**AN ORDINANCE ESTABLISHING A PACE AREA AND ESTABLISHING A PACE PROGRAM TO FINANCE OR REFINANCE THE ACQUISITION, CONSTRUCTION, INSTALLATION, OR MODIFICATION OF ENERGY PROJECTS; AND OTHER MATTERS RELATED THERETO**

**WHEREAS**, [Insert Name], a [village/city/county/town] duly organized and validly existing under the Constitution and the laws of the State of Illinois (the “[Village/City/County/Town]”), is a [non-]home rule unit of local government of the State of Illinois authorized pursuant to the Property Assessed Clean Energy Act, 50 ILCS 50/1 et seq., as amended (the “PACE Act”) to establish a property assessed clean energy program (the “PACE Program”), create a PACE area (as defined in the PACE Act) and finance or refinance energy projects (as defined in the PACE Act); and

**WHEREAS**, pursuant to an ordinance adopted by the [Village/City/County/Town] on \_\_\_\_\_\_\_, 20[ ], \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was designated a program administrator (as defined in the PACE Act) (the “Program Administrator”); and

**WHEREAS**, the Program Administrator has prepared the report attached hereto as Exhibit A (the “Program Report”) setting forth certain terms of the proposed PACE Program in conformity with the PACE Act; and

**WHEREAS**, the [Village/City/County/Town] now desires to establish the PACE area as the entire corporate limits of the [Village/City/County/Town] and to establish the PACE Program as further described herein and in the Program Report and to finance or refinance energy projects; and

**WHEREAS,** the Illinois Finance Authority, a body politic and corporate duly organized and validly existing under and by virtue of the laws of the State of Illinois (the “Authority”), is authorized to issue PACE bonds (as defined in the PACE Act) to finance or refinance energy projects in accordance with the PACE Act and pursuant to subsection (d) of Section 825-65 of the Illinois Finance Authority Act, 20 ILCS 3501/801-1 et seq. (the “Authority Act”); and

**WHEREAS,** any PACE bonds to be issued by the [Village/City/County/Town] to finance or refinance energy projects under the PACE Act not utilizing the Authority as an issuer of PACE bonds will be approved pursuant to a separate ordinance to be considered at a future meeting of the [Village/City/County/Town]; and

**NOW, THEREFORE, BE IT ORDAINED BY THE [VILLAGE/CITY/COUNTY/TOWN] OF [INSERT NAME], ILLINOIS, AS FOLLOWS:**

# Incorporation of the Recitals.

The [Village/City/County/Town] hereby finds that all of the recitals contained in the preambles to this Ordinance are true, correct and complete and are hereby incorporated by reference thereto and are made a part hereof.

# Report of the Program Administrator; Creation of PACE Area.

The [Village/City/County/Town] hereby finds as follows:

## The financing or refinancing of energy projects is a valid public purpose and serves an essential governmental function;

## The [Village/City/County/Town] intends to facilitate access to capital from the Program Administrator[s] approved by the [Village/City/County/Town] or as otherwise permitted by the PACE Act, to provide funds for energy projects which will be repaid by assessments on the property (as defined in the PACE Act) benefitted with the agreement of the record owners (as defined in the PACE Act) of such property;

## A description of the territory within the PACE area, the types of energy projects that may be financed or refinanced, and the description of the proposed arrangements for financing the PACE Program through the issuance of PACE bonds under or in accordance with Section 35 of the PACE Act, which PACE bonds may be purchased by one or more capital providers (as defined in the PACE Act); are all set forth in the Program Report which is attached hereto as Exhibit A. The Program Report is hereby incorporated by reference thereto and made a part hereof. The [Village/City/County/Town] hereby approves the Program Report and hereby establishes the PACE area as the corporate limits of the [Village/City/County/Town], all as further described in the Program Report. The Program Report shall be made available for public inspection in the office of the [Village/City/County/Town] clerk.

# No Public Hearing; Program Established.

The [Village/City/County/Town] hereby finds that no public hearing shall be required in connection with the adoption or amendment of the PACE Program and hereby establishes the PACE Program in accordance with the Program Report.

# Assessment Contract.

The form of “assessment contract” (as defined in the PACE Act) attached as Appendix A to the Program Report is hereby approved by the [Village/City/County/Town]. Any one of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (each, an “Authorized Officer”) is hereby authorized to negotiate, execute, and deliver one or more assessment contracts with record owners meeting the requirements set forth in the Program Report (each, an “Assessment Contract”) in substantially the form of Appendix A to the Program Report, with such changes, deletions, and insertions as shall be approved by the Authorized Officer and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of such Assessment Contract, and upon execution to record such Assessment Contract with the Recorder of Deeds of [Insert Name] County. The execution of such agreements and instruments shall be conclusive evidence of such approval. Prior to execution of any Assessment Contract, the Authorized Officer shall make the determination set forth in clause (i) below and shall have received evidence of items (ii) through (xi) below, to be documented in a written notification to be filed with the [Village/City/County/Town] Clerk:

### that the property to be assessed is entirely within the PACE area of the [Village/City/County/Town];

### that there are no delinquent taxes, special assessments or water or sewer charges on the property to be assessed;

### that there are no delinquent assessments on the property under a property assessed clean energy program;

### whether there are any involuntary liens on the property, including, but not limited to, construction or mechanics liens, lis pendens or judgments against the record owner, environmental proceedings, or eminent domain proceedings;

### that no notices of default or other evidence of property-based debt delinquency have been recorded and not cured;

### that the record owner is current on all mortgage debt on the property, the record owner has not filed for bankruptcy in the last 2 years, and the property is not an asset in a current bankruptcy proceeding;

### that all work requiring a license under any applicable law to acquire, construct, install, or modify an energy project shall be performed by a licensed contractor that has agreed to adhere to a set of terms and conditions through a process established by the [Village/City/County/Town] or the Program Administrator and described in the Program Report;

### the contractor or contractors to be used have signed a written acknowledgement that the [Village/City/County/Town] will not authorize final payment to the contractor or contractors until the [Village/City/County/Town] has received written confirmation from the record owner that the energy project was properly acquired, constructed, installed or modified and is operating as intended; provided, however, that the contractor or contractors retain all legal rights and remedies in the event there is a disagreement with the record owner;

### that the aggregate amount financed or refinanced under one or more assessment contracts does not exceed 25% in relation to the greater of any of the following:

#### the value of the property as determined by the office of the county assessor; or

#### the value of the property as determined by an appraisal conducted by a licensed appraiser;

### that an evaluation of the existing water or energy use and a modeling of expected monetary savings have been conducted for any proposed energy efficiency improvement (as defined in the PACE Act), renewable energy improvement (as defined in the PACE Act), or water use improvement (as defined in the PACE Act), unless the water use improvement is undertaken to improve water quality in accordance with the procedures set forth in the Program Report; and

### before entering into the Assessment Contract with the [Village/City/County/Town], the record owner shall have provided to the mortgage holders of any existing mortgages encumbering or otherwise securing the property a notice of the record owner's intent to enter into the Assessment Contract with the [Village/City/County/Town], together with the maximum principal amount to be financed or refinanced and the maximum assessment necessary to repay that amount, along with an additional request that the mortgage holders of any existing mortgages consent to the record owner subjecting the property to the PACE Program. Prior to the execution of any Assessment Contract, the [Village/City/County/Town] shall have been provided with a copy or other proof of those notices and the written consent of the mortgage holder for the record owner to enter into the Assessment Contract which acknowledges that (a) the existing mortgage or mortgages for which consent was received will be subordinate to the Assessment Contract and the lien created thereby and that the [Village/City/County/Town] or, if applicable, its permitted assignee (as defined in the PACE Act) can foreclose the property if the assessments are not paid.

# Additional Actions. The Authorized Officer is hereby authorized:

### to approve the form of Program Handbook of the Program Administrator (as defined in the Program Report) setting forth certain additional requirements, procedures, and descriptions relating to the PACE Program and to negotiate, execute**,** and deliver such other supporting documents as may be necessary or appropriate to implement the PACE Program**;** and

### in connection with the issuance of PACE bonds by the Authority to finance or refinance energy projects in accordance with the PACE Act and pursuant to subsection (d) of Section 825-65 of the Authority Act, to negotiate, execute, and deliver one or more agreements assigning to the Authority an Assessment Contract securing such PACE bonds

### .

# Enactment.

The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity or enforceability of the remainder of the sections, phrases and provisions hereof. All ordinances, orders and resolutions and parts thereof in conflict herewith are to the extent of such conflict hereby repealed, and this Ordinance shall take effect and be in full force immediately upon its adoption. No provision of the [Municipal Code] [County Code][[1]](#footnote-1) or violation of any provision of the [Municipal Code] [County Code] shall be deemed to impair the validity of this Ordinance or the instruments authorized by this Ordinance or to impair the security for or payment of the instruments authorized by this Ordinance; provided further, however, that the foregoing shall not be deemed to affect the availability of any other remedy or penalty for any violation of any provision of the [Municipal Code] [County Code].

A copy of this Ordinance shall be published in pamphlet form, filed in the office of the Clerk of the [Village/City/County/Town] and made available for public inspection.

This Ordinance shall become effective upon its passage and approval.

EXHIBIT A

Report of Program Administrator

1. The applicable [Village/City/County/Town] to fill in the appropriate code references. [↑](#footnote-ref-1)