

1 **CHAPTER 127 OF THE FAIRFAX COUNTY CODE,**
2 **COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY PROGRAM**

3
4 **ARTICLE 1. General Provisions.**

5 **Section 127-1-1. Short Title.**

6 This ordinance shall be known as the Fairfax County C-PACE Ordinance.

7 **Section 127-1-2. Purpose and Authority.**

8 Pursuant to the authority granted in *Virginia Code* § 15.2-958.3, as amended, any Virginia locality may enact
9 an ordinance authorizing contracts to provide loans for the initial acquisition, installation, and refinancing of
10 eligible improvements with free and willing property owners of both existing properties and new construction.
11 Subject to the limitations set forth in this chapter, the C-PACE Act, or other applicable law, each C-PACE Loan,
12 inclusive of principal, interest, and any financed fees, costs, or expenses, will be secured by the placement of a
13 voluntary special assessment lien against the property that is the subject of the loan. After due consideration, the
14 Board of Supervisors hereby determines that a commercial property assessed clean energy financing program will
15 facilitate and encourage the renovation of existing buildings and foster the construction of new buildings with a
16 variety of efficient features, improving the general welfare of, and promoting economic growth in, the County.
17 Further, the Board of Supervisors hereby authorizes the County C-PACE Program to operate in coordination with
18 the statewide C-PACE program, all in accordance with the C-PACE Act.

19 **Section 127-1-3. Definitions.**

- 20 (a) *Assessment Payment Schedule* means the schedule of installments of C-PACE Payments to be made in the
21 repayment of the C-PACE Loan, which shall be attached to the C-PACE Program Agreement.
- 22 (b) *Board of Supervisors* means the Board of Supervisors of the County of Fairfax, Virginia.
- 23 (c) *C-PACE* means Commercial Property Assessed Clean Energy.
- 24 (d) *C-PACE Act* means Virginia's "Commercial Property Assessed Clean Energy (C-PACE) financing programs" law,
25 codified at *Virginia Code* § 15.2-958.3, as amended.
- 26 (e) *C-PACE Amendment* means an amendment of the C-PACE Lien executed by the Capital Provider, the Property
27 Owner and the Program Manager, as permitted in the C-PACE Documents, which C-PACE Amendment shall
28 be recorded in the Clerk's Office to evidence each amendment to the C-PACE Loan and the C-PACE Lien.
- 29 (f) *C-PACE Assignment (CP)* means a written assignment by one Capital Provider to another Capital Provider of
30 the C-PACE Payments and/or C-PACE Lien pursuant to the terms of the assignment document.
- 31 (g) *C-PACE Assignment (Locality)* means a written assignment by the County to the Capital Provider to whom the
32 C-PACE Loan is then due, wherein the County relinquishes and assigns its right to enforce the C-PACE Lien to
33 the Capital Provider, substantially in the form attached as Addendum 1 to the C-PACE Lien Certificate.
- 34 (h) *C-PACE Documents* means the C-PACE Program Agreement, Financing Agreement, C-PACE Lien Certificate, C-
35 PACE Assignment (CP) (if any), C-PACE Assignment (Locality) (if any), C-PACE Amendment (if any), and any
36 other document, agreement, or instrument executed in connection with a C-PACE Loan.
- 37 (i) *C-PACE Lien or Lien* means the voluntary special assessment lien levied against the property as security for
38 the C-PACE Loan.

- 39 (j) *C-PACE Lien Certificate* means the voluntary special assessment lien document duly recorded among the
40 Land Records against an Eligible Property to secure a C-PACE Loan.
- 41 (k) *C-PACE Loan or Loan* means a loan made under the Program by a Capital Provider to a Property Owner to
42 finance a Project in accordance with the Program Guidelines.
- 43 (l) *C-PACE Payment* means the periodic installment payments of the C-PACE Loan, due and payable by Property
44 Owner, due and payable to the Capital Provider or Program Administrator as permitted by the C-PACE Act in
45 such amounts and at such times as described in the Assessment Payment Schedule.
- 46 (m) *C-PACE Program* means the program established by the County through this chapter, in accordance with the
47 C-PACE Act, that in coordination with the Statewide Program facilitates the financing of Eligible
48 Improvements and provides for a C-PACE Lien to be levied and recorded against the Eligible Property to
49 secure the C-PACE Loan.
- 50 (n) *C-PACE Program Agreement* means the agreement executed among the Property Owner, the County, and
51 the Capital Provider, and their respective successors and assigns, which includes the terms and conditions for
52 participation in the C-PACE Program and the Property Owner's acknowledgment and consent for the County
53 to impose a voluntary special assessment, record a C-PACE Lien Certificate against the Property Owner's
54 Eligible Property and, if the County so determines, assign the rights to enforce the C-PACE Lien and C-PACE
55 Lien Certificate to the Capital Provider. The C-PACE Program Agreement must be substantially in the form
56 attached hereto as Appendix A.
- 57 (o) *Capital Provider* means (1) a private lending institution that has been approved by the Program
58 Administrator in accordance with the Program Guidelines to originate a C-PACE Loan and its successors and
59 assigns; or (2) the current holder of a C-PACE Loan.
- 60 (p) *County* means the County of Fairfax, Virginia.
- 61 (q) *Clerk's Office* means the Office of the Clerk of the Circuit Court of the County of Fairfax, Virginia.
- 62 (r) *Commonwealth* means the Commonwealth of Virginia.
- 63 (s) *Delinquent Payment* means any C-PACE Payment not paid by a Property Owner in accordance with the C-
64 PACE Documents.
- 65 (t) *Eligible Improvement* means the initial acquisition and installation of any of the following improvements
66 made to Eligible Properties:
- 67 (1) Energy efficiency improvements;
- 68 (2) Water efficiency and safe drinking water improvements;
- 69 (3) Renewable energy improvements;
- 70 (4) Resiliency improvements;
- 71 (5) Stormwater management improvements;
- 72 (6) Environmental remediation improvements; and
- 73 (7) Electric vehicle infrastructure improvements.
- 74 Eligible Improvements may be made to both existing Properties and new construction, as further prescribed
75 in this chapter and the Program Guidelines. Eligible Improvements shall include types of authorized
76 improvements added by the General Assembly to the C-PACE Act after the date of adoption of this chapter,
77 without need for a conforming amendment of this chapter. In addition to the elaboration on the types of
78 Eligible Improvements provided in Sec. 127-2-1, below, a Program Administrator may include in its Program
79 Guidelines or other administrative documentation definitions, interpretations, and examples of these
80 categories of Eligible Improvements..

- 81 (u) *Eligible Property* means all assessable commercial real estate, located within the County, with all buildings
82 located or to be located thereon, whether vacant or occupied, improved or unimproved, and regardless of
83 whether such real estate is currently subject to taxation by the County, excluding (1) a residential
84 condominium as defined in *Virginia Code* § 55.1-2000 or (2) a residential dwelling with fewer than five
85 dwelling units. Common areas of real estate owned by a cooperative or a property owners' association
86 described in Va. Code Title 55.1, Subtitle IV (§55.1-1800 et seq.), that have a separate real property tax
87 identification number are Eligible Properties. Eligible Properties shall be eligible to participate in the C-PACE
88 Program.
- 89 (v) *Financing Agreement* means the written agreement, as may be amended, modified, or supplemented from
90 time to time, between a Property Owner and a Capital Provider, regarding matters related to the extension
91 and repayment of a C-PACE Loan to finance Eligible Improvements. The Financing Agreement may contain
92 any lawful terms agreed to by the Capital Provider and the Property Owner.
- 93 (w) *Land Records* means the Land Records of the Clerk's Office.
- 94 (x) *Lender Consent* means a written subordination agreement, in a form and substance acceptable to each prior
95 lienholder in its sole and exclusive discretion, executed by each mortgage or deed of trust lienholder with a
96 lien on the property that is the subject of a C-PACE Loan, which allows the C-PACE Lien to have senior priority
97 over the mortgage or deed of trust liens.
- 98 (y) *Loan Amount* means the original principal amount of a C-PACE Loan.
- 99 (z) *Locality Agreement* means the Virginia Energy – Locality Commercial Property Assessed Clean Energy
100 Agreement between Virginia Energy and the County pursuant to which the County elects to participate in the
101 Statewide Program. The Locality Agreement shall be substantially in the form attached hereto as Appendix B.
- 102 (aa) *Program Administrator* means a private third party retained by Virginia Energy to provide professional
103 services to administer the Statewide Program in accordance with the requirements of the C-PACE Act, this
104 chapter, the Locality Agreement, and the Program Guidelines.
- 105 (bb) *Program Fee(s)* means the fee(s) authorized by the C-PACE Act and charged to participating Property Owners
106 to cover the costs to design and administer the Statewide Program, including, without limitation,
107 compensation of the Program Administrator. While Capital Providers are required to service their C-PACE
108 Loans, if a Capital Provider does not do so and the Program Administrator assumes the servicing
109 responsibility and charges a servicing fee, the servicing fee shall also be included among the Program Fees.
- 110 (cc) *Program Guidelines* means a comprehensive document setting forth those procedures, eligibility rules,
111 restrictions, Program Fee(s), responsibilities, and other requirements promulgated for the governance and
112 administration of the Statewide Program.
- 113 (dd) *Program Manager* means the Fairfax County Executive or such person designated in writing by the Fairfax
114 County Executive to (1) supervise the County's C-PACE Program and participation in the Statewide Program,
115 (2) act as liaison with the Program Administrator, and (3) advise the Program Administrator as to who will
116 sign the C-PACE Documents to which the County is a party on the County's behalf. If the employee of the
117 County who customarily signs agreements for the County is not the person designated as Program Manager,
118 then references in this Ordinance and in the C-PACE Documents to the Program Manager signing certain
119 C-PACE Documents on behalf of the County shall be construed to also authorize such customary signatory for
120 the County to execute such C-PACE Documents.
- 121 (ee) *Project* means the construction or installation of Eligible Improvements on Eligible Property.
- 122 (ff) *Property Owner* means (1) the owner(s) of Eligible Property that voluntarily obtain(s) a C-PACE Loan from a
123 Capital Provider in accordance with the Program Guidelines; or (2) a successor in title to the Property Owner.
- 124 (gg) *Property Owner Certification* means a notarized certificate from a Property Owner, certifying that (1) the
125 Property Owner is current on all loan payments secured by a mortgage or deed of trust lien on the property
126 and on real estate tax payments, (2) the Property Owner is not insolvent or in bankruptcy proceedings, and
127 (3) that the title of the property is not in dispute, as evidenced by a title report or title insurance

128 commitment from a licensed title insurance company acceptable to the Program Administrator and Capital
129 Provider.

130 (hh) *Statewide Program* means the statewide C-PACE financing program sponsored by Virginia Energy,
131 established to provide C-PACE Loans to Property Owners in accordance with the C-PACE Act, this ordinance,
132 the Locality Agreement, the C-PACE Documents, and the Program Guidelines.

133 (ii) *Useful Life* means the normal operating life of the fixed asset.

134 (jj) *Virginia Code or Va. Code* means the Code of Virginia of 1950, as amended.

135 (kk) *Virginia Energy* means the Virginia Department of Energy.

136 **ARTICLE 2. Program Structure**

137 **Section 127-2-1. - C-PACE Program; Eligible Improvements.**

138 (a) *C-PACE Program*. The C-PACE Program shall be available throughout the County, provided that the Property
139 Owner, the property, the proposed Eligible Improvements, the Capital Provider and the principal contractors
140 all qualify for the Statewide Program. The following types of improvements constitute Eligible
141 Improvements, which may be financed with a C-PACE Loan:

142 (1) Renewable energy production and distribution facilities (e.g., solar photovoltaic, fiber optic solar, solar
143 thermal, wind, wave and/or tidal energy, biomass, combined heat and power, geothermal and fuel
144 cells), whether attached to a building or sited on the ground, and the storage and/or distribution of the
145 energy produced thereby, whether for use on-site or sale or export to a utility or pursuant to a power
146 purchase agreement with a non-utility purchaser);

147 (2) Energy usage efficiency systems (e.g., high efficiency lighting and building systems, heating, ventilation
148 and air conditioning (HVAC) upgrades, air duct sealing, high efficiency hot water heating systems,
149 building shell or envelope improvements, reflective roof, cool roof or green roof systems, and/or
150 weather-stripping), or other capital improvements or systems which result in the reduction of
151 consumption of energy over a baseline established in accordance with the Program Guidelines;

152 (3) Water usage efficiency and safe drinking water improvements (e.g., recovery, purification, recycling,
153 and other forms of water conservation), or other capital improvements or systems which result in the
154 reduction of consumption of water over a baseline established in accordance with the Program
155 Guidelines;

156 (4) Resiliency improvements which increase the capacity of a structure of infrastructure to withstand or
157 recover from natural disasters, the effects of climate change, and attacks and accidents, including, but
158 not limited to:

159 i. Flood mitigation or the mitigation of the impacts of flooding;

160 ii. Inundation adaption;

161 iii. Natural or nature-based features and living shorelines, as defined in Va. Code § 28.2-104.1;

162 iv. Enhancement of fire or wind resistance, including but not limited to reinforcement and
163 insulation of a building envelope to reduce the impacts of excessive heat or wind;

164 v. Microgrids;

165 vi. Energy storage; and

166 vii. Enhancement of the resilience capacity of a natural system, structure, or infrastructure;

- 167 (5) Stormwater management improvements that reduce onsite stormwater runoff into a stormwater
 168 system, such as reduction in the quantity of impervious surfaces or providing for the onsite filtering of
 169 stormwater;
- 170 (6) Environmental remediation improvements, including but not limited to:
- 171 i. Improvements that promote indoor air and water quality;
- 172 ii. Asbestos remediation;
- 173 iii. Lead paint removal; and
- 174 iv. Mold remediation;
- 175 (7) Soil or groundwater remediation;
- 176 (8) Electric vehicle infrastructure improvements, such as charging stations;
- 177 (9) Construction, renovation, or retrofitting of an Eligible Property directly related to the accomplishment
 178 of any purpose listed in subsections (1)–(8), above, whether such Eligible Improvement was erected or
 179 installed in or on a building or on the ground, it being the express intention of the County to allow
 180 Eligible Improvements that constitute, or are part of, the construction of a new structure or building to
 181 be financed with a C-PACE Loan; and
- 182 (10) Any other category of improvement (i) approved by the Program Administrator with consent of the
 183 Program Manager as qualifying for financing under the C-PACE Act (including amendments thereto
 184 which authorize additional types of Eligible Improvements) and the Statewide Program, or (ii) added by
 185 the General Assembly to the C-PACE Act after the date of adoption of this Ordinance, without need for
 186 a conforming amendment of this chapter. In addition, a Program Administrator may include in its
 187 Program Guidelines or other administrative documentation definitions, interpretations, and examples
 188 of these categories of Eligible Improvements.
- 189 (b) *Use of C-PACE Loan Proceeds.* The proceeds of a C-PACE Loan may be used to pay construction, development
 190 and consulting costs directly related to an Eligible Improvement Project, including without limitation, the
 191 cost of labor, materials, machinery, equipment, plans, specifications, due diligence studies, consulting
 192 services (e.g., architectural, engineering, energy, financial and legal), Program Fees, C-PACE Loan fees,
 193 capitalized interest, interest reserves, and transaction underwriting and closing costs.
- 194 (c) *Program applications; prioritization.* The Program Administrator shall make available the Statewide
 195 Program’s program application process, to provide for the review and approval of proposed Eligible
 196 Improvements and C-PACE Documents. Program applications will be processed by the Statewide Program in
 197 accordance with the eligibility requirements and procedures set forth in the Program Guidelines.

198 **Section 127-2-2. C-PACE Loan requirements; Program Fees; reporting; Program**
 199 **Administrator; Program Guidelines.**

- 200 (a) *Source of Loans.* C-PACE Loans shall be originated by Capital Providers. The County and/or its respective
 201 governmental entities have no obligation to originate any C-PACE Loans. The County shall not guaranty any
 202 C-PACE Loans.
- 203 (b) *C-PACE Loan Interest Rate.* The interest rate of a C-PACE Loan shall be the rate or rates set forth in the C-
 204 PACE Documents.
- 205 (c) *C-PACE Loan Term.* The term of a C-PACE Loan may not exceed the weighted average of the Useful Life of the
 206 approved Eligible Improvements, as determined by the Program Administrator.
- 207 (d) *Apportionment of Costs.* All of the costs incidental to the financing, administration, collection, and/or
 208 enforcement of the C-PACE Loan shall be borne by the Property Owner.

- 209 (e) *C-PACE Loan Amount thresholds.* The minimum Loan Amount that may be financed with respect to a Project
210 is fifty thousand dollars (\$50,000.00). There is no maximum aggregate amount that may be financed with
211 respect to an Eligible Property, except as stipulated in the Program Guidelines. There is no limit on the total
212 value of all C-PACE Loans issued under the C-PACE Program.
- 213 (f) *C-PACE Loan Refinancing or Reimbursement.* The Program Administrator may approve a Loan application
214 submitted within two years of the County's issuance of a certificate of occupancy or other evidence that the
215 Eligible Improvements comply substantially with the plans and specifications previously approved by the
216 County and that such Loan may refinance or reimburse the Property Owner for the total costs of such Eligible
217 Improvements.
- 218 (g) *Financing Agreements.* Capital Providers may use their own Financing Agreements for C-PACE Loans, but the
219 Financing Agreement may not conflict with the provisions of this chapter, the C-PACE Act, or the C-PACE
220 Program Agreement. To the extent of any conflict, this chapter, the C-PACE Act, and the C-PACE Program
221 Agreement shall prevail.
- 222 (h) *C-PACE Program Agreement.* In order to participate in the C-PACE Program, Property Owner and Capital
223 Provider shall enter into a C-PACE Program Agreement, which sets forth certain terms and conditions for
224 participation in the C-PACE Program. The Program Manager is authorized to approve the C-PACE Loan and
225 execute the C-PACE Program Agreement on behalf of the County without further action by the Board of
226 Supervisors. The C-PACE Program Agreement is binding upon the parties thereto and their respective
227 successors and assigns until the C-PACE Loan is paid in full. The Program Administrator may modify the
228 C-PACE Program Agreement as necessary to further the Statewide Program's purpose and to encourage
229 Program participation, so long as such modifications do not conflict with the Program Guidelines, this
230 chapter, the Locality Agreement or the C-PACE Act.
- 231 (i) *Repayment of C-PACE Loan; collection of C-PACE Payments.* C-PACE Loans will be repaid by the Property
232 Owner through C-PACE Payments made in the amounts and at such times as set forth in the Assessment
233 Payment Schedule, the C-PACE Documents and Program Guidelines. The Capital Provider shall be
234 responsible, subject to and in accordance with the terms of the C-PACE Program Agreement and other
235 C-PACE Documents, for the servicing of the C-PACE Loans and the collection of C-PACE Payments. If a Capital
236 Provider fails to service a C-PACE Loan, such C-PACE Loan shall be serviced by the Program Administrator.
237 Nothing herein shall prevent the Capital Provider or the Program Administrator from directly billing and
238 collecting the C-PACE Payments from the Property Owner to the extent permitted by the C-PACE Act or other
239 applicable law. The enforcement of C-PACE Loans and their C-PACE Documents during an event of default
240 thereunder is governed by Section 127-2-3.
- 241 (j) *C-PACE Loan assumed.* A party which acquires a property which is subject to a C-PACE Lien, whether it
242 obtained ownership of the property voluntarily or involuntarily, becomes the Property Owner under the
243 C-PACE Documents and, by virtue of the C-PACE Lien running with the land, assumes the obligation to repay
244 all remaining unpaid C-PACE Payments which are due and which accrue during such successor Property
245 Owner's period of ownership. Only the current C-PACE Payment and any Delinquent Payments, together
246 with any penalties, fees and costs of collection, shall be payable at the settlement of a property upon sale or
247 transfer, unless otherwise agreed to by the Capital Provider.
- 248 (k) *Transfer of C-PACE Loans.* C-PACE Loans may be transferred, assigned, or sold by a Capital Provider to
249 another Capital Provider at any time until the C-PACE Loan is paid in full provided that the Capital Provider
250 shall (i) notify the Property Owner and the Program Administrator of the transfer prior to the billing date of
251 the next C-PACE Payment due (and within thirty (30) days if the C-PACE Loan is serviced by the Program
252 Administrator), (ii) record a C-PACE Assignment (CP) among the Land Records, and (iii) deliver a copy of the
253 recorded C-PACE Assignment (CP) to the Property Owner, the County, and the Program Administrator.
254 Recordation of the C-PACE Assignment (CP) shall constitute an assumption by the new Capital Provider of the
255 rights and obligations of the original Capital Provider contained in the C-PACE Documents.
- 256 (l) *Program Fees.* The Statewide Program is self-financed through Program Fees charged to participating
257 Property Owners, together with any funds budgeted by the General Assembly to support the Statewide

258 Program. The Program Fees are established to cover the actual and reasonable costs to design and
259 administer the Statewide Program, including, without limitation, the compensation of a third-party Program
260 Administrator. The amount(s) of the Program Fees shall be set forth in the Program Guidelines. Program Fees
261 may be changed by the Program Administrator from time to time and shall only apply to C-PACE Loans
262 executed after the date the revised Fees are adopted.

263 (m) *Locality Agreement.* The County will opt into the Statewide Program by entering into the Locality Agreement,
264 adopting the Statewide Program as the County's own C-PACE Program. In accordance with the C-PACE Act,
265 opting into the C-PACE Program shall not require the County to conduct a competitive procurement process.
266 The Program Manager is authorized to execute the Locality Agreement on behalf of the County without
267 further action by the Board of Supervisors.

268 (n) *Program Guidelines.* The Program Administrator, under the direction of and in consultation with Virginia
269 Energy, has designed the Program Guidelines to create an open, competitive, and efficient C-PACE Program.
270 The Program Administrator may modify the Program Guidelines from time to time, provided such
271 amendments are (i) consistent with the C-PACE Act and (ii) approved by Virginia Energy before taking effect.

272 (o) *Indemnification.* The Program Administrator shall indemnify, defend and hold the County harmless against
273 any claim brought against the County or any liability imposed on the County as a result of any action or
274 omission to act by the Program Administrator.

275 **Section 127-2-3. Levy of assessment; recordation; priority; amendment; enforcement and**
276 **collection costs.**

277 (a) *Levy of voluntary special assessment lien.* Each C-PACE Loan made under the C-PACE Program shall be
278 secured by a voluntary special assessment lien (i.e., a C-PACE Lien) levied by the County against each
279 property benefitting from the Eligible Improvements financed by such C-PACE Loan. The C-PACE Lien shall be
280 in the Loan Amount, but shall secure not only the principal of the C-PACE Loan, but also all interest,
281 delinquent interest, late fees, penalties, Program Fees and collection costs (including attorneys' fees and
282 costs) payable in connection therewith.

283 (b) *Recordation of C-PACE Lien Certificate.* Each C-PACE Lien will be evidenced by the recordation of a C-PACE
284 Certificate in the Loan Amount, but shall also expressly state that it also secures all interest, delinquent
285 interest, late fees, other types of fees, penalties, and collection costs (including attorneys' fees and costs)
286 payable in connection therewith, and a copy of the Assessment Payment Schedule shall be attached thereto
287 as an exhibit. The Program Manager is hereby authorized to, and shall promptly, execute the C-PACE
288 Certificate on behalf of the County and deliver it to the Capital Provider, without any further action by the
289 Board of Supervisors. Upon the full execution of the C-PACE Documents and funding of the C-PACE Loan, the
290 Capital Provider shall cause the recordation of the C-PACE Certificate in the Land Records.

291 (c) *Priority.* A recorded C-PACE Lien shall have the same priority as a real property tax lien against real property,
292 except that it shall have priority over any previously recorded mortgage or deed of trust lien only if prior to
293 the recording of the C-PACE Lien (i) Property Owner has obtained a written Lender Consent, in a form and
294 substance acceptable to the holder of such prior mortgage or deed of trust in its sole and exclusive
295 discretion, executed by such lienholder and recorded with the C-PACE Certificate in the Land Records, and (ii)
296 prior to the recording of the C-PACE Certificate, the Property Owner has delivered an executed Property
297 Owner Certification to the County in connection with the C-PACE Loan closing. Only the current and
298 delinquent C-PACE Payments, together with all due but unpaid interest, late fees and penalties, of a C-PACE
299 Assessment shall constitute a first lien on the property, on par with real property tax liens. The C-PACE Lien
300 shall run with the land and that portion of the C-PACE Assessment under the C-PACE Program Agreement
301 that has not yet become due shall not be eliminated by foreclosure of a real property tax lien.

302 (d) *Amendment of Lien.* Upon written request by a Capital Provider in accordance with the Program Guidelines,
303 the Program Manager, without any further action by the Board of Supervisors, shall join with the Capital
304 Provider and the Property Owner in executing a C-PACE Amendment of the C-PACE Loan and the C-PACE Lien
305 after the closing of the C-PACE Loan. The C-PACE Amendment must be recorded in the Clerk's Office.

306 (e) *Enforcement and collection costs.* In the event of Property Owner’s default under the terms of the C-PACE
307 Documents, the County may enforce the C-PACE Lien for the amount of the Delinquent Payments, late fees,
308 penalties, interest, and any costs of collection in the same manner that a property tax lien against real
309 property may be enforced under Title 58.1, Chapter 39, Article 4 of the Virginia Code. If the County elects
310 not to enforce the C-PACE Lien, which election shall be made within thirty (30) days of receipt by the County
311 from the Capital Provider of notice of the Property Owner’s default under the terms of the C-PACE
312 Documents, then the County will, within fifteen (15) days of the County’s determination not to enforce the
313 C-PACE Lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE
314 Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and delivering such
315 instrument to the Capital Provider for recordation in the Land Records. The preceding sentence
316 notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term
317 of the C-PACE Loan, including at the C-PACE Loan’s closing, regardless of whether the C-PACE Loan is then in
318 default. Upon such assignment and recordation, the Capital Provider is authorized to, and shall, enforce the
319 C-PACE Lien according to the terms of the C-PACE Documents, in the same manner that a property tax lien
320 against real property may be enforced under Title 58.1, Chapter 39 of the Virginia Code, including the
321 institution of suit in the name of the County, and this right to enforce expressly includes authorization for the
322 Capital Provider to engage legal counsel to advise the Capital Provider and conduct all aspects of such
323 enforcement. Such legal counsel, being authorized to institute suit in the name of the County, shall have the
324 status of “Special Counsel to the County” and an “attorney employed by the governing body,” and possess all
325 the rights and powers of an attorney employed under Va. Code §§ 58.1-3966 and 58.1-3969, with the
326 express authority to exercise for the benefit of the Capital Provider every power granted to a local
327 government and/or its Treasurer and its or their attorneys for the enforcement of a property tax lien under,
328 or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4 of the Virginia Code. The
329 County waives its right to require such legal counsel to post the optional bond described in Va. Code
330 § 58.1-3966. All collection and enforcement costs and expenses (including legal fees and costs), interest, late
331 fees, other types of fees, and penalties charged by the County or Capital Provider, as applicable and
332 consistent with the C-PACE Act and the Virginia Code, will (i) be added to the Delinquent Payments being
333 collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Loan,
334 and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider to which the
335 C-PACE Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE
336 Documents, the C-PACE Act or general law. The Property Owner of a property being sold to pay Delinquent
337 Payments, or other interested party, may redeem the property at any time prior to the property’s sale, in
338 accordance with Va. Code §§ 58.1-3974 and 58.1-3975.

339 **Section 127-2-4. Role of the County; Limitation of Liability.**

340 Property Owners and Capital Providers participate in the C-PACE Program and the Statewide Program at
341 their own risk. By executing the C-PACE Documents, including the C-PACE Program Agreement, or otherwise
342 participating in the C-PACE Program and the Statewide Program, each Property Owner, Capital Provider,
343 contractor or other party or participant hereby acknowledges and agrees, for the benefit of the County and as a
344 condition of participation in the C-PACE Program and the Statewide Program, that: (i) the County does not
345 undertake any obligations under the C-PACE Program and the Statewide Program except as expressly stated herein
346 or in the C-PACE Program Agreement, and no implied covenants or obligations of the County exist; (ii) in the event
347 of a default by a Property Owner, the County has no obligation to use County funds to make C-PACE Payments to
348 any Capital Provider including, without limitation, any fees, expenses, and other charges and penalties, pursuant to
349 a Financing Agreement between the Property Owner and Capital Provider; (iii) no C-PACE Loan, C-PACE Lien,
350 C-PACE Payments, or any other obligation arising from any C-PACE Document, the C-PACE Act, or this chapter is
351 backed by the credit of the County, the Commonwealth, or its political subdivisions, including without limitation
352 County taxes or other County funds; (iv) no C-PACE Loan, C-PACE Payment, C-PACE Lien or other obligation arising
353 from a C-PACE Document shall constitute an indebtedness of the County within the meaning of any constitutional
354 or statutory debt limitation or restriction; (v) the County has not made any representations or warranties, financial
355 or otherwise, concerning a Property Owner, Eligible Property, Capital Provider, Project, or C-PACE Loan; (vi) the

356 County makes no representation or warranty as to, and assumes no responsibility with respect to, the accuracy or
357 completeness of any C-PACE Document, or any assignment or amendment thereof; (vii) the County assumes no
358 responsibility or liability in regard to any Project, or the planning, construction or operation thereof; (viii) each
359 Property Owner or Capital Provider shall, upon request, provide the County with any information associated with a
360 Project or C-PACE Loan that is reasonably necessary to confirm that the Project or C-PACE Loan satisfies the
361 requirements of the Program Guidelines; and (ix) each Property Owner, Capital Provider, or other C-PACE
362 participant in the Program shall comply with all applicable requirements of the Program Guidelines.

363 **Section 127-2-5. Severability.**

364 As provided by Section 1-1-11 of this Code, the provisions of this chapter are severable. If a court of
365 competent jurisdiction determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other
366 provision is invalid, or that the application of any part of the chapter or provision to any person or circumstance is
367 invalid, the remaining provisions of this chapter shall not be affected by that decision and continue in full force and
368 effect.