

1           **AMENDMENT TO THE FAIRFAX COUNTY CODE RELATING TO THE**  
2           **ESTABLISHMENT OF A COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY**  
3           **FINANCING PROGRAM**  
4

5  
6           **AN ORDINANCE to amend the Fairfax County Code by adding a new chapter numbered**  
7           **127, relating to the establishment of a Commercial Property Assessed Clean Energy**  
8           **Program.**

9  
10                                 **Draft of February 6, 2019**  
11

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

- 13  
14           **1. The Fairfax County Code is amended by adopting a new chapter number 127 as**  
15           **follows:**  
16

17  
18                                 **Chapter 127. Commercial Property Assessed Clean Energy**  
19                                 **Financing Program**  
20

21   **ARTICLE 1. - General Provisions.**  
22

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

24  
25           This ordinance shall be known as the Fairfax County C-PACE Ordinance.  
26

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

28  
29           Pursuant to the authority granted in Virginia Code § 15.2-958.3, as amended, any Virginia locality  
30           may enact an ordinance authorizing contracts to provide loans for the initial acquisition and  
31           installation of eligible clean energy improvements with free and willing property owners of both  
32           existing properties and new construction. Such loans may be secured by the placement of a  
33           voluntary special assessment lien against the property. After due consideration, the Board of  
34           Supervisors hereby determines that a commercial property assessed clean energy financing  
35           program will facilitate and encourage the renovation of existing buildings and foster the  
36           construction of new buildings with energy or water efficient features or renewable energy  
37           facilities, improving the general welfare of, and promoting economic growth in, the County.

38           **Section 127-1-3. – Definitions.**

39  
40           (a) “C-PACE” means Commercial Property Assessed Clean Energy.  
41

42           (b) “C-PACE Act” means Virginia’s clean energy financing law, codified at Virginia Code  
43           § 15.2-958.3, as amended.  
44

- 45 (c) “C-PACE Agreement” means the C-PACE Program Agreement among Property Owner,  
46 Capital Provider, and the County, which establishes the terms, conditions, party  
47 responsibilities, and repayment obligations related to the C-PACE Assessment and Lien.  
48
- 49 (d) “C-PACE Assessment” means a voluntary special assessment levied against a Property, at a  
50 Property Owner’s request, to secure repayment of the C-PACE Loan, including but not limited  
51 to any prepayment premiums, delinquent principal, interest, penalties, and fees accrued and  
52 related to a C-PACE Loan benefitting the Property.  
53
- 54 (e) “C-PACE Assignment” means a written assignment executed by Capital Provider from time  
55 to time without need of consent from Property Owner, which shall be recorded in the Clerk’s  
56 Office to evidence Capital Provider’s assignment of the C-PACE Loan.  
57
- 58 (f) “C-PACE Certificate” means a Certificate of Levy and Lien of C-PACE Assessment, which  
59 shall (1) be executed by Property Owner, Capital Provider, and the Director of the County’s  
60 Department of Tax Administration or his designee, (2) include an amortization schedule of  
61 C-PACE Payments necessary to repay the C-PACE Loan, including any Program Fees, (3)  
62 include a certification by the County that it has received an executed Property Owner  
63 Certification that satisfies the requirements of the C-PACE Act, and (4) be recorded among  
64 the land records in the Clerk’s Office to evidence the C-PACE Lien, a form of which C-PACE  
65 Certificate is attached to the C-PACE Agreement.  
66
- 67 (g) “C-PACE Documents” means the C-PACE Agreement, C-PACE Loan Agreement, C-PACE  
68 Certificate, C-PACE Assignment (if any), and Program Guidelines.  
69
- 70 (h) “C-PACE Lien” means the voluntary special assessment lien that the County is authorized to  
71 place against a Property in order to secure a C-PACE Loan, as further described in Article 5  
72 of this Chapter and evidenced by the C-PACE Certificate.  
73
- 74 (i) “C-PACE Loan” means a loan made under the Program by a Capital Provider to a Property  
75 Owner to finance a project in accordance with the C-PACE Act, this Ordinance, and the  
76 C-PACE Documents.  
77
- 78 (j) “C-PACE Loan Agreement” means the written agreement executed by a Property Owner and  
79 a Capital Provider that sets forth the terms and conditions pursuant to which the Capital  
80 Provider has agreed to extend, and the Property Owner has agreed to accept and repay, a  
81 C-PACE Loan, and any and all authorized modifications, restructurings, extensions,  
82 consolidations, amendments and/or assignments thereof.  
83
- 84 (k) “C-PACE Payment” means the installment payments of the C-PACE Loan, due and payable  
85 by Property Owner to repay the C-PACE Loan in such amounts and at such times as described  
86 in the C-PACE Agreement.  
87
- 88 (l) “Capital Provider” means (1) a third-party individual or entity that has been approved by the  
89 Program Administrator in accordance with the Program Guidelines to originate or fund a  
90 C-PACE Loan, or (2) the successors or assigns to the original Capital Provider of a C-PACE  
91 Loan.  
92
- 93 (m) “Clerk’s Office” means the Clerk’s Office of the Circuit Court of Fairfax County, Virginia.

- 94  
95 (n) “DMME” means the Virginia Department of Mines, Minerals and Energy.  
96  
97 (o) “DMME Guidelines” means the Uniform Statewide Financial Underwriting Guidelines for  
98 C-PACE Loans, issued by the PACE Stakeholder Committee organized by DMME on  
99 December 1, 2015, as they may be amended from time to time.  
100  
101 (p) “Delinquent Payment” means any C-PACE Payment not paid when due according to the  
102 amortization schedule set forth in the C-PACE Agreement and C-PACE Loan Agreement.  
103  
104 (q) “Eligible Improvement” means an improvement, renovation, addition, construction,  
105 installation, or modification of or to a Property or a building located on a Property, listed in  
106 Section 127-2-1.  
107  
108 (r) “Eligible Property” means assessable real property, located in the County, whether vacant or  
109 occupied, improved or unimproved, excluding a condominium project as defined in Virginia  
110 Code § 55-79.2 or a residential dwelling with fewer than five dwelling units.  
111  
112 (s) “Lender Consent” means a written subordination agreement, in a form and substance  
113 acceptable to each prior lienholder in its sole and exclusive discretion, executed by the holder  
114 of each mortgage or deed of trust lien on the Property and recorded in the Clerk’s Office to  
115 evidence each senior lender’s consent to the C-PACE Loan and to subordinate senior lender’s  
116 lien on the Property to the C-PACE Payments (as and when each C-PACE Payment becomes  
117 due and payable) during the term of the C-PACE Loan.  
118  
119 (t) “Program” means the County C-PACE financing program established to authorize C-PACE  
120 Loans to Property Owners in accordance with C-PACE Act, this Ordinance, and the C-PACE  
121 Documents.  
122  
123 (u) “Program Administrator” means (1) an independent third party (authorized by written contract  
124 with the County), which possesses the authority to administer the Program as provided by the  
125 C-PACE Act, this Ordinance, and the Program Guidelines.  
126  
127 (v) “Program Fees” means fees charged to participating Property Owners in accordance with  
128 Section 127-3-2 of this Ordinance.  
129  
130 (w) “Program Guidelines” means those procedures, rules, disclosures, and restrictions  
131 promulgated for the governance of the Program.  
132  
133 (x) “Program Manager” means the County Executive or such person designated in writing by the  
134 County Executive to run the Program and act as liaison with the Program Administrator.  
135  
136 (y) “Property” refers to an Eligible Property for which a C-PACE Loan is applied for or received.  
137  
138 (z) “Property Owner” means (1) the owner(s) of Eligible Property that voluntarily obtain(s) a  
139 C-PACE Loan under the Program, resulting in a C-PACE Assessment and C-PACE Lien on  
140 that Property, or (2) a successor in title to a person meeting the definition in (1).  
141

142 (aa) “Property Owner Certification” means a certificate from a Property Owner, certifying that (1)  
143 the Property Owner is current on all loan payments secured by a mortgage or deed of trust lien  
144 on the Property, (2) the Property Owner is current on all federal, state, and local taxes and  
145 there is no federal income tax lien, judgment lien, or other involuntary lien against the  
146 Property, and (3) the Property Owner is not insolvent or in bankruptcy or foreclosure  
147 proceedings.

148  
149 (bb) “Total C-PACE Loan Amount” means the total amount of the loan principal, plus all interest,  
150 penalties, fees, costs, and other amounts accrued or accruing thereon under the C-PACE  
151 Documents.

## 152 153 **ARTICLE 2. – Eligible Improvements.**

### 154 155 **Section 127-2-1. Eligible Improvements under the C-PACE Program.**

156  
157 (a) The Program shall be available throughout the County, provided that the property owner, the  
158 property, and the financed improvements all qualify for the Program. The following types of  
159 improvements constitute Eligible Improvements, which may be financed with a C-PACE  
160 Loan:

161 1) renewable energy production and distribution facilities (e.g., solar photovoltaic, solar  
162 thermal, wind, wave and/or tidal energy, and the storage and/or distribution of the energy  
163 produced thereby);

164 2) energy usage efficiency systems (e.g., high efficiency lighting and building systems,  
165 heating, ventilation and air conditioning (HVAC) upgrades, air duct sealing, high  
166 efficiency hot water heating systems, building shell or envelope improvements, reflective  
167 roof, cool roof or green roof systems, and/or weather-stripping);

168 3) water usage efficiency improvements (e.g., recovery, purification, recycling, and other  
169 forms of water conservation);

170 4) construction, renovation, or retrofitting of a property directly related to the  
171 accomplishment of any purpose listed in subsections (1), (2) or (3), above, whether such  
172 Eligible Improvement was erected or installed in or on a building or on the ground, it  
173 being the express intention of the County to allow Eligible Improvements that constitute,  
174 or are part of, the construction of a new structure or building to be financed with a  
175 C-PACE Loan; or,

176 5) any other kind of renewable energy production and distribution facility or energy or water  
177 efficiency improvement approved by the Program Administrator as qualifying for  
178 financing under the C-PACE Act and the Program.

179

## 180 **ARTICLE 3. – Program Arrangements; Funding.**

181

### 182 **Section 127-3-1. - C-PACE Loans.**

183

184 (a) Source of Funding. C-PACE Loans shall be financed by Capital Providers. The County has  
185 no obligation to originate any C-PACE Loans. The County shall not make or guaranty any  
186 C-PACE Loans.

- 187 (b) Interest Rate. The interest rate of a C-PACE Loan shall be the rate or rates determined by  
188 mutual agreement of the Property Owner and Capital Provider.
- 189 (c) Loan Repayment Period. The time period during which a C-PACE Loan must be repaid will  
190 be determined by mutual agreement of the Property Owner and Capital Provider, but may not  
191 exceed the later of the weighted average of the useful life of the approved Eligible  
192 Improvements, or thirty years.
- 193 (d) Apportionment of Costs. All of the costs incidental to the financing, administration, and  
194 collection of the C-PACE Loan shall be borne by the Property Owner.
- 195 (e) Minimum and Maximum Aggregate Amounts. The minimum dollar amount that may be  
196 financed with respect to a Property is \$50,000. The maximum aggregate dollar amount that  
197 may be financed with respect to a Property is \$50 million or 30 percent of the market value of  
198 the Property after it reaches stabilized occupancy as evidenced by an appraisal, whichever is  
199 greater. The maximum aggregate dollar amount that may be financed under the Program is  
200 \$2.5 billion.
- 201 (f) Application Priority. In the event that requests for approval of loans under the Program appear  
202 likely to exceed the maximum aggregate dollar amount that may be financed, priority shall be  
203 given to those requests from Property Owners who meet established income or assessed  
204 property value eligibility requirements, if any, set forth in the Program Guidelines.
- 205 (g) Use of C-PACE Loan Proceeds. The proceeds of a C-PACE Loan may be used to pay  
206 construction, development and consulting costs directly related to an Eligible Improvement  
207 Project, including without limitation, the cost of labor, materials, machinery, equipment,  
208 plans, specifications, due diligence studies, consulting services (e.g., architectural,  
209 engineering, energy, financial and legal), Program Fees, C-PACE Loan fees, capitalized  
210 interest, interest reserves, and transaction underwriting and closing costs. The Proceeds of a  
211 C-PACE Loan may also be used to finance Eligible Improvements not yet completed.
- 212 (h) Transferability of C-PACE Loan. C-PACE Loans may be transferred, assigned, or sold by a  
213 Capital Provider in accordance with the C-PACE Loan Agreement; provided that Capital  
214 Provider shall (1) record a C-PACE Assignment in the Clerk's Office, and (2) deliver a copy  
215 of the recorded C-PACE Assignment to the County. Recordation of the C-PACE Assignment  
216 shall constitute an assumption by the new Capital Provider of the Capital Provider's C-PACE  
217 rights and obligations contained in the C-PACE Documents.

218

219 **Section 127-3-2. – Program Fees.**

220

- 221 (a) Imposition of Program Fees. The Program will be self-financed through Program Fees  
222 charged to participating Property Owners. The Program Fees are established to cover the  
223 actual and reasonable costs to design and administer the Program, including the compensation  
224 of a third-party Program Administrator. Program Fees will be assessed as a percentage fee of  
225 the C-PACE Loan paid at closing. The amount(s) of the Program Fees shall be set forth in the  
226 Program Guidelines. Program Fees may be changed by the Program Manager from time to  
227 time and shall only apply to C-PACE Loans executed after the date the revised Fees are  
228 adopted.

229

230 **Section 127-3-3. – C-PACE Agreement.**

- 231
- 232 (a) Local Official Authorized to Enter Into Contracts on Behalf of the County. The Program  
233 Manager is authorized to execute C-PACE Documents on behalf of the County.
- 234 (b) Draft Contract. A draft C-PACE Program Agreement is included as Appendix A to this  
235 Ordinance. The Program Administrator may approve modifications to the form of the  
236 C-PACE Agreement in Appendix A that it deems to be insubstantial; any proposed  
237 modifications to the form that the Program Administrator deems to be substantial shall be  
238 referred to the Program Manager, who shall have final authority to approve such  
239 modifications.
- 240 (c) Loan Agreements; Order of Precedence. Capital Providers may use their own form of loan  
241 financing documents as and for the C-PACE Loan Agreement, but the provisions of the  
242 C-PACE Loan Agreement may not conflict with the provisions of this Ordinance.
- 243 (d) Amendments. After a C-PACE Loan has closed, the C-PACE Agreement, C-PACE Loan  
244 Agreement, and C-PACE Certificate may not be amended without the written consent of either  
245 the Program Manager or Program Administrator, which consent will not be unreasonably  
246 withheld. A transfer, assignment, or sale of a C-PACE Loan in accordance with the C-PACE  
247 Loan Agreement executed by a Property Owner and a Capital Provider is not considered an  
248 amendment within the scope of this subparagraph.  
249

250 **ARTICLE 4. – Voluntary Assessment and Lien; Enforcement.**

251

252 **Section 127-4-1. - C-PACE Voluntary Special Assessment Lien.**

253

- 254 (a) At the request of a Property Owner as evidenced by Property Owner’s execution of a C-PACE  
255 Agreement, the County will place a C-PACE Lien against the Property identified in the  
256 C-PACE Agreement. The amount of the C-PACE Lien will be equal to the Total C-PACE  
257 Loan Amount.
- 258 (b) The C-PACE Lien will be evidenced by the recordation of a C-PACE Certificate in the Clerk’s  
259 Office.
- 260 (c) A recorded C-PACE Lien shall have the same priority status as a property tax lien against real  
261 property, except that it shall have priority over any previously recorded mortgage or deed of  
262 trust lien only if prior to the recording of the special assessment lien (i) Property Owner has  
263 obtained any necessary Lender Consent and (ii) the Property Owner has delivered an executed  
264 Property Owner Certification to the County in connection with the C-PACE Loan closing.
- 265 (d) Only the current and delinquent C-PACE Payments, together with all due but unpaid interest,  
266 late fees and penalties, of a C-PACE Assessment shall constitute a first lien on the Property,  
267 on par with real property tax liens.
- 268 (e) The C-PACE Lien shall run with the land and that portion of the C-PACE Assessment under  
269 the C-PACE Agreement that has not yet become due shall not be eliminated by foreclosure of  
270 a real property tax lien.  
271

272 **Section 127-4-2. – Enforcement by County.**

273  
274 (a) Delinquent C-PACE Payments may be subject to penalties and interest, in such amounts  
275 agreed to by Property Owner and Capital Provider in a C-PACE Loan Agreement. Penalties  
276 and interest on delinquent C-PACE Payments shall accrue in the same manner as delinquent  
277 real property taxes.

278 (b) In the event a Property Owner fails to make any C-PACE Payment when due in accordance  
279 with the C-PACE Certificate, the C-PACE Loan Agreement or related documents, the County  
280 will enforce the C-PACE Lien for the amount of the delinquent C-PACE Payment(s),  
281 including all penalties, interest, and any costs of collection accrued thereon in the same  
282 manner that a property tax lien against real property may be enforced. All collection and  
283 enforcement costs, expenses, interest, and penalties incurred by the County or Capital  
284 Provider, as applicable and consistent with the Act, will (1) be added to the delinquent  
285 C-PACE Payments being collected, (2) become part of the aggregate amount sued for and  
286 collected, (3) be added to the C-PACE Loan, and (4) be secured by the C-PACE Lien.  
287 Notwithstanding the foregoing, nothing herein shall prevent the Capital Provider from  
288 enforcing the C-PACE Lien to the extent permitted by the Act or general law. The County  
289 shall remit to the Capital Provider all amounts due to the Capital Provider and collected  
290 pursuant to the enforcement of a delinquent C-PACE Payment, less actual costs incurred by  
291 the County to enforce the C-PACE Lien.

292  
293 **Article 5. – Program Administrator.**

294  
295 **Section 127-5-1. - Program Administrator; Program Guidelines.**

296 (a) The County will enter into a written contract with a third-party Program Administrator  
297 pursuant to the County’s procurement process.

298  
299 (b) The principal duties of the Program Administrator may include (without limitation) the  
300 following: (i) creating the Program Guidelines and modifying the Program Guidelines as  
301 necessary; (ii) processing C-PACE applications to determine eligibility for a C-PACE Loan  
302 and related Eligible Improvements; (iii) promoting the Program; and (iv) certifying that  
303 prospective C-PACE service providers and Capital Providers are eligible to participate in the  
304 Program.

305  
306 (c) Program Guidelines shall be developed by the Program Administrator under the direction of,  
307 and in consultation with the Program Manager. The Program Administrator may modify the  
308 Program Guidelines from time to time subject to the approval of the Program Manager and in  
309 accordance with the intent and purpose of the C-PACE Program as approved by the Board.  
310 The Program Guidelines shall include, but not be limited to the following:

311  
312 (1) Disclosures about C-PACE Program Fees, requirements and procedures;

313  
314 (2) Eligibility requirements for participation in the Program by Property Owners, Capital  
315 Providers, contractors, and others. Eligibility of Property Owners shall be contingent  
316 upon submission of a Property Owner Certification and any necessary Lender Consents;

317

- 318 (3) Technical assessment requirements, which may be based on the size and type of the  
319 building and the size and scope of the proposed Eligible Improvements;  
320  
321 (4) DMME Guidelines or other appropriate underwriting guidelines consistent with this type  
322 of Program; and  
323  
324 (5) Template Program forms, including but not limited to, the program application, Property  
325 Owner Certification, and C-PACE Assignment.  
326  
327 (d) The Program Guidelines and any subsequent amendments thereto shall become effective only  
328 (1) to the extent that the Program Guidelines do not contravene this Ordinance, and (2) after  
329 review by the County Attorney and written approval by the Program Manager.  
330  
331 (e) The Program Administrator (1) will endeavor to conduct a competitive, open-market Program,  
332 available to all pre-certified Capital Providers, contractors, engineers, and consultants who  
333 apply to provide services or funding for the Program, and (2) shall not grant any Capital  
334 Provider or service provider an exclusive right to provide services or funding for the Program.  
335  
336

337 **Article 6. – Limitation of Liability.**  
338

339 **Section 127-6-1. - Limitation of Liability.**  
340

341 Property Owners and Capital Providers participate in the Program at their own risk. By  
342 executing a C-PACE Agreement or any other C-PACE Document, or otherwise participating in  
343 the Program, each Property Owner, Capital Provider, contractor or other party or participant  
344 hereby acknowledges and agrees, for the benefit of the County and as a condition to the County's  
345 authorization of each C-PACE Loan, that: (a) the County does not undertake any obligations under  
346 or in connection with the C-PACE Act, this Ordinance, the Program Guidelines, or any C-PACE  
347 Document, except as expressly stated therein or herein, and no implied covenants or obligations  
348 of the County exist; (b) the C-PACE Loan, C-PACE Lien, C-PACE Payments, and any other  
349 obligations arising from any C-PACE Document, the C-PACE Act, and this Ordinance: (1) are not  
350 backed by any credit of the County, or any taxes, taxing power, or governmental funds, and (2)  
351 shall not constitute an indebtedness of the County within the meaning of any constitutional or  
352 statutory debt limitation or restriction; (c) the County has not made any representations, financial  
353 or otherwise, regarding the Property Owner, the Capital Provider, the Property, or the Eligible  
354 Improvements; (d) the County makes no representation or warranty as to, and assumes no  
355 responsibility with respect to, the accuracy or completeness of any C-PACE Lien; (e) the County  
356 assumes no responsibility or liability for approved Eligible Improvements, or the planning,  
357 construction or operation thereof, and (f) each Property Owner, Capital Provider, contractor and  
358 other C-PACE participant in the Program shall comply with all applicable requirements of the  
359 C-PACE Act, this Ordinance, and the C-PACE Documents.  
360  
361



362 **Appendix A to Fairfax County C-PACE Ordinance**  
363

364 **C-PACE PROGRAM AGREEMENT**  
365

366 **THIS C-PACE PROGRAM AGREEMENT** (this “Agreement”), is made and entered  
367 into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and among the County of Fairfax, Virginia  
368 (“County”), \_\_\_\_\_, a \_\_\_\_\_, (“Capital Provider”), and  
369 \_\_\_\_\_, a \_\_\_\_\_, (“Property Owner”), and is attached to and  
370 made a part of that certain C-PACE LOAN AGREEMENT dated as of the same date made by and  
371 between Capital Provider and Property Owner.

372 **RECITALS**  
373

374 **WHEREAS**, Property Owner owns all that certain real property together with all  
375 improvements, buildings, and other structures thereon, and appurtenances thereto, lying in the  
376 County and commonly known as [Address], as more fully described in Exhibit A (the "Property");  
377

378 **WHEREAS**, the Commonwealth of Virginia has authorized its localities to establish  
379 commercial property assessed clean energy programs under Section 15.2-958.3 of the Code of  
380 Virginia of 1950, as amended (the “Act”). In conformance with the Act, the County has enacted  
381 Chapter 127 of the Fairfax County Code (the “Ordinance”) to create the Fairfax County  
382 Commercial Property Assessed Clean Energy (C-PACE) Financing Program (the "Program"), the  
383 requirements of which are set forth in the Ordinance and the Program Guidelines promulgated  
384 thereunder;  
385

386 **WHEREAS**, pursuant to the terms of the Program, County has approved Property Owner’s  
387 application for constructing improvements upon or renovating the Property to increase energy or  
388 water usage efficiency or installing a renewable energy production or distribution system to service  
389 the Property as generally described in Exhibit C (the Project);  
390

391 **WHEREAS**, Capital Provider has agreed to make a C-PACE Loan to Property Owner to  
392 finance the Project (the “C-PACE Loan”);  
393

394 **WHEREAS**, the Project consists of Eligible Improvements as defined in the Ordinance,  
395 which allows the County, at Property Owner’s request, to impose a voluntary special assessment  
396 lien equal in amount to the Total C-PACE Loan Amount against the Property in order to secure  
397 the C-PACE Loan authorized under the Program;  
398

399 **WHEREAS**, pursuant to the Program the County may collect Property Owner’s payments  
400 under the C-PACE Loan Agreement on Capital Provider’s behalf as C-PACE Payments;  
401

402 **WHEREAS**, pursuant to the Act and the Ordinance the County entered into a contract with  
403 [Program Administrator name] (“Program Administrator”) for Program administration services;  
404

405 **WHEREAS**, the Program Manager is authorized to enter into this Agreement on behalf of  
406 the County pursuant to the Ordinance;  
407

408 **NOW, THEREFORE**, for and in consideration of the making of the C-PACE Loan, County  
409 approval of the Project, and the financing arrangements between Capital Provider and Property  
410 Owner, and other good and valuable consideration, receipt and sufficiency of which are hereby  
411 acknowledged, Capital Provider, Property Owner, and County agree as follows:

412 **AGREEMENT**

413 **ARTICLE 1 – DEFINITIONS**

414 1.01. Any and all capitalized terms used in this Agreement that are not specifically defined  
415 herein shall have the meanings set forth in the Ordinance.

416 **ARTICLE 2 – C-PACE FINANCING**

417  
418 2.01. Financing of Project. Capital Provider will provide financing for the Project in accordance  
419 with the C-PACE Loan Agreement. The C-PACE Loan amount includes a Program Fee of  
420 \$\_\_\_\_\_, payable at closing. Capital Provider shall remit the Program Fee to the  
421 Program Administrator within ten days of closing.

422  
423 2.02. C-PACE Special Assessment Lien. For the benefit of Capital Provider in order to secure  
424 the C-PACE Loan, County agrees to levy a C-PACE Assessment and place a C-PACE Lien on the  
425 Property. The C-PACE Lien shall be equal in amount to the Total C-PACE Loan Amount, as set  
426 forth in the C-PACE Certificate attached hereto as Exhibit B, which shall include the C-PACE  
427 Loan amortization schedule. After the execution of this Agreement Capital Provider will promptly  
428 record the Certificate in the Clerk’s Office and provide a copy of the recorded Certificate to the  
429 County. As long as the C-PACE Loan Agreement is in force, the current C-PACE Payment  
430 together with any delinquent C-PACE Payment (including all due but unpaid interest, late fees,  
431 and penalties) shall constitute a first lien on the Property, on par with property tax liens against  
432 real property. The C-PACE Lien shall run with the land and that portion of the C-PACE  
433 Assessment that has not yet become due shall not be eliminated by foreclosure of a property tax  
434 lien on the Property.

435  
436 2.03. C-PACE Loan Terms and Assessment Payments. Property Owner shall repay the C-PACE  
437 Loan by making C-PACE Payments to Capital Provider in accordance with the amortization  
438 schedule set forth in the C-PACE Certificate, as may be amended to the extent permitted under the  
439 Ordinance and the C-PACE Loan Agreement. In the case of a conflict between the terms of the  
440 C-PACE Loan Agreement and the Certificate, the Certificate shall control. Capital Provider shall  
441 be responsible for (i) preparing all documentation in respect of the C-PACE Loan, this Agreement,  
442 the Certificate, and any assignment or amendment of any of the foregoing documentation allowed  
443 under the Ordinance and the C-PACE Loan Agreement, and (ii) presenting such documentation to  
444 the Program Administrator prior to the execution or any assignment or amendment thereof.

445  
446 2.04 Assignment of the C-PACE Loan. In accordance with the Ordinance, and to the extent  
447 provided in the C-PACE Loan Agreement, Capital Provider shall have the right to transfer and  
448 assign all of its rights and obligations under the C-PACE Documents to one or more successor  
449 Capital Providers. An assignment by Capital Provider shall be evidenced by a C-PACE  
450 Assignment. The County shall not be obligated under Section 3.02 of this Agreement to remit any  
451 payment related to the C-PACE Loan to a new Capital Provider unless a recorded copy of the C-  
452 PACE Assignment has been provided to the County and the Program Administrator at least thirty

453 days before the such payment is due. Recordation of the C-PACE Assignment shall constitute an  
454 assumption by the new Capital Provider of the Capital Provider’s C-PACE rights and obligations  
455 contained in the C-PACE Documents.

456  
457 **ARTICLE 3 – DEFAULT AND REMEDIES**  
458

459 3.01. Default by Property Owner; Penalties and Interest. Failure by Property Owner to make  
460 any C-PACE Payment when due shall constitute a default under this Agreement. Delinquent  
461 Payments shall be subject to penalties and interest, as set forth in the C-PACE Loan Agreement.  
462 Interest on Delinquent Payments shall accrue from the first day following the day such Delinquent  
463 Payment was due and shall be collected upon the principal and penalties of all C-PACE Payments  
464 then remaining unpaid.

465  
466 3.02. Remedies. In addition to the remedies available to Capital Provider under the terms of the  
467 C-PACE Loan Agreement, the County shall institute legal action to collect Delinquent Payments  
468 in accordance with the C-PACE Loan Agreement, the Ordinance, and Title 58.1, Chapters 32 and  
469 39 of the Code of Virginia, as amended, which enforcement action may include conducting a tax  
470 foreclosure sale of the Property by public auction. In addition to the C-PACE Payments and  
471 Delinquent Payments due to Capital Provider, the County shall be entitled to recover its costs and  
472 expenses, including reasonable attorneys’ fees and costs, in the same manner as in a suit to collect  
473 delinquent real estate taxes. All collection and enforcement costs, expenses, interest and penalties  
474 incurred by Capital Provider and the County shall (i) be added to the Delinquent Payments being  
475 collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the  
476 C-PACE Assessment, and (iv) be secured by the C-PACE Lien. The County shall remit to Capital  
477 Provider all amounts due to Capital Provider and collected pursuant to the enforcement of a  
478 Delinquent Payment, less actual costs incurred by the County to enforce the C-PACE Lien.

479  
480 3.03. Waiver of Certain Defenses; Confession of Judgment. By executing this Agreement, and  
481 as a condition of approval of the Project under the Program and the Ordinance, Property Owner  
482 hereby:

483  
484 (a) waives all defenses, affirmative or otherwise, to a foreclosure action brought for the  
485 nonpayment of any C-PACE Payment;

486  
487 (b) agrees to provide a confession of judgment if requested by the County or Capital  
488 Provider.

489  
490 **ARTICLE 4 – ADDITIONAL COVENENANTS AND AGREEMENTS**  
491

492 4.01. Program Compliance. Property Owner represents and warrants that it has and will comply  
493 in all respects with the Act, the Ordinance, and the Program Guidelines.

494  
495 4.02. Indemnification. Without limitation of any other obligation or liability of Property Owner  
496 or any right or remedy of Capital Provider or the County contained herein or in the C-PACE Loan  
497 Agreement, Property Owner agrees to indemnify and hold harmless Capital Provider and the  
498 County, as well as their respective directors, officers, employees, agents, subsidiaries and affiliates  
499 (each, an “Indemnified Party”), from and against all damages, losses, settlement payments,  
500 obligations, liabilities, claims, suits, penalties, assessments, citations, directives, demands,  
501 judgments, actions or causes of action, whether statutorily created or under the common law,

502 including all costs and expenses (including, without limitation, reasonable fees and disbursements  
503 of attorneys, engineers and consultants) and all other liabilities whatsoever (including, without  
504 limitation, liabilities under any applicable environmental laws, regulations or rules) which shall at  
505 any time or times be incurred, suffered, sustained or required to be paid by any such Indemnified  
506 Party (except any of the foregoing which result from the negligence or willful misconduct of the  
507 Indemnified Party) on account of or in relation to or in any way in connection with any of the  
508 arrangements or transactions contemplated by, associated with or ancillary to this Agreement, or  
509 any other documents executed or delivered in connection herewith or therewith, all as the same  
510 may be amended from time to time, whether or not all or part of the transactions contemplated by,  
511 associated with or ancillary to this Agreement or any such other documents are ultimately  
512 consummated, resulting from any conduct, act or failure to act by Property Owner or its affiliates  
513 or related parties. In any investigation, proceeding or litigation, or the preparation therefor, Capital  
514 Provider and the County shall each select its own counsel and, in addition to the foregoing  
515 indemnity, Property Owner agrees to pay promptly the reasonable fees and expenses of such  
516 counsel. In the event of the commencement of any such proceeding or litigation, Property Owner  
517 shall be entitled to participate in such proceeding or litigation with counsel of its choice at its own  
518 expense; provided that such counsel shall be reasonably satisfactory to Capital Provider and the  
519 County. This section shall survive the execution, delivery, performance of this Agreement,  
520 repayment of the C-PACE Loan, and the extinguishment of the C-PACE Lien.

521  
522 4.03. C-PACE Enforceability; Severability. If (a) the C-PACE Act, the Ordinance, the C-PACE  
523 Documents, and/or any material provisions thereof are found by a court of competent jurisdiction  
524 to be illegal or otherwise unenforceable such that the C-PACE Loan and/or C-PACE Lien are not  
525 enforceable or otherwise not collectible in the manner set forth in the C-PACE Act or the C-PACE  
526 Documents for any reason, or (b) an action is brought by any person to have the C-PACE Act, the  
527 Ordinance, the C-PACE Documents, and/or the C-PACE Lien challenged, nullified or overturned,  
528 and during the pendency of the action, the C-PACE Documents and/or the C-PACE Lien may not  
529 be enforceable or collectible as contemplated under the C-PACE Act, then Property Owner (i)  
530 shall continue to make the C-PACE Payments as required under the C-PACE Documents, and (ii)  
531 shall execute any and all documentation necessary to perfect and enforce the C-PACE Documents  
532 and the C-PACE Lien as may be required by Capital Provider or the County. If any one or more  
533 of the provisions of this Agreement shall be found to be invalid, illegal or unenforceable in any  
534 respect or to any extent, such finding shall not affect the validity, legality or enforceability of the  
535 remaining provisions of this Agreement.

## 536 537 **ARTICLE 5 – MISCELLANEOUS**

538  
539 5.01. Amendment. This Agreement may be amended only by written agreement of the County,  
540 Property Owner, and Capital Provider.

541  
542 5.02. Execution in Counterparts. This Agreement may be executed in any number of  
543 counterparts, each of which shall be deemed to be an original and all of which together shall be  
544 deemed a single agreement.

545  
546 5.03. Governing Law; Venue. This Agreement and its terms, including, but not limited to, the  
547 parties' obligations under it, the performance due from each party under it, and the remedies  
548 available to each party for breach of it, shall be governed by, construed, and interpreted in  
549 accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law,  
550 conflict of laws, rules, or provisions, including those of the Commonwealth of Virginia that would

551 cause the application of any laws other than those of the Commonwealth of Virginia shall not  
552 apply. Any and all disputes, claims and causes of action arising out of or in connection with this  
553 Agreement or any performance hereunder, shall be brought in the state courts of Fairfax County,  
554 Virginia, or in the United States District Court, Eastern District of Virginia, Alexandria Division.  
555

556 5.04. No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to  
557 waive, limit, or otherwise modify any governmental immunity that may be available by law to the  
558 County, its officials, employees, contractors, or agents, or any other person acting on behalf of the  
559 County.  
560

561 5.05. Successors and Assigns; No Third-Party Beneficiaries. This Agreement is binding upon  
562 and made for the benefit of Capital Provider, Property Owner, and County, and their respective  
563 successors and permitted assigns, and no other person or persons shall have any right of action  
564 hereunder.  
565  
566

567 **IN WITNESS WHEREOF**, Property Owner, Capital Provider, and County have executed this  
568 Agreement as of the date first written above by and through their duly authorized representatives.  
569

570 **[CAPITAL PROVIDER]**

571  
572  
573 By: \_\_\_\_\_  
574 Name:  
575 Title:  
576

577  
578 **[PROPERTY OWNER]**

579  
580  
581 By: \_\_\_\_\_  
582 Name:  
583 Title:  
584

585  
586 **COUNTY**

587  
588  
589 By: \_\_\_\_\_  
590 Name:  
591 Title: Program Manager  
592  
593

594  
595  
596  
597

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

598 **EXHIBIT B**  
599 **CERTIFICATE OF LEVY AND LIEN OF C-PACE ASSESSMENT**  
600

601 At the request and with the consent of [Property Owner Name], a \_\_\_\_\_ [insert  
602 state of formation and type of entity] (the "Property Owner"; index as Grantor), the undersigned  
603 officer of the COUNTY OF FAIRFAX, VIRGINIA (the "County"; index as Grantee), acting  
604 pursuant to authority granted under the County's Commercial Property Assessed Clean Energy  
605 Financing Program established pursuant to Section 15.2-958.3 of the Code of Virginia (the  
606 "C-PACE Act") and Chapter 127 of the Fairfax County Code (the "Ordinance"), HEREBY, ON  
607 BEHALF OF [CAPITAL PROVIDER] ("Capital Provider"), LEVIES A SPECIAL  
608 ASSESSMENT AGAINST AND LIEN UPON certain real property commonly referred to as  
609 [Property address] and more particularly described in **Schedule I** to this Certificate (the  
610 "Property"), situated in the County and owned on the date hereof by Property Owner. This levy  
611 and lien shall secure the repayment of a C-PACE Loan made by Capital Provider to finance one  
612 or more Eligible Improvements under the Ordinance, disbursed pursuant to that certain C-PACE  
613 Loan Agreement between Property Owner and Capital Provider dated as of [date], as it may be  
614 amended pursuant to the Ordinance.

615  
616 This levy and lien are made in accordance with, and subject to the provisions of, the C-PACE Act,  
617 the Ordinance and the C-PACE Loan Agreement and related documents. Upon the transfer or  
618 conveyance of the Property, each subsequent owner of the Property, by accepting title to the  
619 Property, assumes and agrees to perform all of the obligations and covenants set forth herein and  
620 in the C-PACE Agreement (the "C-PACE Agreement") among Property Owner, Capital Provider,  
621 and County dated as of [date], and each other document referenced therein, including, without  
622 limitation, making the installment payments described below, from and after the date such owner  
623 acquires title to the Property. This levy and lien and is based on the principal amount of the  
624 C-PACE Assessment of \$ \_\_\_\_\_, with interest thereon at a fixed rate equal to  
625 \_\_\_\_\_, calculated on a \_\_\_\_/\_\_\_\_ basis, with equal installments of principal and interest due and  
626 payable in the amounts and at the times set forth in the amortization schedule attached as **Schedule**  
627 **II**, which shall control over any conflicting amounts set forth in the C-PACE Loan Agreement. In  
628 the event that any installment payment is not paid when it becomes due and payable, interest and  
629 penalties shall accrue upon the unpaid installment(s) at the lesser of (i) the rates and amounts  
630 provided for in the C-PACE Loan Agreement or (ii) the maximum annual rate permitted under  
631 law. At such time as the payments of this special assessment have been satisfied and paid in full,  
632 County shall file at the expense of the Property Owner a release of this Certificate in the land  
633 records of the County.

634  
635 This Certificate constitutes a certificate of lien and is filed pursuant to the provisions of the  
636 C-PACE Act, the Ordinance, and the C-PACE Agreement to evidence a lien for the special  
637 assessment authorized thereby. Pursuant to the Act and the Ordinance, the lien shall have the same  
638 priority status as a lien for taxes of the County on real property. The Certificate and the levy and  
639 lien set forth herein shall run with the land and shall be binding upon Property Owner and its heirs,  
640 executors, administrators, successors, and assigns.

641  
642 THE LIEN SET FORTH IN THIS CERTIFICATE SHALL NOT HAVE PRIORITY OVER ANY  
643 PREVIOUSLY RECORDED MORTGAGE OR DEED OF TRUST LIEN ON THE PROPERTY  
644 UNLESS A WRITTEN SUBORDINATION AGREEMENT IS EXECUTED BY THE HOLDER  
645 OF EACH EXISTING MORTGAGE OR DEED OF TRUST LIEN. EACH SUCH  
646 SUBORDINATION AGREEMENT IS ATTACHED HERETO AND MADE A PART HEREOF,

647 OR HAS PREVIOUSLY BEEN RECORDED. By executing this Certificate, the undersigned  
648 officer is certifying that the County has received evidence from Property Owner that: (i) Property  
649 Owner is current on payments on loans secured by a mortgage or deed of trust lien on the property  
650 and on property tax payments, (ii) Property Owner is not insolvent or in bankruptcy proceedings,  
651 and (iii) Property Owner's title to the Property is not in dispute.  
652

653 Dated at \_\_\_\_\_, Virginia this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ .  
654

655 \_\_\_\_\_  
656 Director, Fairfax County Department of  
657 Tax Administration

658 COMMONWEALTH OF VIRGINIA  
659 CITY/COUNTY OF \_\_\_\_\_, to-wit:  
660

661 The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
662 20\_\_ by \_\_\_\_\_ as Director, Fairfax County Department of Tax  
663 Administration, on behalf of the County of Fairfax.  
664

665 \_\_\_\_\_  
666 Notary Public  
667 My commission expires: \_\_\_\_\_  
668 Notary registration no.: \_\_\_\_\_  
669

670  
671 [CAPITAL PROVIDER]  
672

673  
674 By: \_\_\_\_\_  
675 Name:  
676 Title:  
677

678 COMMONWEALTH OF VIRGINIA  
679 CITY/COUNTY OF \_\_\_\_\_, to-wit:  
680

681 The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
682 20\_\_ by \_\_\_\_\_ as \_\_\_\_\_, on behalf of the Capital  
683 Provider.  
684

685 \_\_\_\_\_  
686 Notary Public  
687 My commission expires: \_\_\_\_\_



688 Notary registration no.: \_\_\_\_\_

689

690

691 [PROPERTY OWNER]

692

693

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

695 Name:

696 Title:

697

698 COMMONWEALTH OF VIRGINIA

699 CITY/COUNTY OF \_\_\_\_\_, to-wit:

700

701 The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
702 20\_\_ by \_\_\_\_\_ [as \_\_\_\_\_, on behalf of the Property  
703 Owner].

704

705

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

707 My commission expires: \_\_\_\_\_

708 Notary registration no.: \_\_\_\_\_

709

710

711

712 Received for Record: \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ A.M./P.M.

713

714 Recorded in the Fairfax County Land Records at Book \_\_\_\_\_, Page \_\_\_\_\_

715

716

717 \_\_\_\_\_  
Clerk

718

719  
720  
721  
722

**SCHEDULE I**  
**[PROPERTY DESCRIPTION]**

723  
724  
725  
726  
727

**SCHEDULE II**  
**[C-PACE LOAN AMORTIZATION SCHEDULE]**

728  
729

**EXHIBIT C**  
**[PROJECT DESCRIPTION]**