Program (“the Program”) via Ordinance No. 2019 – 134, dated December 16, 2019.
6. The regulations of the C-PACE Statute and the Lehigh County C-PACE Program (“the Program”) establish that the C-PACE Assessment state that upon a change in ownership of the Property, any assessments that occur after the date of sale are the responsibility of the new property owner. Assessments that occur prior to the date of sale are the responsibility of the current property owner and may be proportioned the same way property taxes are at the time of sale. The Assessment runs with the Property and the original property owner is released from all future assessments at time of sale.

This Memorandum summarizes key aspects of the full Financing Agreement between the below listed parties.

County: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

Capital Provider: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

Property Owner(s): \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

Property Owner(s): \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

Property Owner(s): \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

Program Administrator: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_



## Summary of C-PACE Assessment

**Property Tax ID:**

**Total Amount Financed:**

**Assessment Commencement Date:**

**Number of Annual Payments:**

**Interest Rate:**

**Annual Payment Amount:**

**Final Assessment Date:**

### **Complete description of the qualified project**

[insert project description]

During the Term, the Assessment, which runs with the land with respect to the Property, will be added to the Property's Tax Bill on account # [ENTER PROPERTY TAX ID] by the County. Property Owner agrees that the Assessment will be included on the Property's Tax Bill and agrees to pay the Assessment, which includes administrative costs, through the Assessment which is due and payable on the same date as the Property's Tax Bill.

### **Change in Property Ownership.**

Upon a change in ownership of Property, any assessments that occur after the date of sale are the responsibility of the new property owner. Assessments that occur prior to the date of sale are the responsibility of the current property owner and may be proportioned the same way property taxes are at the time of sale. The Assessment runs with the Property and the original property owner is released from all future assessments at time of sale.

### **Assignment**

The County may not assign or transfer its rights or obligations under this Agreement without prior written consent of Property Owner and Capital Provider. Capital Provider may not assign any or all its rights arising under this Agreement without providing 45 days' notice to the County and Program Administrator. The County has 30 days to provided written objection to the transfer but the assignment which shall not be unreasonably withheld, conditional or delayed. The Capital Provider may provide a response within the 45-day window to any objection. Assignment may be included in the Financing Agreement with the Property Owner. The Capital Provider shall provide the owner with 45 days' notice of assignment. The Property Owner has 30 days to provided written objection to the transfer but the assignment which shall not be unreasonably withheld, conditional or delayed. The Capital Provider may provide a response within the 45-day window to any objection. The County, Property Owner and Capital Provider hereby agree that this Agreement shall inure to the benefit of, and shall be binding upon the County, Property Owner and Capital Provider and their successors and permitted assignees.

**EXHIBIT D**  
**C-PACE SPECIAL ASSESSMENT PAYMENT SCHEDULE**

Period	Due Date	Payment	Interest	Principal	Principal Remaining	Administrator Fee	Total Payment Due
1	9/30/20	\$	\$	\$	\$	\$	\$
2	9/30/20	\$	\$	\$	\$	\$	\$
3	9/30/20	\$	\$	\$	\$	\$	\$
4	9/30/20	\$	\$	\$	\$	\$	\$
5	9/30/20	\$	\$	\$	\$	\$	\$
6	9/30/20	\$	\$	\$	\$	\$	\$
7	9/30/20	\$	\$	\$	\$	\$	\$
8	9/30/20	\$	\$	\$	\$	\$	\$
9	9/30/20	\$	\$	\$	\$	\$	\$
10	9/30/20	\$	\$	\$	\$	\$	\$
11	9/30/20	\$	\$	\$	\$	\$	\$
12	9/30/20	\$	\$	\$	\$	\$	\$
13	9/30/20	\$	\$	\$	\$	\$	\$
14	9/30/20	\$	\$	\$	\$	\$	\$
15	9/30/20	\$	\$	\$	\$	\$	\$
16	9/30/20	\$	\$	\$	\$	\$	\$
17	9/30/20	\$	\$	\$	\$	\$	\$
18	9/30/20	\$	\$	\$	\$	\$	\$
19	9/30/20	\$	\$	\$	\$	\$	\$
20	9/30/20	\$	\$	\$	\$	\$	\$

**EXHIBIT E**  
**NOTICE TO LEHIGH COUNTY TO COMMENCE**  
**COLLECTION OF ASSESSMENT FOR C-PACE PROGRAM (the “Notice”)**

\_\_\_\_\_ (Program Administrator provides this NOTICE to LEHIGH COUNTY TO COMMENCE COLLECTION OF ASSESSMENT FOR THE C-PACE Program, in accordance with the COOPERATIVE AGREEMENT between Lehigh County and \_\_\_\_\_ (Program Administrator) dated [DATE] in which the County selected \_\_\_\_\_ as the Program Administrator and acknowledge \_\_\_\_\_ as the agent for administration of the C-PACE Program in the County.

Program Administrator provides this NOTICE TO LEHIGH COUNTY TO COMMENCE COLLECTION OF ASSESSMENTS FOR C-PACE PROGRAM, in accordance with the Commercial Property Assessed Clean Energy Financing Statement of Levy and Lien Agreement (“Agreement”) between Lehigh County and the [CAPITAL PROVIDER] and [PROPERTY OWNER] dated [DATE].

Pursuant to Article 2 of the Program Administrator Cooperative Agreement, Program Administrator is hereby notifying Lehigh County (the “County”) that (a) Program Administrator has approved the C-PACE program application for a project located at \_\_\_\_\_, [PARCEL ID] (the “Property”); and (b) the C-PACE Financing Agreement attached hereto as **Exhibit A** (the “C-PACE Financing Agreement”) has been executed. Pursuant to the Agreement between the County, [PROPERTY OWNER], and [CAPITAL PROVIDER], the County hereby acknowledges and confirms that the Assessment (as defined in the Agreement) will be added to the Tax Bill of the Property prior to [DATE], [YEAR] to secure repayment of the C-PACE Financing Agreement. The Assessment shall be assessed in accordance with the Special Assessment Payment Schedule, which is attached to the Agreement as **Exhibit B**.

Pursuant to the Article 3 of the Agreement, if Program Administrator forwards an Amendment of Assessment and Payment Schedule to the County on or before [DATE] of any tax year, the County will amend the Assessment to reflect the adjustment and file the Amendment of Assessment and Payment Schedule in the Land Records for Lehigh County, Pennsylvania.

[Remainder of page intentionally left blank, signature page follows.]

**SUSTAINABLE ENERGY FUND**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**RECEIVED AND ACKNOWLEDGED BY:**

LEHIGH COUNTY, PENNSYLVANIA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT F**

**Form of Assignment Agreement**

**FORM OF  
ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement (“**Assignment**”), dated effective as of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), is made by \_\_\_\_\_ (“**Assignor**”) to \_\_\_\_\_ (“**Assignee**”). Assignor and Assignee are referred to at times, each individually as a “**Party**,” and collectively as the “**Parties**.”

**Agreement**

1. For good and valuable consideration and the payment of Ten Dollars and No Cents (\$10.00), the receipt and sufficiency of which is hereby acknowledged, confessed, stipulated and agreed upon by Assignor, Assignor ASSIGNS, BARGAINS, GIVES, SETS OVER, CONVEYS, TRANSFERS and DELIVERS to Assignee all of Assignor’s rights, title, interest, obligations, and duties under the Statement of Levy and Lien of Assessment Agreement (the “**SOL**”), dated as of [DATE], entered into by Assignor, [BORROWER], and the County of Lehigh (the “**County**”), together with all of Assignor’s rights to receive payments from [BORROWER] and the County (or its designee), payable in accordance with the SOL arising on or after the date of this Assignment (the “**Transferred Interest**”).

2. Assignor warrants that: (i) it is authorized to execute this document; (ii) it is conveying good, indefeasible title to the Transferred Interest; (iii) the Transferred Interest is free and clear of all liens and encumbrances, and no party has any rights in or to acquire, or hold as security, or otherwise, the Transferred Interest; and (iv) it has provided the County and/or Program Administrator with a notice of this Assignment, a copy of which is attached hereto as **Exhibit A**.

3. Assignor hereby agrees to make, execute and deliver to Assignee any and all further instruments of conveyance, assignment or transfer, and any and all other instruments, as may be necessary or proper to carry out the purpose and intent of this Assignment and/or to fully vest Assignee in all rights, titles, interests obligations, and duties of Assignor in and to the Transferred Interest, which instruments shall be delivered to Assignee as soon as possible without any condition or delay on the part of Assignor.

4. Assignee hereby accepts all of Assignor’s rights, title, interest, obligations, and duties under the SOL, and agrees to be bound by its terms. From and after the date of this Assignment, Assignee shall be a party to the SOL and shall have the rights and obligations of the Assignor specified thereunder, and Assignee shall be deemed to be the “Capital Provider” for all purposes of the SOL.

5. All notices, certificates or communications provided pursuant to the SOL to Assignee shall be delivered as provided in the SOL to:

Assignee: \_\_\_\_\_

With a copy to: \_\_\_\_\_

6. This Assignment shall inure to the benefit of and be binding upon the successors and assigns of Assignor and Assignee.

7. This Assignment shall be construed under and enforced in accordance with the laws of the State of Pennsylvania. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

***[SIGNATURES ON FOLLOWING PAGE]***

IN WITNESS WHEREOF, Assignor and Assignee hereby agree to be bound by the terms of this Assignment and each has executed this Assignment to be effective as of the Effective Date.

**ASSIGNOR:**

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**STATE OF** \_\_\_\_\_ )  
**COUNTY OF** \_\_\_\_\_ )

This Assignment & Assumption Agreement was acknowledged and signed before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**STATE OF** \_\_\_\_\_ )  
**COUNTY OF** \_\_\_\_\_ )

This Assignment & Assumption Agreement was acknowledged and signed before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_