

**KEY ELEMENTS INCORPORATED IN  
VIRGINIA C-PACE MODEL ORDINANCE**

- 1) Strictly follows the intent and explicit requirements of the 2015 Virginia PACE statute to comply with the Dillon Rule and be legally enforceable as a special assessment lien;
- 1) Clearly defines the roles and responsibilities of all parties to a PACE financing transaction – Program Administrator, Locality, PACE lender and Property Owner;
- 2) Adopts for Virginia use the best practices of ordinances in proven markets including D.C., Maryland, and Texas, among others;
- 3) Defines in detail how PACE liens are secured and enforced – essential to lender participation in financing PACE projects;
- 4) Incorporates the Virginia Department of Mines, Minerals and Energy (DMME) 2015 recommendations, required by the Virginia Bankers Association and the draft Regional PACE Program Guidelines anticipated this February 2018, a summary of which is included in Attachment C on p. 3.
- 5) Delineates the limitations to liability with the respect to the role a locality in a C-PACE program. Per Bill Nusbaum, author of the model ordinance “localities should not incur any liability under a properly drafted C-PACE ordinance” and “the agreement among the C-PACE parties should also clearly exonerate and exculpate the locality”.

**Draft C-PACE Model Ordinance**

**EXPOSURE DRAFT #3**

(January 7, 2018)

**ORDINANCE TO AMEND THE CODE OF  
THE [CITY][COUNTY] OF \_\_\_\_\_, VIRGINIA,  
BY CREATING A NEW [ARTICLE][CHAPTER] \_\_\_\_, ENTITLED  
“COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY  
FINANCING PROGRAM”**

**WHEREAS**, Section 15.2-958.3 of the Code of Virginia of 1950, as amended (the “Code”), enables Virginia localities to enact an ordinance by which the locality authorizes a program to provide loans for the initial acquisition and installation of clean energy improvements with free and willing owners of qualifying existing and new commercial properties; and

**WHEREAS**, loans under such a program would be secured by the placement of a voluntary, special assessment against the participating real property, recorded in the [deed books] [land records] of the Clerk's Office of the Circuit Court of the [City][County], the installments of which special assessment will be due and payable at the same time as the real property taxes authorized to be levied by Title 58.1, Chapter 32 of the Code, and the lien of which special assessment will be on a par with the lien of such real property taxes, all of which gives rise to such program generally being known around the country as a “Commercial Property Assessed Clean Energy Program” or “Commercial PACE Program”; and

**WHEREAS**, the [City][County] has numerous older buildings with many years of remaining life before replacement, the energy or water efficiency of which buildings often does not meet current standards, nor do many existing buildings have renewable energy and other conservation systems installed to provide some or all of their electric energy needs, make them more efficient and reduce their greenhouse gas emissions; and

**WHEREAS**, the promotion and development of new buildings with energy efficient or water efficient features that exceed current building code requirements or which utilize renewable energy will enhance the real property tax base of the [City][County] and make such buildings, if rented, more attractive to tenants, thereby promoting employment and economic growth in the [City][County] and the region; and

**WHEREAS**, after due consideration, the [Council][Board] hereby finds and determines that the improvements to be made and financed under a Commercial PACE Program in the [City][County] may reasonably be expected to (1) renew and revitalize existing commercial properties, (2) enhance the value of both existing and new commercial properties, (3) improve the profitability of such properties, (4) generate construction jobs in the [City][County] and the surrounding region, (5) lead to the creation of additional jobs by the businesses which thereby become more profitable, (6) improve air and water quality in the [City][County] and the surrounding region, and support progress towards the national goal of energy independence, and

(7) strengthen the economy of the [City][County], the surrounding region, the Commonwealth and the nation, and that accordingly, the adoption of an ordinance creating a Commercial PACE Program for the [City][County] is in the public interest and fulfills multiple public purposes;

**NOW, THEREFORE, BE IT ORDAINED** by the [Council][Board of Supervisors] of the [City][County] of \_\_\_\_\_, Virginia, that the Code of the [City][County] of \_\_\_\_\_, Virginia be, and is hereby, amended and re-ordained as follows:

**[Article][Chapter] \_\_\_\_. [Jurisdiction Name] Commercial PACE Program.**

**Sec. \_\_-1. Creation of Commercial Property Assessed Clean Energy (“Commercial PACE”) Financing Program**

There is hereby established a Commercial Property Assessed Clean Energy Financing Program for the [City][County] (herein, the “Commercial PACE Program”), which shall operate in accordance with the provisions of this [Article][Chapter]. The Commercial PACE Program may adopt such trade name or names under which to operate as the Program Administrator, with the consent of the [City Manager][County Administrator], may from time to time determine. The Commercial PACE Program shall be available to property owners throughout the [City][County] so long as the property owner, type of building and type of proposed improvements all qualify for the Commercial PACE Program.

**Sec. \_\_-2. Definitions**

“Code” means the Code of Virginia of 1950, as amended to date and as it may hereafter be amended.

“Commercial Property” means assessable real estate, whether vacant or occupied, other than (a) a condominium or (b) a residential property containing four or fewer dwelling units. Property which has been used for agricultural or silvicultural purposes but which is proposed to be developed with Qualifying Improvements financed with a PACE Loan shall be Commercial Property for the purposes of this [Article][Chapter]. If the Commonwealth’s PACE statute is amended to allow a PACE Loan to finance Qualifying Improvements to a commercial condominium or a unit of a commercial condominium, then this definition shall automatically be amended to conform to the revised Virginia law.

“DMME Guidelines” means the Uniform Statewide Financial Underwriting Guidelines for PACE Loans, issued on December 1, 2015, by the PACE Stakeholder Committee organized by the Virginia Department of Mines, Minerals and Energy, as they may be amended from time to time.

“PACE” means Property Assessed Clean Energy.

“PACE Borrower” means a business (including a sole proprietor), non-profit entity or other owner of assessable real estate meeting the definition of Commercial Property which voluntarily obtains a PACE Loan under the Commercial PACE Program, or a successor in title to the initial PACE Borrower. Such assessable real estate may be a long-term leasehold interest if the Real Property

Tax is levied on such leasehold interest rather than on the fee, in which event the tenant holding such leasehold interest shall be considered the “owner” of such property and eligible to be a PACE Borrower.

“PACE Contract” means the agreement among the PACE Borrower, the PACE Lender, the [City][County] and the Treasurer, as required by Section 15.2-958.3.A.7 of the Code, setting forth the universally applicable terms of and arrangements for the PACE Loan, and a template of which is found at the end of this [Article][Chapter].

“PACE Lender” means an entity which originates or holds a loan made to finance Qualifying Improvements, after having been determined to be qualified to be a PACE Lender by the Program Administrator in accordance with the Program Guidelines.

“PACE Lien Notice” means a Notice of PACE Special Assessment Lien, in a standardized form prescribed by the Program Administrator and approved by the Treasurer and the [City][County] Attorney, and recorded in the Clerk's Office of the Circuit Court of the [City][County].

“PACE Loan” means a loan made under a Commercial PACE Program by a PACE Lender to a PACE Borrower to finance Qualifying Improvements to a Commercial Property.

“PACE Loan Transfer” means the transfer, assignment or sale, by agreement, merger, operation of law or other lawful means, of a PACE Loan by a PACE Lender.

“PACE Special Assessment” means a special assessment levied against a Commercial Property, at a PACE Borrower’s request, to cover the debt service and recurring fees of a PACE Loan benefitting the Commercial Property.

“Program Administrator” means an independent, third party, authorized representative of the [City][County] possessing the authority to administer the PACE Program as provided by the Code, this [Article][Chapter] and the Program Guidelines.

“Program Guidelines” means those procedures, rules, and restrictions promulgated, imposed and enforced by the Program Administrator for the governance of the Commercial PACE Program.

“Qualifying Improvements” shall have the meaning given such term in Sec. \_\_-3.

“Real Property Tax” or “Real Property Taxes” means the local tax on real estate which localities levy pursuant to Title 58.1, Chapter 32 of the Code.

“Treasurer” means the [City][County] Treasurer [in jurisdictions where that office has been abolished in favor of an official appointed by the locality, insert the title of such appointed official throughout the Model Ordinance].

**Sec. \_\_-3. Improvements that may be financed under the Commercial PACE Program**

The following types of improvements (“Qualifying Improvements”) may be financed with a PACE Loan:

- a. Renewable energy production and distribution facilities, including but not limited to, solar photovoltaic, solar thermal, geothermal, wind, fuel cells, biomass systems, biogas or methane recovery systems, and wave and/or tidal energy and the storage and/or distribution of the energy produced thereby;
- b. Energy usage efficiency reasonably expected to reduce the energy usage of the Commercial Property, including but not limited to, high efficiency lighting and building systems, heating, ventilation and air conditioning (HVAC) upgrades, air duct sealing, high efficiency boilers and furnaces, high efficiency hot water heating systems, combustion and burner upgrades, fuel switching, heat recovery and steam traps, cogeneration systems, building shell or envelope improvements, reflective roof, cool roof or green roof systems, weather-stripping, fenestration and door improvements and modifications, insulation (both in walls, roofs, floors and foundations and in HVAC systems’ radiant barriers), building energy management systems, process equipment upgrades, and other forms of conservation; provided, that for Qualifying Improvements that are part of a new building or structure, such Qualifying Improvements shall exceed the minimum energy efficiency requirements of then-applicable law, ordinance, regulation or code;
- c. Water usage efficiency improvements (including recovery, purification, recycling and other forms of water conservation); provided, that for Qualifying Improvements that are part of a new building or structure, such Qualifying Improvements shall exceed water usage efficiency requirements of then-applicable law, ordinance, regulation or code;
- d. Construction, renovation or retrofitting of a Commercial Property directly related to the accomplishment of any purpose listed in clauses a, b or c, above, whether such Qualifying Improvement was erected or installed in or on a building or on the ground, it being the express intention of the [City][County] to allow Qualifying Improvements that constitute, or are part of, the construction of a new structure or building to be financed with a PACE Loan; or
- e. Any other category of improvement approved by [City Manager][County Administrator] or the Program Administrator as qualifying for financing under the Commercial PACE Program, with the concurring written opinion of either the [City][County] Attorney or other legal counsel engaged to serve as counsel for the Commercial PACE Program that such improvement is authorized by or consistent with the Commonwealth’s authorizing legislation for Commercial PACE Programs.
- f. With respect to the foregoing “Qualifying Improvements,” a PACE Loan may fund the cost of all (a) labor, (b) materials, machinery and equipment, (c) architectural, engineering, consulting (such as energy audits and assessments, feasibility studies and reports, and financial projections), financial and legal services, (d) plans, specifications and studies, (e) physical and building condition surveys, (f) commissioning expenses, (g) project management, (h) energy savings or performance guaranty or insurance, (i) post-installation evaluation, measurement and verification, and building accreditation, (j) permitting fees, (k)

due diligence and closing costs for the PACE Loan, including administrative and PACE Lender fees that are directly attributable to a Qualifying Improvement, and (l) reserves for construction period interest.

#### Sec. \_\_-4. PACE Loans

- a. Neither the [City][County] nor any authority or other governmental entity whose board is appointed by this [Council][Board] shall lend its credit to a borrower under this Commercial PACE Program; all PACE Loans shall be originated by private PACE Lenders, which may, but need not, be licensed financial institutions. Except for oversight duties set forth in this [Article][Chapter], the role of the [City][County] shall be limited to facilitating the repayment of PACE Loans by authorizing and instructing [the Treasurer][in localities where the Treasurer doesn't do the billing, insert the official who prepares the bill] to include each installment of the PACE Special Assessment on the PACE Borrower's real property tax bill.
- b. The minimum initial principal amount of a PACE Loan shall be \$50,000, and the maximum initial principal amount of a PACE Loan shall be (i) twenty percent (20%) of the assessed or appraised value of real property that is subject to a deed of trust lien or (ii) thirty-five percent (35%) of the assessed or appraised value of real property that is unencumbered by a deed of trust lien. The appraised value may be established by an appraisal reflecting a completed and stabilized Commercial Property, including all the Qualifying Improvements and all other construction, additions, alterations and renovations undertaken as part of the same project.
- c. The interest rate of a PACE Loan shall be determined by the agreement of the PACE Borrower and the PACE Lender.
- d. The maturity date of a PACE Loan shall not exceed the later of the expected useful life of the Qualifying Improvements financed thereby (which may be a blended useful life if the Qualifying Improvements financed thereby have varying useful lives) or the fortieth (40<sup>th</sup>) anniversary of the making of the PACE loan.
- e. The principal of a PACE Loan shall be fully amortized in installments over the term of the PACE Loan as agreed by the PACE Borrower and PACE Lender. Installments may be structured to allow for an interest-only period, which interest-only period shall not extend past the first due date for Real Property Taxes following the completion of the Qualifying Improvements. PACE Loan payments shall be scheduled to allow adequate time for (i) the PACE Borrower to pay its PACE Special Assessment installment by its due date, (ii) the deposit, clearing and processing of such payment, and (iii) the subsequent remittance of the PACE Loan payment to the PACE Lender. If the financing agreement between the PACE Lender and the PACE Borrower allows for the prepayment of the PACE Loan, then the corresponding PACE Special Assessment may be prepaid by the payment of all the outstanding principal and interest of the PACE Loan; provided, however, that such financing agreement may condition the prepayment of the PACE Loan upon the payment to the PACE Lender of a prepayment premium or penalty or a yield maintenance or make whole fee (collectively, a "Prepayment Fee"), but since

there can be no certainty as to whether a Prepayment Fee will need to be paid, it shall not be secured by the PACE Special Assessment lien.

- f. With the exception of agreements to which the [City][County], the Treasurer and/or the Program Administrator is a party, or agreements that will be recorded in the Clerk's Office of the Circuit Court of the [City][County], PACE Lenders should be allowed to use their own financing documents for the PACE Loan, unless the Program Administrator shall, after review of a PACE Lender's financing documents, for good cause request modifications thereto and the PACE Lender shall decline to make such modifications, in which event the Program Administrator may cause the preparation of template documents for PACE Loans and direct their use by such PACE Lender. An initial template of the PACE Contract is located at the end of this [Article][Chapter]; provided, however, that the Program Administrator may from time to time revise such PACE Contract with the prior written consent of the Treasurer and the [City][County] Attorney, without the need of amending this [Article][Chapter] each time.
- g. If Real Property Taxes on the Commercial Property are paid through an escrow held by a first mortgage lender, then the PACE Borrower and PACE Lender may agree for the PACE Borrower to include its PACE Special Assessment installments in its monthly escrow payments to the first mortgage lender, in which event the PACE Borrower shall provide the Program Administrator with evidence of such agreement, including the undertaking by the first mortgage lender to remit the installments on the PACE Special Assessment to the Treasurer prior to their due dates.
- h. To the extent that any agreement must be entered into on behalf of or in the name of the [City][County], such agreement shall be executed by the [City Manager][County Administrator]. Agreements to be entered into on behalf of or in the name of the Treasurer shall be executed by the Treasurer, personally[delete this sentence in localities which have abolished the Treasurer's office].

**Sec. \_\_\_-5. PACE Special Assessment and Lien**

- a. A PACE Loan shall be secured by a PACE Special Assessment lien, the existence, terms and conditions of which shall be evidenced by the recordation of a Notice of PACE Lien in the Clerk's Office of the Circuit Court of the [City][County]. The PACE Special Assessment shall be payable in installments over a period of years, due at the same time as Real Property Taxes.
- b. A recorded Notice of PACE Lien shall have the same priority status as the lien of Real Property Taxes against real property, except that it shall have priority over any previously recorded mortgage or deed of trust lien only if (i) a written subordination agreement, in a form and substance acceptable to each prior lienholder in its sole and exclusive discretion, is executed by the holder of each mortgage or deed of trust lien on the property and recorded with the PACE Special Assessment lien in the land records of the Clerk's Office of the Circuit Court of the [City][County], and (ii) evidence that (A) the PACE Borrower is (1) current on payments on loans secured by a mortgage or deed of trust lien on the property, (2) current on real and personal property tax payments, (3) current on all federal,

state and local taxes, and there is no federal income tax lien, judgment lien or similar involuntary lien against the property, and (4) not insolvent or in bankruptcy or foreclosure proceedings, and (B) the title of the property is not in dispute (which may be evidenced by a status of title report from a title insurance agency or an attorney's title opinion) is submitted to the locality prior to recording of the PACE Special Assessment lien.

- c. Concurrently with the PACE Loan's closing and recordation of the Notice of PACE Lien, the amounts payable in each installment thereof shall be communicated in writing by the Program Administrator to the Treasurer and shall be added to the property's Real Property Tax account within [fourteen (14)] days of the Treasurer's receipt of such information. Thereafter, the PACE Special Assessment installments shall be billed on the property's Real Property Tax bill and shall be collected with the payment of Real Property Taxes.
- d. The obligation of the [City][County] to remit to the PACE Lender the periodic payments due under a PACE Loan shall be a limited obligation, only payable if and when funds from the payment of the related PACE Special Assessment installments are irrevocably credited to the Treasurer's account. The Treasurer shall promptly process, deposit and credit payments of PACE Special Assessment installments made by or for the account of a PACE Borrower.
- e. Once the payment of a PACE Special Assessment installment has been irrevocably credited to the Treasurer's account, the Treasurer shall, no later than fourteen (14) days after the later of the installment's due date or such irrevocable credit having occurred, (i) deduct a fee for its actual costs incurred, not to exceed the lesser of the Treasurer's usual and customary fee (if any) for remitting payments for other assessments or [0.5%] percent from such installment payment, but in no event to exceed \$1,000, and remit such fee to the [City][County] as compensation for the costs of administering its component of the Commercial PACE Program and (ii) remit the balance of such installment payment to the order of the PACE Lender that then holds the PACE Loan, in payment of the corresponding payment due on the PACE Loan.
- f. Only the current and delinquent installments of principal, together with all due but unpaid interest, late fees and penalties, of a PACE Special Assessment shall constitute a first lien on the property, on a par with the lien of Real Property Taxes. Delinquent installments of the PACE Special Assessment shall accrue penalties and interest in the same manner as delinquent Real Property Taxes, except that enforcement of a delinquent installment of a PACE Special Assessment may be commenced as soon as thirty (30) days after its due date, and after such date, enforcement shall be promptly commenced upon receipt by the Treasurer of a written demand for enforcement from the holder of the PACE Loan secured by the PACE Special Assessment lien. The collection of current and delinquent installments of principal, together with all due but unpaid interest, late fees and penalties, of a PACE Special Assessment (i) shall be enforced by the [City][County] in the same manner that it collects delinquent Real Property Taxes, or (ii) the Treasurer may engage, as special counsel, an attorney or law firm to collect the delinquent installments of the PACE Special Assessment, which attorney or law firm may, in the Treasurer's discretion, be an attorney or law firm



designated by the PACE Lender which then holds the delinquent PACE Loan. In collecting the delinquent amounts due under a PACE Special Assessment, the [City][County] and the Treasurer shall be entitled to recover their costs and expenses, including [reasonable] attorney fees and costs, in the same manner as in a suit to collect delinquent real property tax, and may charge interest and penalties for delinquent installments of the PACE Special Assessment in the same manner as delinquent Real Property Taxes, and all such costs, expenses, interest and penalties shall be added to the delinquent principal and interest being collected and become part of the aggregate amount sued for and collected, be added to the delinquent PACE Special Assessment and be secured by the PACE Special Assessment lien.

- g. The purchaser of a property subject to a PACE Special Assessment lien, including any purchaser thereof at the foreclosure of the lien of a deed of trust, a judgment or Real Property Taxes, shall assume the obligation to repay all remaining unpaid installments of the PACE Special Assessment. Only current and delinquent installments of the PACE Special Assessment, together with any penalties, interest and costs of collection as provided in the preceding paragraph, shall be payable at the settlement of such a foreclosure sale. Notwithstanding the first sentence of this paragraph, if a property subject to a PACE Special Assessment lien is acquired by a governmental agency or a political subdivision (collectively, a “Governmental Owner”), the PACE Special Assessment shall be suspended while owned by the Governmental Owner, and resume (with all deferred amounts under the PACE Loan to be brought current and paid to the PACE Lender) upon the property’s sale to a non-Governmental Owner.
- h. PACE Loan Transfers are permitted; provided that no PACE Loan Transfer shall be valid and enforceable against the [City][County] and obligate the Treasurer to remit payments received by it on the PACE Special Assessment to the new holder of the PACE Loan unless evidence of the PACE Loan Transfer has been recorded in the Clerk's Office of the Circuit Court of the [City][County] where the original PACE Special Assessment lien was recorded, and a copy of such recorded PACE Loan Transfer has been provided to the Treasurer at least fourteen (14) days before the due date for the PACE Special Assessment installment. Recordation of evidence of the PACE Loan Transfer shall have the effect of establishing privity of contract between the new holder of the PACE Loan and the other parties to the PACE Contract, and constitute an assumption by the new holder of the PACE Loan of the rights and obligations of the PACE Lender thereunder. A PACE Loan Transfer is not an assignment of the PACE Special Assessment lien, as PACE Special Assessment liens are not assignable under Virginia law.

#### **Sec. \_\_\_-6. Program Administrator**

- a. The Program Administrator shall be hired by the [Council][Board], and shall enter into an agreement with the [City][County], pursuant to a process designed by the [City Manager][County Administrator], for a term of not less than three (3) years, with two (2) one-year renewal options at the discretion of the [City Manager][County Administrator].

- b. The principal roles of the Program Administrator are: (1) to promulgate the Program Guidelines, pursuant to which the Commercial PACE Program shall operate; (2) to work out billing and remittance details with the Treasurer, including any necessary software modifications; (3) to process applications for PACE Loans, reviewing and certifying each proposed project as eligible for a PACE Loan, or advising why it cannot be certified; and (4) to promote the Commercial PACE Program to prospective stakeholders (e.g., commercial building owners, contractors, architects, engineers, property managers and lenders), to provide PACE training to stakeholders, prospective stakeholders and governmental staff, and where appropriate, to certify them as eligible to participate in the Commercial PACE Program.
- c. It is declared sound public policy that the Program Administrator shall price its services and otherwise use its commercially reasonable best efforts to minimize the fees and costs that a PACE Borrower must pay for its PACE Loan, all with the goal of promoting and facilitating PACE Loans in the [City][County]. The [City Manager][County Administrator] shall review annually the Program Administrator's fee schedule and the other costs associated with the Commercial PACE Program and, if [he][she] deems it advisable, counsel the Program Administrator as to such pricing and costs in order to encourage their compliance with the public interest in making the Commercial PACE Program as affordable and broadly available as possible.
- d. The Program Administrator shall promulgate Program Guidelines, which shall detail, to the extent not specified or limited by Virginia law or this [Article][Chapter], how the Commercial PACE Program shall operate. In promulgating the Program Guidelines, the Program Administrator shall give due regard to the DMME Guidelines, but is expressly authorized, in its discretion exercised jointly with a PACE Lender, to make exceptions to the DMME Guidelines consistent with sound lending practices, or as authorized in this [Article][Chapter]. The Program Guidelines shall include, but not be limited to, the following topics:
  - i. Eligibility standards for property owners, their properties, and the proposed improvements;
  - ii. Underwriting standards, generally adhering to those in the DMME Guidelines, and principles for determining when making an exception to those standards is warranted;
  - iii. Standards for vetting contractors, architects, engineers and other consultants who wish to participate in the Commercial PACE Program, subject to the general principles set forth in Paragraph (e) of this Section;
  - iv. Project review standards, including compliance with Commercial PACE Program Guidelines, this [Article][Chapter], Section 15.2-958.3 of the Code of Virginia of 1950, as amended, and all other applicable state laws, ordinances, regulations and codes;
  - v. Minimum standards for the performance of any energy savings analysis or audit by a qualified energy analyst or auditor or a certified building energy rater, with such standards ordinarily to include (A) recommendations for energy savings measures; (B) estimated energy savings and a priority ranking

for each measure; (C) estimated renewal energy to be produced; (D) estimated greenhouse gas reduction; and (E) estimated cost savings (including operational savings) resulting from the implementation of the recommendations and the use of proceeds of the PACE Loan; provided, however, that the Program Administrator may adopt an alternative process in substitution for an energy savings audit, but such alternative process must be based on professionally accepted methodologies for documenting the information otherwise required to be included in an energy savings audit, which alternative process shall be submitted to the [City Manager][County Administrator] for approval;

- vi. Billing and collection processes;
  - vii. Requirement for the prompt delivery to the Program Administrator of all final permits and inspections relating to the Qualifying Improvements upon the completion of their construction and installation; and
  - viii. Template forms for the PACE Special Assessment lien, lender subordination to the PACE Special Assessment lien, and the PACE Contract among the PACE Borrower, the PACE Lender, the [City][County] and the Treasurer.
- e. The Program Administrator shall ensure that the Commercial PACE Program operates as a competitive market, open to all certified lenders, contractors, engineers and consultants who wish to invest in PACE Loans or provide services to PACE Borrowers; provided that for any service related to a PACE Loan which must be evaluated by the Program Administrator, the Program Administrator is accorded the discretion to decline to certify as an eligible service provider if the Program Administrator determines in good faith that the service provider lacks sufficient knowledge, experience or skill to render service of sufficient quality to be relied upon in connection with the PACE Loan. The Program Administrator shall not grant any lender or service provider an exclusive right to make PACE Loans or to provide a service in connection with PACE Loans.
- f. *[OPTIONAL PROVISION: This provision should to be added to the Ordinance only if the locality included a joint and cooperative procurement provision (per Va. Code Sec. 2.2-4304) in its RFP to engage a program administrator for its Commercial PACE Program.]* The [City][County] acknowledges that the Program Administrator may extend its agreement with the [City][County] to any other jurisdiction [in Virginia][or describe a more limited regional or other eligibility basis for jurisdictions to participate] in accordance with the joint and cooperative procurement provisions included in the [City's][County's] Request for Proposal for a Program Administrator and its attachments, which provisions shall govern such joint and cooperative procurement. The Program Administrator shall indemnify, defend and hold the [City][County] harmless against any claim brought against the [City][County] or any liability imposed on the [City][County] as a result of any action or omission to act by the Program Administration in a jurisdiction to which its program administration agreement with the [City][County] was extended under such joint and cooperative procurement.

**Sec. \_\_-7. Limitation of Liability**

By executing a PACE Contract or any other PACE Loan document, or otherwise participating in the Commercial PACE Program, each PACE Borrower, PACE Lender, contractor or other party or participant acknowledges and agrees, for the benefit of the [City][County] and as a condition of participation in the Commercial PACE Program, that: (i) the [City][County] undertakes no obligation under or in respect of any the Act, this Ordinance, the Program Guidelines or any PACE Loan document except as expressly stated therein or herein, and no implied covenants or obligations of the [City][County] shall be read thereinto; (ii) regardless of any default by PACE Borrower, the [City][County] has no obligation to remit payments on a PACE Special Assessment to any PACE Lender, or any other payments in respect of any PACE Loan, including, without limitation, any fees, expenses and other charges described in any PACE Loan document, except from the funds actually received and irrevocably collected as “good funds” by the [City][County] in payment therefor, as the obligation to remit such funds to the PACE Lender is hereby declared to be a special or limited obligation of the [City][County]; (iii) none of any PACE Loan, PACE Special Assessment payment or lien, or other obligation arising from any PACE Loan document, the Act or the Ordinance shall be backed by (A) any credit of the [City][County], (B) any credit of the Commonwealth or any of its political subdivisions, including, without limitation, the [City][County], or (C) any taxes, taxing power or governmental funds; (iv) none of any PACE Loan, PACE Special Assessment payment or lien, or other obligation arising from any PACE Loan document, the Act or the Ordinance shall constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, (v) the [City][County] has not made any representations, financial or otherwise, in respect of the PACE Borrower, its real or personal property or the Qualifying Improvements to be made thereto or thereon, (vi) the [City][County] makes no representation or warranty as to, and assumes no responsibility with respect to, the accuracy or completeness of any Special Assessment Lien or any amendment thereof, (vii) the [City][County] assumes no responsibility or liability in respect of any Qualifying Improvements, or the planning, construction or operation thereof, (viii) each PACE Borrower, PACE Lender and contractor shall, upon request, provide the [City][County] with any information associated with the Project or the Loan that is reasonably necessary to confirm that the Project or Loan meets all requirements of the Act, the Ordinance and the Program Guidelines and (ix) each PACE Borrower, PACE Lender, contractor and other participant under the Commercial PACE Program shall comply with all applicable requirements of the Act, the Ordinance and the Program Guidelines.

END OF ORDINANCE