**10-26-127**

*ADOPTION OF AN AMENDMENT TO*

*CHAPTER 127 (COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY PROGRAM)*

*OF THE 1976 CODE OF THE COUNTY OF FAIRFAX, VIRGINIA*

*At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia, on Tuesday, May 5, 2026, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment regarding Chapter 127 (Commercial Property Assessed Clean Energy and Resiliency Program) of the 1976 Code of the County of Fairfax, Virginia, said amendment so adopted being in the words and figures following, to-wit:*

*BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA:*

# AN ORDINANCE AMENDING CHAPTER 127 OF THE FAIRFAX COUNTY CODE, RELATING TO THE COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY PROGRAM

**AN ORDINANCE to amend the Fairfax County Code by amending and readopting Chapter 127, relating to the Commercial Property Assessed Clean Energy and Resiliency Program.**

**Be it ordained by the Board of Supervisors of Fairfax County:**

1. **That Chapter 127 of the Fairfax County Code is amended and readopted as follows:**

## *ARTICLE 1. General Provisions.*

### Section 127-1-1. Short Title.

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

### Section 127-1-2. Purpose and Authority.

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

### Section 127-1-3. Definitions.

(a) *Assessment Payment Schedule* means the schedule of installments of C-PACE Payments to be made in the repayment of the C-PACE Loan, which shall be attached to the C-PACE Program Agreement.

(b) *Board of Supervisors* means the Board of Supervisors of the County of Fairfax, Virginia.

(c) *C-PACE* means Commercial Property Assessed Clean Energy.

(d) *C-PACE Act* means Virginia's "Commercial Property Assessed Clean Energy (C-PACE) financing programs" law, codified at *Virginia Code* § 15.2-958.3, as amended.

(e) *C-PACE Amendment* means an amendment of the C-PACE Lien executed by the Capital Provider, the Property Owner and the Program Manager, as permitted in the C-PACE Documents, which C-PACE Amendment shall be recorded in the Clerk's Office to evidence each amendment to the C-PACE Loan and the C-PACE Lien.

(f) *C-PACE Assignment (CP)* means a written assignment by one Capital Provider to another Capital Provider of the C-PACE Payments and/or C-PACE Lien pursuant to the terms of the assignment document.

(g) *C-PACE Assignment (Locality)* means a written assignment by the County to the Capital Provider to whom the C-PACE Loan is then due, wherein the County relinquishes and assigns its right to enforce the C-PACE Lien to the Capital Provider, substantially in the form attached as Addendum 1 to the C-PACE Lien Certificate.

(h) *C-PACE Documents* means the C-PACE Program Agreement, Financing Agreement, C-PACE Lien Certificate, C-PACE Assignment (CP) (if any), C-PACE Assignment (Locality) (if any), C-PACE Amendment (if any), and any other document, agreement, or instrument executed in connection with a C-PACE Loan.

(i) *C-PACE Lien or Lien* means the voluntary special assessment lien levied against the property as security for the C-PACE Loan.

(j) *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.

(k) *C-PACE Loan or Loan* means a loan made under the Program by a Capital Provider to a Property Owner to finance a Project in accordance with the Program Guidelines.

(l) *C-PACE Payment* means the periodic installment payments of the C-PACE Loan, due and payable by Property Owner, due and payable to the Capital Provider or Program Administrator as permitted by the C-PACE Act in such amounts and at such times as described in the Assessment Payment Schedule.

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

(n) *C-PACE Program Agreement* means the agreement executed among the Property Owner, the County, and the Capital Provider, and their respective successors and assigns, which includes the terms and conditions for participation in the C-PACE Program and the Property Owner's acknowledgment and consent for the County to impose a voluntary special assessment, record a C-PACE Lien Certificate against the Property Owner's Eligible Property and, if the County so determines, assign the rights to enforce the C-PACE Lien and C-PACE Lien Certificate to the Capital Provider. The C-PACE Program Agreement must be substantially in the form attached hereto as Appendix A.

(o) *Capital Provider* means (1) a private lending institution that has been approved by the Program Administrator in accordance with the Program Guidelines to originate a C-PACE Loan and its successors and assigns; or (2) the current holder of a C-PACE Loan.

(p) *County* means the County of Fairfax, Virginia.

(q) *Clerk's Office* means the Office of the Clerk of the Circuit Court of the County of Fairfax, Virginia.

(r) *Commonwealth* means the Commonwealth of Virginia.

(s) *Delinquent Payment* means any C-PACE Payment not paid by a Property Owner in accordance with the C-PACE Documents.

(t) *Eligible Improvement* means the initial acquisition and installation of any of the following improvements made to Eligible Properties:

(1) Energy efficiency improvements;

(2) Water efficiency and safe drinking water improvements;

(3) Renewable energy improvements;

(4) Resiliency improvements;

(5) Stormwater management improvements;

(6) Environmental remediation improvements; and

(7) Electric vehicle infrastructure improvements.

Eligible Improvements may be made to both existing Properties and new construction, as further prescribed in this chapter and the Program Guidelines. Eligible Improvements shall include types of authorized improvements added by the General Assembly to the C-PACE Act after the date of adoption of this chapter, without need for a conforming amendment of this chapter. In addition to the elaboration on the types of Eligible Improvements provided in Sec. 127-2-1, below, a Program Administrator may include in its Program Guidelines or other administrative documentation definitions, interpretations, and examples of these categories of Eligible Improvements..

(u) *Eligible Property* means all assessable commercial real estate, located within the County, with all buildings located or to be located thereon, whether vacant or occupied, whether improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the County. Eligible Property or Property may include multifamily properties with no fewer than five units, common areas of real estate owned by a cooperative or a property owners' association as defined in §55.1-1800 that have a separate real property tax identification number, and commercial condominiums as defined in §55.1-1900. Residential real estate with fewer than five units is not eligible for the C-PACE Program.

(v) *Financing Agreement* means the written agreement, as may be amended, modified, or supplemented from time to time, between a Property Owner and a Capital Provider, regarding matters related to the extension and repayment of a C-PACE Loan to finance Eligible Improvements. The Financing Agreement may contain any lawful terms agreed to by the Capital Provider and the Property Owner.

(w) *Land Records* means the Land Records of the Clerk's Office.

(x) *Lender Consent* means a written subordination agreement, in a form and substance acceptable to each prior lienholder in its sole and exclusive discretion, executed by each mortgage or deed of trust lienholder with a lien on the property that is the subject of a C-PACE Loan, which allows the C-PACE Lien to have senior priority over the mortgage or deed of trust liens.

(y) *Loan Amount* means the original principal amount of a C-PACE Loan.

(z) *Locality Agreement* means the Virginia Energy – Locality Commercial Property Assessed Clean Energy Agreement between Virginia Energy and the County pursuant to which the County elects to participate in the Statewide Program. The Locality Agreement shall be substantially in the form attached hereto as Appendix B.

(aa) *Program Administrator* means a private third party retained by Virginia Energy to provide professional services to administer the Statewide Program in accordance with the requirements of the C-PACE Act, this chapter, the Locality Agreement, and the Program Guidelines.

(bb) *Program Fee(s)* means the fee(s) authorized by the C-PACE Act and charged to participating Property Owners to cover the costs to design and administer the Statewide Program, including, without limitation, compensation of the Program Administrator. While Capital Providers are required to service their C-PACE Loans, if a Capital Provider does not do so and the Program Administrator assumes the servicing responsibility and charges a servicing fee, the servicing fee shall also be included among the Program Fees.

(cc) *Program Guidelines* means a comprehensive document setting forth those procedures, eligibility rules, restrictions, Program Fee(s), responsibilities, and other requirements promulgated for the governance and administration of the Statewide Program.

(dd) *Program Manager* means the Fairfax County Executive or such person designated in writing by the Fairfax County Executive to (1) supervise the County's C-PACE Program and participation in the Statewide Program, (2) act as liaison with the Program Administrator, and (3) advise the Program Administrator as to who will sign the C-PACE Documents to which the County is a party on the County's behalf. If the employee of the County who customarily signs agreements for the County is not the person designated as Program Manager, then references in this Ordinance and in the C-PACE Documents to the Program Manager signing certain C-PACE Documents on behalf of the County shall be construed to also authorize such customary signatory for the County to execute such C-PACE Documents.

(ee) *Project* means the construction or installation of Eligible Improvements on Eligible Property.

(ff) *Property Owner* means the fee simple owner of eligible property or the lessee under a long-term ground lease of eligible property, including a property that is owned by a public or private entity. To be eligible for a C-PACE loan (1) the term of the C-PACE loan shall not exceed the remaining term of the ground lease, (2) there shall be no ground lease provisions or other circumstances that would prevent the property owner from participating in the C-PACE loan program, (3) the fee simple owner shall consent to the C-PACE loan, and (4) the fee simple owner and the lessee under a long-term ground lease shall comply with the requirements of the C-PACE loan program, including the program guide.

(gg) *Property Owner Certification* means a notarized certificate from a Property Owner, certifying that (1) the Property Owner is current on all loan payments secured by a mortgage or deed of trust lien on the property and on real estate tax payments, (2) the Property Owner is not insolvent or in bankruptcy proceedings, and (3) that the title of the property is not in dispute, as evidenced by a title report or title insurance commitment from a licensed title insurance company acceptable to the Program Administrator and Capital Provider.

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

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

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

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

## *ARTICLE 2. Program Structure*

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

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

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

(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), or other capital improvements or systems which result in the reduction of consumption of energy over a baseline established in accordance with the Program Guidelines;

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

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

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

ii. Inundation adaption;

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

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

v. Microgrids;

vi. Energy storage; and

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

(5) Stormwater management improvements that reduce onsite stormwater runoff into a stormwater system, such as reduction in the quantity of impervious surfaces or providing for the onsite filtering of stormwater;

(6) Environmental remediation improvements, including but not limited to:

i. Improvements that promote indoor air and water quality;

ii. Asbestos remediation;

iii. Lead paint removal; and

iv. Mold remediation;

v. Soil or groundwater remediation;

(7) Electric vehicle infrastructure improvements, such as charging stations;

(8) Construction, renovation, or retrofitting of an Eligible Property directly related to the accomplishment of any purpose listed in subsections (1)–(7), 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 County to allow Eligible Improvements that constitute, or are part of, the construction of a new structure or building to be financed with a C-PACE Loan; and

(9) Any other category of improvement (i) approved by the Program Administrator with consent of the Program Manager as qualifying for financing under the C-PACE Act (including amendments thereto which authorize additional types of Eligible Improvements) and the Statewide Program, or (ii) added by the General Assembly to the C-PACE Act after the date of adoption of this Ordinance, without need for a conforming amendment of this chapter. In addition, a Program Administrator may include in its Program Guidelines or other administrative documentation definitions, interpretations, and examples of these categories of Eligible Improvements.

(b) *Use of C-PACE Loan Proceeds*. The proceeds of a C-PACE Loan may be used to pay construction, development and consulting costs directly related to an Eligible Improvement Project, including without limitation, the cost of labor, materials, machinery, equipment, plans, specifications, due diligence studies, consulting services (e.g., architectural, engineering, energy, financial and legal), Program Fees, C-PACE Loan fees, capitalized interest, interest reserves, and transaction underwriting and closing costs.

(c) *Program applications; prioritization*. The Program Administrator shall make available the Statewide Program's program application process, to provide for the review and approval of proposed Eligible Improvements and C-PACE Documents. Program applications will be processed by the Statewide Program in accordance with the eligibility requirements and procedures set forth in the Program Guidelines.

## Section 127-2-2. C-PACE Loan requirements; Program Fees; reporting; Program Administrator; Program Guidelines.

(a) *Source of Loans*. C-PACE Loans shall be originated by Capital Providers. The County and/or its respective governmental entities have no obligation to originate any C-PACE Loans. The County shall not guaranty any C-PACE Loans.

(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-PACE Documents.

(c) *C-PACE Loan Term*. The term of a C-PACE Loan may not exceed the weighted average of the Useful Life of the approved Eligible Improvements, as determined by the Program Administrator.

(d) *Apportionment of Costs*. All of the costs incidental to the financing, administration, collection, and/or enforcement of the C-PACE Loan shall be borne by the Property Owner.

(e) *C-PACE Loan Amount thresholds*. The minimum Loan Amount that may be financed with respect to a Project is fifty thousand dollars ($50,000.00). There is no maximum aggregate amount that may be financed with respect to an Eligible Property, except as stipulated in the Program Guidelines. There is no limit on the total value of all C-PACE Loans issued under the C-PACE Program.

(f) *C-PACE Loan Refinancing or Reimbursement*. The Program Administrator may approve a Loan application submitted within three years of the County's issuance of a certificate of occupancy or other evidence that the Eligible Improvements comply substantially with the plans and specifications previously approved by the County and that such Loan may refinance or reimburse the Property Owner for the total costs of such Eligible Improvements.

(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 C-PACE Act, or the C-PACE Program Agreement. To the extent of any conflict, this chapter, the C-PACE Act, and the C-PACE Program Agreement shall prevail.

(h) *C-PACE Program Agreement*. In order to participate in the C-PACE Program, Property Owner and Capital Provider shall enter into a C-PACE Program Agreement, which sets forth certain terms and conditions for participation in the C-PACE Program. The Program Manager is authorized to approve the C-PACE Loan and execute the C-PACE Program Agreement on behalf of the County without further action by the Board of Supervisors. The C-PACE Program Agreement is binding upon the parties thereto and their respective successors and assigns until the C-PACE Loan is paid in full. The Program Administrator may modify the C-PACE Program Agreement as necessary to further the Statewide Program's purpose and to encourage Program participation, so long as such modifications do not conflict with the Program Guidelines, this chapter, the Locality Agreement or the C-PACE Act.

(i) *Repayment of C-PACE Loan; collection of C-PACE Payments*. C-PACE Loans will be repaid by the Property Owner through C-PACE Payments made in the amounts and at such times as set forth in the Assessment Payment Schedule, the C-PACE Documents and Program Guidelines. The Capital Provider shall be responsible, subject to and in accordance with the terms of the C-PACE Program Agreement and other C-PACE Documents, for the servicing of the C-PACE Loans and the collection of C-PACE Payments. If a Capital Provider fails to service a C-PACE Loan, such C-PACE Loan shall be serviced by the Program Administrator. Nothing herein shall prevent the Capital Provider or the Program Administrator from directly billing and collecting the C-PACE Payments from the Property Owner to the extent permitted by the C-PACE Act or other applicable law. The enforcement of C-PACE Loans and their C-PACE Documents during an event of default thereunder is governed by Section 127-2-3.

(j) *C-PACE Loan assumed*. A party which acquires a property which is subject to a C-PACE Lien, whether it obtained ownership of the property voluntarily or involuntarily, becomes the Property Owner under the C-PACE Documents and, by virtue of the C-PACE Lien running with the land, assumes the obligation to repay all remaining unpaid C-PACE Payments which are due and which accrue during such successor Property

Owner's period of ownership. Only the current C-PACE Payment and any Delinquent Payments, together with any penalties, fees and 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 the Capital Provider shall (i) notify the Property Owner and the Program Administrator of the transfer prior to the billing date of the next C-PACE Payment due (and within thirty (30) days if the C-PACE Loan is serviced by the Program Administrator), (ii) record a C-PACE Assignment (CP) among the Land Records, and (iii) deliver a copy of the recorded C-PACE Assignment (CP) to the Property Owner, the County, and the Program Administrator. Recordation of the C-PACE Assignment (CP) shall constitute an assumption by the new Capital Provider of the rights and obligations of the original Capital Provider contained in the C-PACE Documents.

(l) *Program Fees*. The Statewide Program is self-financed through Program Fees charged to participating Property Owners, together with any funds budgeted by the General Assembly to support the Statewide Program. The Program Fees are established to cover the actual and reasonable costs to design and administer the Statewide Program, including, without limitation, the compensation of a third-party Program Administrator. The amount(s) of the Program Fees shall be set forth in the Program Guidelines. Program Fees may be changed by the Program Administrator from time to time and shall only apply to C-PACE Loans executed after the date the revised Fees are adopted.

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

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

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

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

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

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

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

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

(e) *Enforcement and collection costs*. In the event of Property Owner's default under the terms of the C-PACE Documents, the County may enforce the C-PACE Lien for the amount of the Delinquent Payments, late fees, penalties, interest, and any costs of collection in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39, Article 4 of the Virginia Code. If the County elects not to enforce the C-PACE Lien, which election shall be made within thirty (30) days of receipt by the County from the Capital Provider of notice of the Property Owner's default under the terms of the C-PACE Documents, then the County will, within fifteen (15) days of the County's determination not to enforce the C-PACE Lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and delivering such instrument to the Capital Provider for recordation in the Land Records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loan's closing, regardless of whether the C-PACE Loan is then in default. Upon such assignment and recordation, the Capital Provider is authorized to, and shall, enforce the C-PACE Lien according to the terms of the C-PACE Documents, in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39 of the Virginia Code, including the institution of suit in the name of the County, and this right to enforce expressly includes authorization for the Capital Provider to engage legal counsel to advise the Capital Provider and conduct all aspects of such enforcement. Such legal counsel, being authorized to institute suit in the name of the County, shall have the status of "Special Counsel to the County" and an "attorney employed by the governing body," and possess all the rights and powers of an attorney employed under Va. Code §§ 58.1-3966 and 58.1-3969, with the express authority to exercise for the benefit of the Capital Provider every power granted to a local government and/or its Treasurer and its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4 of the Virginia Code. The County waives its right to require such legal counsel to post the optional bond described in Va. Code § 58.1-3966. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees, other types of fees, and penalties charged by the County or Capital Provider, as applicable and consistent with the C-PACE Act and the Virginia Code, will (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 to which the C-PACE Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act or general law. The Property Owner of a property being sold to pay Delinquent Payments, or other interested party, may redeem the property at any time prior to the property's sale, in accordance with Va. Code §§ 58.1-3974 and 58.1-3975.

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

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

## Section 127-2-5. Severability.

As provided by Section 1-1-11 of this Code, 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 this chapter shall not be affected by that decision and continue in full force and effect.

2. **That the provisions of the chapter are effective upon adoption.**

*GIVEN under my hand this 5th day of May, 2026.*

Jill G. Cooper
Clerk for the Board of Supervisors