



# **VAN BUREN COUNTY, MICHIGAN**

## **PROPOSED PACE PROGRAM**

### **PACE PROGRAM REPORT**

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# **The Van Buren County PACE Program**

## **EXECUTIVE SUMMARY**

Public Act No. 270 of 2010 (“Act 270”) authorizes local units of government to adopt Property Assessed Clean Energy (“PACE”) programs to promote the installation of energy efficiency improvements and renewable energy systems by owners of commercial or industrial property within a district designated by the local unit of government. Act 270 allows private commercial lenders to finance energy projects; authorizes local units of government to issue bonds, notes and other indebtedness; and authorizes the assessment of properties for the cost of the energy projects. Act 270 provides for repayment to the local unit of government or the private lender through a voluntary property assessment. The property assessment remains with the property and has the same priority as other property tax and assessment liens in the event of foreclosure.

This documentation package includes the report required by Section 9 of Act 270 and provides model forms of documents for the PACE program. As many of the details of a PACE transaction are determined on a project-specific basis, adjustments to the model documents may be required to fit a particular transaction.

## **VAN BUREN COUNTY, MICHIGAN**

### **PACE PROGRAM REPORT**

This PACE Program Report contains the information required by Section 9 of Act 270. Additional information is available from Van Buren County (“Van Buren”). The PACE Program and Report were approved by the Board of Commissioners on **[INSERT DATE]** subsequent to a public hearing held on **[INSERT DATE]**.

## INTRODUCTION

In order to encourage economic development, improve property valuation, increase employment, reduce energy costs, reduce greenhouse gas emissions and contribute to the public health and welfare in Van Buren County, the County Commissioners established the Van Buren County Property Assessed Clean Energy Program (VBCPACE) pursuant to Act 270 of 2010 (“Act 270”).

The PACE Program has identified specific sources of commercial funding to finance the implementation of energy efficiency improvements, renewable energy systems and energy projects within the Van Buren County PACE district (which is coterminous with Van Buren County’s jurisdictional boundaries).

The Van Buren County Board of Commissioners approved a resolution of intent to establish a Property Assessed Clean Energy District at its meeting on October 11, 2022. The County published notice of the required public hearing regarding the establishment of the District on [DATE]. The public hearing was conducted on [DATE], after which the Board of Commissioners approved the Resolution to Establish the Property Assessed Clean Energy District.

The purpose of this PACE Report (hereinafter the “Report”) is to fulfill the requirements of Act 270. Section 9 of Act 270 requires a Report that includes:

- a form of contract between Van Buren County and the record owner
- identification of an official authorized to enter into program contracts on behalf of Van Buren County
- a maximum aggregate amount for financing under the program
- an application process and eligibility requirements
- a method for determining interest rates
- repayment periods and the maximum amount of assessment
- explanation of how assessments will be made and collected
- a plan for raising capital
- information regarding reserve funds and fees of the program
- a requirement that the term of the assessment not exceed the useful life of the energy project
- a requirement of an appropriate ratio of the amount of assessment to the assessed value of the property
- requirement of consent from the mortgage holder
- provisions for marketing and participant education
- provisions for adequate debt service reserve fund
- quality assurance and anti-fraud measures
- a requirement for baseline energy audits, ongoing savings measurements and performance guarantees for projects over \$250,000 in assessments.

## 1. Form of PACE Contract

A form of model PACE Special Assessment Agreement is attached as **Appendix A**. Individual property owners may negotiate project-specific terms to be included in an actual agreement based upon the specific energy efficiency and renewable energy improvements to be financed through the individual agreement, subject to the limitations set forth herein.

## 2. Authorized Official/PACE Administrator

Provided that there is no commitment of Van Buren County funding or liability, the Chair of the Van Buren County Board of Commissioners or his/her designee (the “Authorized Official”) is authorized to enter into PACE Program contracts on behalf of Van Buren County in consultation with the Economic Development Corporation and Market Van Buren. The Authorized Official is further authorized to sign any agreement, documents or certificates necessary to facilitate the participation of property owners and to facilitate the purposes hereunder.

As part of the Van Buren County PACE Program, Market Van Buren will act as PACE administrator and will manage Van Buren’s PACE Program. Market Van Buren is authorized to negotiate with credit providers and PACE project participants to facilitate the use of the PACE Program and to assist PACE project applicants in obtaining owner-arranged financing.

## 3. Financing Parameters

Owner-arranged and other financing from commercial lenders, as allowed under Act 270, Section 9(1)(g)(iii), are separate sources of financing from the financing provided by Van Buren County. The Authorized Official is not authorized to assist PACE project applicants in obtaining owner-arranged financing. The obligation to obtaining financing is an exclusive requirement of the property owner and shall not rely upon or seek assistance from the County in sourcing, determining any aspect of the financing agreement with a commercial lender or otherwise offering or providing advice or counsel in the appropriateness of the potential project. These considerations are the sole responsibility of the applicant to develop a complete project outline with financing, payback schedules, return on investment and all other requirements for inclusion in the application package to the County. The County will then consider the application for approval, rejection or referred back for any missing information necessary in order make a determination of project status.

## 4. **Application Process/Eligibility Requirements Application Process:**

The application process for financing projects under the Program shall be that of Market Van Buren. The current application form is attached as **Appendix F**. This form may be changed or amended as necessary by Market Van Buren.

### **Eligibility Requirements:**

The eligibility requirements for financing projects under the Program shall be those of Market Van Buren. Eligibility requirements may be changed or amended as necessary by Market Van Buren. The current list of eligibility requirements is attached as **Appendix A**.

**Appeal:**

Any applicant whose application is denied by the Authorized Official may appeal the application denial to the Van Buren County Board of Commissioners within twenty-one (21) days of the date of the written denial. Any appeal shall be in writing and shall identify with specificity the facts upon which the appeal is based.

The Appellant shall establish by clear and convincing evidence that all eligibility requirements for financing a project under the Program were met and that the denial requires reversal by the Van Buren County Board of Commissioners. The decision of the Van Buren County Board of Commissioners shall be final.

**5. Financing Terms of Assessments**

The interest rate for PACE special assessment installments supplied by commercial lenders shall be negotiated by the parties based on current market conditions.

The maximum allowable repayment period of a PACE special assessment must be included in the PACE Special Assessment Agreement and will be determined on a project- specific basis and shall not exceed the lesser of the useful life of the energy project paid for by the assessment or 25 years.

The maximum dollar amount of a PACE special assessment shall be negotiated on a project-specific basis between the property owner and the entity providing the financing based upon the specific energy efficiency improvement(s), water efficiency improvement(s) and/or renewable energy system(s) included in the individual PACE Special Assessment Agreement.

**6. Assessment Collection Process**

Within the parameters set forth herein, the Authorized Official will authorize one or more commercial lenders to provide financing to defray all or part of the cost of the energy improvements by special assessment upon the Special Assessment Parcel, which the Authorized Official will find is especially benefited in proportion to the costs of the energy improvements.

The Special Assessment Roll, attached as **Appendix C**, will be spread by the Authorized Official on behalf of Van Buren and without objection by the property owner to allocate one hundred percent (100%) of the PACE special assessment levy created hereby to the Special Assessment Parcel.

The PACE special assessment, as allocated by the Authorized Official on behalf of Van Buren without objection by the property owner, will be finally established against the property and the energy projects to be constructed on the Special Assessment Parcel. The PACE special assessment will be effective immediately upon the execution of the PACE Special Assessment Agreement by the property owner. The PACE special assessment may be paid in semi-annual installments pursuant to Section 13(2) of Act 270. The Authorized Official, on behalf of Van Buren, will confirm the Special Assessment Roll.

## **7. Financing Program**

Van Buren County authorizes the use of owner-arranged financing from commercial lenders to finance qualified energy projects under the Program. Furthermore, Van Buren County recommends the Van Buren County Business Development Corporation as a resource for an active roster of financial institutions, institutional investors and other sources of private capital available to finance PACE projects in Michigan.

## **8. Reserve Fund**

As Van Buren County has elected NOT to issue bonds, notes, or other public funds to finance PACE projects, it will not maintain a reserve fund for the program.

## **9. Fee Schedule**

Application, administration and program fees for record owners shall be those of Market Van Buren and any out-of-pocket costs, if any, incurred by Van Buren County. Administration and program fees will be determined on a project-specific basis and will depend on the size, nature and complexity of the energy project(s) and financing mechanism(s) involved.

## **10. Useful Life**

The maximum length of time allowable for repayment of a PACE assessment shall not exceed the lesser of the useful life of the energy project paid for by the assessment or 25 years and will be determined on a project-specific basis by Market Van Buren. Projects involving multiple energy efficiency improvements and/or renewable energy systems may aggregate the useful life of each improvement to determine an overall useful life figure for financing purposes. In aggregating the improvements, the property owner must appropriately weigh each improvement's dollar cost.

## **11. Property Eligibility Parameters**

Van Buren County authorizes the use of owner-arranged financing from commercial lenders to finance qualified energy projects under the Program. Furthermore, Van Buren County recommends Market Van Buren and the Van Buren County Development Corporation as a resource for an active roster of financial institutions, institutional investors and other sources of private capital available to finance PACE projects in Michigan.

## **12. Mortgage Consent Requirement**

If a property is subject to a mortgage the record owner must obtain written consent from the mortgagee to participate in the Program. Proof of lender consent must be submitted before a Special Assessment Agreement may be executed. A form of lender consent to participate in a PACE Program is attached as **Appendix H**.



### **13. Marketing Program**

Van Buren County in partnership with Market Van Buren, will provide an ongoing marketing and participant education program. Market Van Buren will provide both marketing and education programs as part of its economic development growth and retention program and will act as a point of contact to provide the same to any business considering locating in Van Buren County about the opportunities to save energy, save money and improve their property. The Van Buren County Economic Development Corporation (VBEDC) will act to assist Market Van Buren as a liaison when necessary to gather any additional information that may be necessary to meet the County's obligation of reviewing and considering each application. The goal of the program is to support employment opportunities and expanded economic development. The County is sponsoring this program with this sole objective. The County's goal is that projects shall be approved that are financially sound and have the highest level of probability based on the best estimate of return on investment in order to be successful.

### **14. Quality Assurance and Antifraud Measures**

Market Van Buren includes the following quality assurance and antifraud measures:

- i. Business integrity review on clean energy contractors;
- ii. Background check process on clean energy contractors; and
- iii. Other general due diligence as may be necessary or required.

### **15. Audit Requirement**

As set forth in the PACE Program Application, a baseline energy audit must be completed before an energy project is undertaken. Each contract will require and provide adequate funding for monitoring and verification of energy savings throughout the life of the special assessment.

### **16. Projects Over \$250,000**

As set forth in the PACE Special Assessment Agreement, energy projects financed with more than \$250,000 require ongoing measurements to establish energy savings and a guarantee from the contractor that the energy project will achieve a savings to investment ratio greater than one (1). Provisions to provide for ongoing measurements and to provide performance guarantees shall be included with the PACE Program Application.

### **17. Amendments to the Program**

A public hearing shall not be required to amend this Program. Market Van Buren, with the prior consent of Van Buren, may amend the Van Buren PACE program as necessary from time to time.

**APPENDIX A:**  
**TEMPLATE SPECIAL ASSESSMENT AGREEMENT**

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SPACE ABOVE FOR RECORDING PURPOSES

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**PACE SPECIAL ASSESSMENT AGREEMENT**  
**(OWNER-ARRANGED FINANCING)**

*by and among*

**VAN BUREN COUNTY, MICHIGAN**

*and*

**[PROPERTY OWNER]**

*and*

**[PACE LENDER]**

**Dated:** \_\_\_\_\_

**Template Van Buren County PACE Special Assessment Agreement**

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## Template Van Buren County PACE Special Assessment Agreement

### **PACE SPECIAL ASSESSMENT AGREEMENT** **(OWNER-ARRANGED FINANCING)**

**THIS PACE SPECIAL ASSESSMENT AGREEMENT** (this “Agreement”) is made this [INSERT DATE] between VAN BUREN COUNTY, a Michigan county corporation (the “County”), whose address is [INSERT ADDRESS], PROPERTY OWNER, a Michigan limited liability company (the “Property Owner”), whose address is [INSERT ADDRESS], and PACE LENDER, a Michigan limited liability company (the “Lender”), whose address is [INSERT ADDRESS].

#### **RECITALS:**

A. Pursuant to Act 270 and a resolution adopted by the Van Buren County Board of Commissioners on [INSERT DATE], Van Buren has established the PACE Program as described in the PACE Program Report and has created the Special Assessment District under the PACE Program for the purpose, *inter alia*, of assisting a record owner of property within the Special Assessment District in obtaining Owner-Arranged Financing from a commercial lender to defray the costs of one or more Energy Projects on the property.

B. Under Act 270, Van Buren County is authorized, pursuant to an agreement with the record owner of property within the Special Assessment District, to impose a special assessment on the property to be benefitted by the Energy Projects in order to secure and provide for the repayment of the Owner-Arranged Financing.

C. The Property Owner desires to undertake certain Energy Projects on commercial property of the Property Owner located within the Special Assessment District, as described herein, and has obtained a commitment from the Lender to make the Loan to the Property Owner to defray its cost.

D. In order to induce the Lender to make the Loan to the Property Owner, the Property Owner has requested that Van Buren County enter into this Agreement to impose a special assessment on the property to be benefitted by the Energy Projects, in accordance with Act 270, which special assessment will secure and provide for repayment of the Loan from the Lender.

E. Pursuant to Act 270 and the PACE Program, Van Buren County is authorized to enter into this Agreement.

In consideration of the foregoing and the mutual covenants contained in this Agreement, the County, the Property Owner and the Lender agree that:

# Template Van Buren County PACE Special Assessment Agreement

## ARTICLE I DEFINITIONS

**Section 1.01 Definitions.** Capitalized terms used in this Agreement and Recitals shall have the meanings stated in Act 270 and as stated immediately below, except to the extent the context in which they are used requires otherwise:

(a) “**Act 270**” means Act 270 of the Michigan Public Acts of 2010, commonly referred to as the Property Assessed Clean Energy Act, MCL 460.931 et seq.

(b) “**Agreement**” means this PACE Special Assessment Agreement as same may be amended and/or restated.

(c) “**Applicable Interest Rate**” means the per annum rate of interest specified in the Loan Documents at which the Special Assessment Roll bears interest as calculated by the Lender in accordance with the provisions of Section 4.01 of this Agreement.

(d) “**Authorized Official**” means the Chair of the Van Buren County Board of Commissioners or his/her designee, who is authorized to exercise the authority of an Authorized Official under the terms of the PACE Program Report.

(e) “**Default Rate**” means the rates dictated for counties by the Michigan General Property Tax Act of 1893 as amended (MCL 211.78a and 211.78g).

(f) “**Energy Efficiency Improvement**” means equipment, devices, or materials intended to decrease energy consumption, including, but not limited to, all of the following: insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems; storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption; automated energy control systems; heating, ventilating, or air-conditioning and distribution system modifications or replacements; caulking, weather-stripping, and air sealing; replacement or modification of lighting fixtures to reduce the energy use of the lighting system; energy recovery systems; day lighting systems; installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity; measures to reduce the usage of water or increase the efficiency of water usage; and any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the Van Buren County Board of Commissioners.

(g) “**Energy Project**” means the installation or modification of an Energy Efficiency Improvement or the acquisition, installation, or improvement of a Renewable Energy Improvement.

(h) “**Event of Default**” has the meaning set forth in Section 7.01 hereof.

## Template Van Buren County PACE Special Assessment Agreement

- (i) **“Force Majeure”** means unforeseeable events beyond a party’s reasonable control and without such party’s failure or negligence including, but not limited to, acts of God, acts of public or national enemy, acts of the federal government, fire, flood, epidemic, quarantine restrictions, strikes and embargoes, labor disturbances, the unavailability of raw materials, and delays of contractors due to such causes, but only if the party seeking to claim Force Majeure takes reasonable actions necessary to avoid delays caused thereby.
- (j) **“General Property Tax Act”** means the General Property Tax Act, Act 206, Public Acts of Michigan, 1893, as amended.
- (k) **“Improvements”** means the Energy Efficiency Improvements and the Renewable Energy Improvements being undertaken by the Property Owner on the Special Assessment Parcel as described in **Appendix E** attached hereto.
- (l) **“MVB”** shall mean Market Van Buren, a Michigan 501(c)(3) nonprofit.
- (m) **“Lender”** has the meaning set forth in the preamble.
- (n) **“Loan”** means the loan obtained by the Property Owner from the Lender pursuant to Owner-Arranged Financing to defray a portion of the cost of the Improvements under the terms of the Loan Documents.
- (o) **“Loan Documents”** means the Loan Agreement, dated as of [INSERT DATE], between the Property Owner and the Lender and any and all exhibits or attachments thereto, including any documents amending, restating, replacing, extending or otherwise modifying the Loan Agreement and all documents provided to the Lender from time to time by the Property Owner to evidence or secure the Loan as required pursuant to the terms of the Loan Agreement.
- (p) **“Owner-Arranged Financing”** means the process by which a property owner secures financing for improvements to its property that does not involve bonds or any other form of funding provided by the County.
- (q) **“PACE Program”** shall mean the property assessed clean energy program implemented by the County pursuant to Act 270 and the PACE Program Report to stimulate energy efficiency and renewable energy projects in conformity with Act 270.
- (r) **“PACE Program Report”** means the Van Buren County Program Report approved by the Van Buren County Board of Commissioners on [INSERT DATE], including any amendments or changes thereto made before the date of this Agreement.
- (s) **“Payment Schedule”** has the meaning set forth in Section 4.01 hereof.

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- (t) “**Property Owner**” has the meaning set forth in the preamble.
- (u) “**Renewable Energy Improvement**” means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer’s side of the meter that use one (1) or more renewable energy resources to generate electricity, gas, or other power. Renewable Energy Improvement includes a biomass stove but does not include an incinerator or digester.
- (v) “**Special Assessment**” means the money obligation created pursuant to this Agreement with respect to the Special Assessment Parcel used to defray the cost of the Improvements and which shall, together with all interest, charges and penalties which may accrue thereon, be a lien upon the Special Assessment Parcel of the same priority and status as other property tax liens and other assessment liens as provided in Act 270 until such amounts have been paid in full.
- (w) “**Special Assessment District**” means the Special Assessment District established as part of the PACE Program pursuant to Act 270.
- (x) “**Special Assessment Parcel**” means the property located in the Special Assessment District to which one hundred percent (100%) of the Special Assessment has been spread by the County and which is more particularly described on the attached **Appendix B**.
- (y) “**Special Assessment Roll**” has the meaning set forth in Section 4.01 hereof.

### ARTICLE II DESCRIPTION OF IMPROVEMENTS

**Section 2.01 Description of Improvements.** The Improvements to be acquired, constructed, installed and financed by the Property Owner under the PACE Program are described in **Appendix E** attached hereto. If after project approval, the Property Owner seeks to undertake additional Improvements, **Appendix E** may be amended or supplemented from time to time. Such additional Improvements must meet all the eligibility criteria of the PACE Program and the PACE Program Report and may be added to the original application as a modification, or submitted as a new project, at the discretion of Market Van Buren and the Authorized Official.

### ARTICLE III COVENANTS OF THE PROPERTY OWNER

#### **Section 3.01 Acquisition, Construction and Installation of Improvements.**

(a) The Property Owner covenants and agrees to acquire, construct and install the Improvements as described in **Appendix E** on the Special Assessment Parcel described on **Appendix B** in full conformity with all applicable laws and regulations and in compliance with the PACE Program eligibility requirements set forth in **Appendix A**. If the proceeds of the Loan are not sufficient to pay the costs of the Improvements as aforesaid, the Property Owner agrees

## Template Van Buren County PACE Special Assessment Agreement

to complete the Improvements and to pay that portion of the costs of the Improvements in excess of the amount of the Loan. The Property Owner acknowledges and agrees that the County makes no representation, either express or implied, that the proceeds of the Loan will be sufficient to pay the total costs of the Improvements, and the Property Owner agrees that if, after exhaustion of the proceeds of the Loan, the Property Owner shall be required to pay any portion of the costs of the Improvements from its own funds, the Property Owner shall not be entitled to any reimbursement therefor from County or from the Lender, nor shall the Property Owner be entitled to any abatement or diminution of the amount of the Special Assessment created by this Agreement or of any interest, charges or penalties which may accrue thereon.

### ARTICLE IV PACE SPECIAL ASSESSMENT

#### Section 4.01 PACE Special Assessment Created.

(a) At the request of the Property Owner, the County hereby determines to assist the Property Owner in obtaining the Loan to defray a portion of the cost of the Improvements on the Special Assessment Parcel by the levy of the Special Assessment upon the Special Assessment Parcel, which the Authorized Official on behalf of the County finds is especially benefited in proportion to the cost of the Improvements. The Special Assessment created hereby has been spread by the Authorized Official on behalf of the County on the Special Assessment Roll attached hereto as **Appendix C** (the “Special Assessment Roll”), with the consent of the Property Owner, to allocate one hundred percent (100%) of the Special Assessment to the Special Assessment Parcel.

(b) The Special Assessment, as allocated by the Authorized Official with the consent of the Property Owner, is hereby finally established and levied against the Special Assessment Parcel as described on the attached **Appendix B** in the principal amount of [INSERT LOAN AMOUNT] as stated on the Special Assessment Roll. The Special Assessment is effective immediately upon the execution and delivery of this Agreement by the Property Owner. The Special Assessment shall be paid by the Property Owner in [NUMBER] semi-annual installments on the dates and in the amounts set forth in the payment schedule attached hereto as **Appendix D** (the “Payment Schedule”). The Special Assessment Roll and the Payment Schedule are hereby confirmed by the Authorized Official on behalf of the County. The unpaid amount of the Special Assessment Roll shall bear interest from the date of execution and delivery of this Agreement at the Applicable Interest Rate, as calculated by the Lender in accordance with the terms of the Loan Documents, payable by the Property Owner semi-annually on each date on which any installment of the Special Assessment is due in accordance with the Payment Schedule. Notwithstanding the foregoing, (i) if any installment of the Special Assessment or any interest due and payable on the Special Assessment Roll is not paid by the Property Owner when and as the same shall become due and payable in accordance with the provisions of this Section 4.01 or (ii) any “event of default” under the Loan Documents has occurred and is continuing, the unpaid amount of the Special Assessment Roll shall bear interest at the Default Rate as calculated by the Lender in accordance with the terms of the Loan Documents, for as long as such amounts remain unpaid or for so long as such “event of default” under the Loan Documents exists and is continuing. The County, the Property Owner and the Lender agree that the Lender shall be solely



## **Template Van Buren County PACE Special Assessment Agreement**

responsible for the determination from time to time of the Applicable Interest Rate and the Default Rate and the amount of interest due and payable by the Property Owner on the Special Assessment Roll on each day on which interest thereon is due and payable as provided in this Agreement, and the Lender's determination thereof shall be binding on the Property Owner absent manifest error. The Property Owner and the Lender agree that the County shall under no circumstance have any obligation to determine the Applicable Interest Rate or the Default Rate or to calculate the amount of any interest payment due on the Special Assessment Roll as provided in this Agreement, and the County may conclusively rely upon the Lender's determinations thereof for the purpose of exercising and discharging all of the County's rights and obligations under this Agreement. The Lender agrees to provide, or cause to be provided, notice to the Property Owner and the County of the determinations of the Applicable Interest Rate and the Default Rate, as applicable, pursuant to this Section 4.01(b) at such times, and from time to time, as the Property Owner or the County may request.

**Section 4.02 Assignment of Special Assessment Payments to Lender.** At the request of the Property Owner and the Lender, and pursuant to Section 9(g)(iii) of Act 270, the County hereby irrevocably assigns to the Lender its right to receive all installments of the Special Assessment required to be paid by the Property Owner pursuant to this Agreement, whether in accordance with the Payment Schedule or upon prepayment of the Special Assessment in whole or in part in accordance with Section 4.06 of this Agreement, together with all payments of interest due and payable on the Special Assessment Roll at the Applicable Interest Rate or the Default Rate, as the case may be, as provided in Section 4.01(b) of this Agreement. In pursuance of the foregoing, the County, the Property Owner and the Lender agree that, except as provided in Section 4.05 of this Agreement, (i) all installments of the Special Assessment, whether payable in accordance with the Payment Schedule or upon prepayment of the Special Assessment in whole or in part in accordance with Section 4.06 of this Agreement, together with all payments of interest due and payable upon the Special Assessment Roll at the Applicable Interest Rate or the Default Rate, as the case may be, shall be paid by the Property Owner directly to the Lender when due at such address in the United States as may be designated by the Lender in writing to the Property Owner and the County; (ii) the County shall have no obligation or duty to include any installments of the Special Assessment on any tax bill issued by the County or to bill, collect or remit to the Lender any installments of the Special Assessment or any interest due and payable upon the Special Assessment Roll; and (iii) absent receipt by the County of written notice from the Lender of a payment default in accordance with Section 4.05 hereof, the County shall be entitled to conclusively presume that all installments of the Special Assessment and all payments of interest due and payable on the Special Assessment Roll have been made by the Property Owner to the Lender when due as required by the terms of this Agreement.

### **Section 4.03 Property Owner's Consent to Special Assessment; Waiver.**

(a) The Property Owner hereby irrevocably consents to and confirms the creation of the Special Assessment Roll and the levy of the Special Assessment established pursuant to this Agreement and EXPRESSLY WAIVES ANY AND ALL CLAIMS CHALLENGING AND DEFENSES TO, THE LEGALITY, VALIDITY, ENFORCEABILITY OR COLLECTABILITY OF THE SPECIAL ASSESSMENT, including, but not limited to, claims arising from, relating to or otherwise based upon any theory of procedural defect concerning the approval of the Improvements, the establishment of the Special Assessment District, confirmation of the Special Assessment Roll and the Payment Schedule, the County's right to place the Special

## Template Van Buren County PACE Special Assessment Agreement

Assessment lien on the Special Assessment Parcel, the collectability and due dates of the Special Assessment installments and interest due and payable on the Special Assessment Roll, or any other theory or claim. The Property Owner further waives notice of hearing and the right to file objections if and to the extent such rights exist under any special assessment ordinance of the County.

(b) Following the signing of this Agreement, no suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of the Special Assessment, and the Property Owner, for itself and its successors in interest, lessees, purchasers, and assigns with respect to all or any part of the Special Assessment Parcel, hereby irrevocably waives its rights to contest the Special Assessment with any adjudicative body having jurisdiction over the subject matter, including, but not limited to, the Michigan Tax Tribunal.

(c) In addition to any conditions, covenants, warranties and representations specified in the Loan Documents, the Property Owner shall not sell, transfer, alienate or convey any of its interest in the Special Assessment Parcel without first having given written notice of the Special Assessment to any successors in interest, lessees, purchasers or assigns and having made a copy of this Agreement part of any purchase contract, sale contract, lease agreement, deed or any other conveyancing instrument by which the Property Owner purports to assign all or any part of its interest in the Special Assessment Parcel to any successors in interest, lessees, purchasers, transferees, licensees and assigns. This Agreement shall be recorded against the real property constituting the Special Assessment Parcel by the PACE lender with the Register of Deeds of Van Buren County, State of Michigan.

(d) The Property Owner agrees that it, its successors and assigns shall, during the term of this Agreement and the Special Assessment, pay all ad valorem real property taxes and assessments levied against the Special Assessment Parcel when due and the Property Owner specifically waives, irrevocably for itself, its successors and assigns as to any and all portions of the Special Assessment Parcel, the right to pay ad valorem real property taxes and assessments on any other installment method which may be available to property owners in the County.

(e) The County agrees that following (i) payment by the Property Owner in full of the Special Assessment, together with all accrued interest on the Special Assessment Roll, and all other interest, charges and penalties which may accrue thereon, and (ii) receipt by the County of written acknowledgment from the Lender that the Special Assessment, together with all accrued interest on the Special Assessment Roll, has been paid to the Lender in full, it will promptly execute and deliver documentation discharging the lien of the Special Assessment on the Special Assessment Parcel. Until the Special Assessment liability has been fully satisfied and the lien discharged, each purchaser of all or any part of the Special Assessment Parcel, as a condition of closing on such purchase, shall execute and deliver to the County a written notice: (i) acknowledging the principal amount unpaid and outstanding on the Special Assessment; (ii) agreeing to the assumption of the liability to pay the Special Assessment, and any interest thereon, on a timely basis, when due, until the remaining balance and interest on said Special Assessment has been paid in full; (iii) acknowledging that the title insurance policy will state that the Special Assessment has not been paid at time of closing thereon; and (iv) agreeing to pay to the Lender at or prior to the close of the purchase all past due installments of the Special Assessment and all past due payments of interest on the Special Assessment Roll. The representations set forth in such written notice shall be enforceable at law and in equity, including without limitation, by way of specific performance.



## Template Van Buren County PACE Special Assessment Agreement

payments of interest due and payable on the Special Assessment Roll have been made by the Property Owner to the Lender when due as required by the terms of this Agreement, and the County shall have no obligation or duty to include any installments of the Special Assessment on any tax bill issued by the County or to bill, collect or remit to the Lender any installments of the Special Assessment or any interest due and payable upon the Special Assessment Roll.

(b) The County hereby agrees that, pursuant to the assignment set forth in Section 4.04, it will cause to be paid over to the Lender all amounts received by the County from the Van Buren County Treasurer as collections of any Payment Default Amount within forty-five (45) days of the date such sums are received by the County from the Van Buren County Treasurer. The parties hereto expressly acknowledge and agree that in no event shall the County advance to the Lender the amount of any unpaid Payment Default Amount, and the County shall be obligated to pay over to the Lender only such sums as are actually received by the Van Buren County Treasurer as collections of any Payment Default Amount.

(c) In the event that any interest, penalties, fees or other charges shall be imposed upon the Special Assessment Parcel or against the Special Assessment Roll or the amount of any unpaid Special Assessment pursuant to the ordinances of the County or the General Property Tax Act, by Van Buren County, Michigan, for the administration, billing, collection or enforcement of the Special Assessment created hereby, such amounts shall remain a debt of the Property Owner to Van Buren County, Michigan, as their interests may appear, and shall not be deemed to have been assigned to the Lender pursuant to the terms of this Agreement or otherwise.

**Section 4.06 Prepayment of Special Assessment.** Subject to the provisions of the Loan Documents, including, without limitation, prepayment penalties, if any, the Property Owner may, upon sixty (60) days' written notice to the Lender and the County, prepay any installment of the Special Assessment specified in the Payment Schedule by causing to be paid to the Lender the amount of the installment to be prepaid, together with accrued interest thereon to the date of prepayment. If such prepayment of any installment is not received by the Lender on the date specified for prepayment, the Lender shall promptly deliver written notice to the County that such prepayment was not received by the Lender.

**Section 4.07 Invalidity; Cure.** In the event of any invalidity of the Special Assessment, the Authorized Official, at the request of the Lender, and if the County shall have received indemnity satisfactory to the Authorized Official for its costs and expenses (including reasonable attorneys' fees), shall cause a new Special Assessment to be made for all or any part of the Improvements in accordance with Act 270 and the PACE Program as reasonably determined by the Authorized Official. The Property Owner, on behalf of itself and its successors in interest, lessees, purchasers, and assigns, hereby waives any objections to and agrees to the imposition of such new Special Assessment; *provided, however*, that the amount of the new Special Assessment shall not exceed the unpaid principal amount of the Loan at the time the new Special Assessment shall be established.

**Section 4.08 Van Buren County or Van Buren County Treasurer Becoming Owner of the Special Assessment Parcel.** In the event that the County Treasurer takes ownership of the Special Assessment Parcel by operation of law, the County Treasurer and the Lender agree that while the lien on the Special Assessment Parcel will remain in full force and effect, and all

## **Template Van Buren County PACE Special Assessment Agreement**

principal, interest, penalties, fees, and other charges, either based on Michigan Compiled Laws or the Loan Documents will continue to accrue during the period of time that the County Treasurer owns the Special Assessment Parcel. No loan or special assessment payments, including interest, penalties, fees or other charges, are required to be paid or will be accrued by the County Treasurer to the Lender. Any and all principal, interest, penalties, fees, and other charges which accrue during the period by which the County Treasurer own the Special Assessment Parcel will, in the sole and unlimited discretion of the Lender, either be: (1) considered immediately due and payable by any person or entity who purchases the Special Assessment Parcel from the County Treasurer, and no sale or transfer of the Special Assessment Parcel is valid unless and until all principal, interest, penalties, fees, and other charges have been paid by the subsequent owner of the Special Assessment Parcel; or (2) capitalized into the outstanding principal balance of the Special Assessment, causing the Lender to provide a revised Payment Schedule in an amount necessary to amortize the new outstanding principal balance of the Special Assessment over the remaining number of payments. The lien created by the Special Assessment shall not be extinguished or released until all necessary principal and interest payments, as well as all penalties, fees, and other charges, as determined solely by Lender, have been paid and received by Lender.

# Template Van Buren County PACE Special Assessment Agreement

## ARTICLE V CONDITIONS PRECEDENT

### Section 5.01

### Conditions Precedent to the County's Obligations.

The obligations of the Count under this Agreement shall be subject to the satisfaction of the following conditions precedent on or prior to the date of execution and delivery of this Agreement by the County, unless waived in writing by the County:

- (a) The County, the Property Owner and the Lender shall have authorized, executed and delivered this Agreement and all approvals required hereby shall have been secured.
- (b) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Property Owner or the County is a party, or shall be threatened in writing against the Property Owner or the County, contesting the validity or binding effect of this Agreement, the Special Assessment or the Owner-Arranged Financing contemplated hereby, or which, if adversely decided, could have a material adverse effect upon the ability of the Property Owner to pay or the County to levy the Special Assessment or to assign to the Lender the right to receive payments of the Special Assessment, or which could have a material adverse effect on the ability of the Property Owner or the County to comply with any of the obligations and terms of this Agreement.
- (c) There shall be no ongoing breach of any of the covenants and agreements of the Property Owner required to have been observed or performed by the Property Owner under the terms of this Agreement and no Event of Default by the Property Owner, and no event which, with the passage of time or the giving of notice or both could become an Event of Default by the Property Owner under this Agreement, shall have occurred.
- (d) All documents, schedules, materials, maps, plans, descriptions and related matters which are contemplated to be made Appendices to this Agreement shall have been fully completed by the Property Owner to the County's reasonable satisfaction and such Appendices shall be true, accurate and complete.
- (e) The Property Owner shall meet all eligibility requirements as set forth in **Appendix A**.
- (f) The Property Owner and the Lender shall have authorized, executed and delivered the Loan Documents, and the Lender shall have funded the Loan in accordance with the terms of the Loan Documents.
- (g) The Property Owner shall not have filed for bankruptcy or sought the protections of any state or federal insolvency law providing protections to debtors.
- (h) The Property Owner shall have obtained consent from each holder of a mortgage interest or lien upon the Special Assessment Parcel prior to the execution and delivery of this Agreement in substantially the form set forth in the PACE Program Report.

# Template Van Buren County PACE Special Assessment Agreement

## ARTICLE VI REPRESENTATIONS AND WARRANTIES

### Section 6.01 Representations and Warranties of the County.

The County represents and warrants to the Property Owner that, as of the date of this Agreement:

(a) The execution and delivery of this Agreement has been duly authorized by the County, and this Agreement complies with Act 270 and constitutes a valid and binding agreement of the County, enforceable against the County in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principals of equity, including those relating to equitable subordination.

(b) Neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated herein is in violation of any provision of any existing law, ordinance, rule, resolution or regulation to which the County is subject, or any agreement to which the County is a party or by which the County is bound, or any order or decree of any court or governmental entity by which the County is subject.

(c) There are no delinquent taxes, special assessments, or water or sewer charges on the Special Assessment Parcel that will be assessed under this Agreement; and there are no delinquent assessments on the Special Assessment Parcel under a PACE program.

### Section 6.02 Representations and Warranties of the Property Owner.

The Property Owner represents and warrants to the County and the Lender that:

(a) The Property Owner is duly organized and validly existing as a limited liability company in good standing under the laws of the State of Michigan, with power under the laws of the State of Michigan to carry on its business as now being conducted, and is duly qualified to do business in the State of Michigan; and the Property Owner has the power and authority to own the Special Assessment Parcel and to carry out its obligation to complete the Improvements.

(b) The execution and delivery of this Agreement will not result in a violation or default by the Property Owner of any provision of its Articles of Organization or Operating Agreement, or under any indenture, contract, mortgage, lien, agreement, lease, loan agreement, note, order, judgment, decree or other instrument of any kind or character to which it is a party and by which it is bound, or to which it or any of its assets are subject.

(c) The Property Owner is the sole and exclusive legal and equitable title owner of fee simple title to the Special Assessment Parcel and the Improvements located, or to be located, thereon and has full legal power and authority to consent to the finalization and levying of the Special Assessment as provided herein.

(d) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action, and this

## Template Van Buren County PACE Special Assessment Agreement

Agreement has been duly executed and delivered by the Property Owner and constitutes a valid and binding agreement enforceable against the Property Owner in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.

(e) Property Owner warrants and agrees that any contractual, legal or other disputes between it and the Lender--other than matters specifically related to enforcement of property tax obligations--or the contractor involved in the Improvements, do not involve the County, and Property Owner agrees to defend and hold the County and its agents, including but not limited to Market Van Buren, harmless from any such disputes or causes of action as well as any other cost or liability incurred by the County as a result of the Property Owner's participation in the PACE Program in Van Buren County, with the sole exception being disputes or liability caused solely by the County's intentional or negligent actions or inactions.

(f) The Property Owner, the Special Assessment Parcel and the Improvements satisfy all of the PACE Program eligibility and program requirements set forth in **Appendix A**.

### Section 6.03

#### **Representations and Warranties of the Lender.**

The Lender represents and warrants to the County that:

(a) The Lender has experience in the market for property assessed clean energy programs and assessments and is capable of evaluating the merits and risks of its participation in the Owner-Arranged Financing contemplated by this Agreement.

(b) The Lender has made its own independent investigation of the Property Owner, the terms of this Agreement, the nature of the Special Assessment created hereby and the procedures for the collection and enforcement of the Special Assessment under this Agreement and the laws of the State of Michigan, and is not relying on the County, its agents, attorneys or employees for any of such information or with respect to the sufficiency and scope of such investigation. The Lender has not received, and is not relying on, any representations of the County with respect to the Property Owner.

(c) Lender warrants and agrees that any contractual, legal or other disputes between it and Property Owner--other than matters specifically related to enforcement of property tax obligations--do not involve the County, and Lender agrees to hold the County and its agents, including but not limited to Market Van Buren, harmless from any such disputes or causes of action.



# Template Van Buren County PACE Special Assessment Agreement

## ARTICLE VII DEFAULT

**Section 7.01 Property Owner Event of Default.** If the Property Owner shall default in the performance of any covenant or agreement on its part contained in this Agreement and such default shall continue for a period of ten (10) days after written notice thereof has been given to the Property Owner by the County, an “Event of Default” shall be deemed to have occurred under this Agreement.

**Section 7.02 Remedies for Property Owner Event of Default.** Upon the occurrence of an Event of Default as provided in Section 7.01 hereof, the County, after giving written notice as required, without further notice of any kind, and in addition to all other rights and remedies provided at law or in equity, shall be entitled to seek and obtain a decree of specific performance of this Agreement from a court of competent jurisdiction; or the right to recover from the Property Owner any damages incurred by the County and any costs incurred by the County in enforcing or attempting to enforce this Agreement or the Special Assessment, including attorneys’ fees and expenses; or to foreclose on the Special Assessment Parcel and to sell all or any part of the Special Assessment Parcel to the extent necessary to recover any damages and costs; or any combination of the foregoing. Notwithstanding the foregoing, the parties hereto acknowledge and agree that the County shall not be obligated to institute any of the actions or proceedings or to exercise any of the remedies authorized by this Section 7.02 upon the occurrence of an Event of Default hereunder, and that its obligations with respect to the billing, collection and enforcement of the Special Assessment or any installment thereon shall be limited to those obligations set forth in Article IV of this Agreement. The Lender acknowledges that neither the Special Assessment nor any installment thereon can be accelerated.

**Section 7.03 The County Default.** If the County shall default in the performance of any covenant or agreement on its part contained in this Agreement and shall fail to proceed in good faith to cure such default within sixty (60) days after written notice thereof has been received by the County from the Property Owner or the Lender, a “County Default” shall be deemed to have occurred under this Agreement.

**Section 7.04 Remedy for County Default.** Upon the occurrence of a County Default as provided in Section 7.03 hereof, and if the Property Owner or the Lender, as the case may be, shall have otherwise fully performed all of its obligations hereunder, the Property Owner or the Lender, after giving written notice as required, without further notice or demand, shall be entitled to seek and obtain a decree of specific performance from a court of competent jurisdiction; but neither the Property Owner nor the Lender shall have the right to seek to recover money damages against the County, including any costs or fees (including attorneys’ fees) incurred by the Property Owner or the Lender in enforcing or attempting to enforce this Agreement. Neither the occurrence of a County Default nor the institution of any proceeding or the exercise of any remedy upon the occurrence of a County Default shall negate or diminish the obligations of the Property Owner hereunder to pay the installments of the Special Assessment and interest accrued on the Special Assessment Roll and all other costs hereunder when the same shall become due and payable.



## Template Van Buren County PACE Special Assessment Agreement

**Section 8.03 Notices.** All notices, certificates or communications required by this Agreement to be given shall be in writing and shall be sufficiently given and shall be deemed delivered when personally served, or when received if mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties as follows, or to such other address as such party may specify by written notice to the other parties hereto:

If to the County: Van Buren County  
Attn: AUTHORIZED OFFICIAL  
[INSERT ADDRESS]

With a copy to: Van Buren County  
PACE Administrator  
Market Van Buren

If to the Property Owner:  
[INSERT PROPERTY OWNER ADDRESS]

With a copy to: The Lender

If to the Lender: PACE LENDER ADDRESS

or to such other address as such party may specify by written notice to the other parties hereto.

**Section 8.04 Amendment and Waiver** No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by each party hereto. No waiver of any term of this Agreement shall be binding upon any party until such waiver is reduced to writing, executed by the party to be charged with such waiver, and delivered to the other parties hereto.

**Section 8.05 Entire Agreement.** This Agreement constitutes the entire agreement between the County, on the one hand, and the Lender and the Property Owner, on the other hand. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, between the County, on the one hand, and the Lender or the Property Owner, on the other hand.

**Section 8.06 Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

**Section 8.07 Captions.** The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

## Template Van Buren County PACE Special Assessment Agreement

**Section 8.08 Applicable Law.** This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan.

**Section 8.09 Mutual Cooperation.** Each party to this Agreement shall take all actions required of it by the terms of this Agreement as expeditiously as possible and shall cooperate to the fullest extent possible with the other parties to this Agreement. Each party to this Agreement shall exercise reasonable diligence in reviewing, approving, executing and delivering all documents necessary to accomplish the purposes and intent of this Agreement. Each party to this Agreement also shall use its best efforts to assist the other parties to this Agreement in the discharge of its obligations hereunder and to assure that all conditions precedent to the financing arrangements are satisfied.

**Section 8.10 Binding Effect: No Third-Party Beneficiary.** This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns. In no event shall the provisions of this Agreement be deemed to inure to the benefit of or be enforceable by any third party, except for permitted assigns.

**Section 8.11 Force Majeure.** No party hereto shall be liable for the failure to perform its obligations hereunder if said failure to perform is due to Force Majeure. Said failure to perform shall be excused only for the period during which the event giving rise to said failure to perform exists; *provided, however*, that the party seeking to take advantage of this Section shall notify the other party in writing, setting forth the event giving rise to said failure to perform, within ten (10) business days after the occurrence of said event.

[SIGNATURES ON THE FOLLOWING PAGE]

**Template Van Buren County PACE Special Assessment Agreement**

**IN WITNESS WHEREOF**, the County, PROPERTY OWNER, and PACE LENDER have caused this PACE Special Assessment Agreement to be duly executed and delivered as of the date first written above.

Witnessed:

**PROPERTY OWNER**

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

\_\_\_\_\_  
Signature of:

Its:

Witnessed:

**VAN BUREN COUNTY**

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

\_\_\_\_\_  
Signature of:

Its: AUTHORIZED OFFICIAL

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

\_\_\_\_\_  
Signature of:

Its: AUTHORIZED OFFICIAL

Witnessed:

**PACE LENDER**

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

\_\_\_\_\_  
Signature of:

Its:

\_\_\_\_\_

**Template Van Buren County PACE Special Assessment Agreement**

State of Michigan )  
 ) ss  
County of Van Buren )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_ the Authorized Signatory of \_\_\_\_\_ on behalf of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
My Commission expires \_\_\_\_\_

State of Michigan )  
 ) ss  
County of Van Buren )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by [COUNTY AUTHORIZED OFFICIAL NAME & TITLE] on behalf of Van Buren County.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
My Commission expires \_\_\_\_\_

State of Michigan )  
 ) ss  
County of Van Buren )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by PACE LENDER OFFICIAL the Authorized Signatory of PACE LENDER, on behalf of PACE LENDER.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
My Commission expires \_\_\_\_\_

## Template Van Buren County PACE Special Assessment Agreement

### APPENDIX A

#### PROGRAM ELIGIBILITY REQUIREMENTS

Property is privately owned commercial or industrial real property within Van Buren County's jurisdictional boundaries, which may be owned by any individual or private entity, whether for-profit or non-profit. MCL 460.933(g). Multi-family residential property is included in the definition of commercial property.

There are no delinquent taxes, special assessments, or water or sewer charges on the property. The Authorized Official at his discretion may disqualify properties that although not currently delinquent, have been delinquent within six months of the application's submission. MCL 460.941(2)(a).

There are no delinquent assessments on the property under a PACE program. MCL 460.941(2)(b). The term of assessment shall not exceed the lesser of the useful life of the energy project paid for by the assessment or 25 years. Projects that consist of multiple energy efficiency improvements or renewable energy systems with varying lengths of useful life may blend the lengths to determine an overall assessment term that does not exceed the useful life of the improvements in aggregate. MCL 460.939(i).

An appropriate ratio must be determined for the amount of assessment in relation to the assessed value of the property. The ratio will be determined on a project-by-project basis by Van Buren County and shall not exceed 25% of two times the State Equalized Value without written approval of the Authorized Official. MCL 460.939(j).

Written consent from the mortgage holder must be obtained if the property is subject to a mortgage. MCL 460.939(k).

A baseline energy audit must be conducted for the property that is approved by Van Buren County. Such approval may be granted retroactively if the audit meets the standards of Van Buren County. MCL 460.939(o).

For projects financed for more than \$250,000, a performance guarantee must be provided by the contractor(s) to guarantee a savings to investment ratio greater than one (1). MCL 460.939(p). The performance guarantee must meet the standards set by Van Buren County.

For projects financed for more than \$250,000, financial and logistical arrangements for ongoing measurement and verification of energy savings that meet standards set by Van Buren County. MCL 460.939(p).

**Template Van Buren County PACE Special Assessment Agreement**

**APPENDIX B**

**SPECIAL ASSESSMENT PARCEL DESCRIPTION (Project-Specific)**

Parcel Number:

Address:

Legal Description:



**Template Van Buren County PACE Special Assessment Agreement**

**APPENDIX C**

**SPECIAL ASSESSMENT ROLL (Project-Specific)**

PACE Project Special Assessment Parcel Number:

Address:

City:

Owner:

Assessment:

Percent:

I certify that the above is the special assessment role created for the PACE project referenced in this document in the applicable county, city, village, or applicable entity, in the State of Michigan, subject to payment of the special assessment as outlined in Appendix C of this document.

---

---

Dated

## **Template Van Buren County PACE Special Assessment Agreement**

### **APPENDIX D**

#### **PAYMENT SCHEDULE (Project-Specific)**

[\*This schedule includes principal of the Special Assessment only. Interest will be calculated as set forth in the Loan Documents and Van Buren County is entitled to conclusively rely on the amount due on each payment date as determined by the Lender in accordance with this Agreement.]

**Template Van Buren County PACE Special Assessment Agreement**

**APPENDIX E**

**DESCRIPTION OF IMPROVEMENTS (Project-Specific)**

## Template Van Buren County PACE Special Assessment Agreement

### APPENDIX F

#### Van Buren County PACE Program Application

Public Act 270 of 2010 (“Act 270”) authorizes local units of government to adopt Property Assessed Clean Energy (“PACE”) programs to promote the installation of energy efficiency improvements and renewable energy systems by owners of commercial or industrial property within a district designated by Van Buren County. Act 270 allows private commercial lenders to finance energy projects. Act 270 authorizes the assessment of properties for the cost of the energy projects and provides for repayment to local governments through a voluntary property assessment. The property assessment remains with the property and has the same priority as other property tax and assessment liens in the event of foreclosure.

Van Buren County has developed a PACE Program that provides voluntary special assessments for certain energy efficiency improvements and renewable energy systems that are associated with real property.

The property eligibility requirements are as follows:

- (a) Property is privately owned commercial or industrial real property within Van Buren County’s jurisdictional boundaries, which may be owned by any individual or private entity, whether for-profit or non-profit. MCL 460.933(g). A multi-family residential property or four or more units is included in the definition of commercial property.
- (b) There are no delinquent taxes, special assessments, or water or sewer charges on the property. The Authorized Official at his discretion may disqualify properties that although not currently delinquent, have been delinquent within six months of the application’s submission. MCL 460.941(2)(a).
- (c) There are no delinquent assessments on the property under a PACE Program. MCL 460.941(2)(b).
- (d) The term of assessment shall not exceed the lesser of the useful life of the energy project paid for by the assessment or 25 years. Projects that consist of multiple energy efficiency improvements or renewable energy systems with varying lengths of useful life may blend the lengths to determine an overall assessment term that does not exceed the useful life of the improvements in aggregate. MCL 460.939(i).
- (e) An appropriate ratio must be determined for the amount of assessment in relation to the assessed value of the property. The ratio will be determined on a project-by-project basis by Van Buren County and shall not exceed 25% of two times the State Equalized Value without written approval of the Authorized Official. MCL 460.939(j).
- (f) Written consent from the mortgage holder must be obtained if the property is subject to a mortgage. MCL 460.939(k).

## Template Van Buren County PACE Special Assessment Agreement

- (g) A baseline energy audit must be conducted for the property that is approved by Market Van Buren and the Authorized Official. Such approval may be granted retroactively if the audit meets the standards of Van Buren County MCL 460.939(o).
- (h) For projects financed for more than \$250,000, a performance guarantee must be provided by the contractor(s) to guarantee a savings to investment ratio greater than one (1). MCL 460.939(p). The performance guarantee must meet the standards set by Van Buren County.
- (i) For projects financed for more than \$250,000, financial and logistical arrangements for ongoing measurement and verification of energy savings that meet standards set by Van Buren County. MCL 460.939(p).
- (j) Bonds or notes issued under Act 270 shall not be general obligations of the local unit of government but shall be secured by the voluntary assessments and other security mechanisms provided in the statute. MCL 460.945(2).
- (k) The applicant assumes all risk with respect to the implementation of a PACE Program in respect of the applicant's property. Van Buren County is an accommodation party only, and is providing access to the PACE Program so as to enable property owners to make decisions regarding energy improvements to their property in a manner which allows the property owner to make the improvements in a cost-effective manner and for the property owner's benefit.
- (l) To qualify for the Van Buren County PACE program, a project must meet a Minimum project cost of One Hundred Thousand Dollars (\$100,000.00).

Energy projects that may be eligible for PACE assessments include, but are not limited to: equipment, devices, or materials intended to decrease energy consumption, including: insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems; storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption; automated energy control systems; heating, ventilating, or air-conditioning and distribution system modifications or replacements; caulking, weather-stripping, and air sealing; replacement or modification of lighting fixtures to reduce the energy use of the lighting system; energy recovery systems; day lighting systems; installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity; measures to reduce the usage of water or increase the efficiency of water usage; any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the County Commission; and a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that use one (1) or more renewable energy resources to generate electricity, but does not include an incinerator or digester.

### **Application Review and Approval Process**

All applications will be reviewed by the staff of Market Van Buren. If a project is deemed eligible by Market Van Buren, the application will be presented to the Van Buren County Economic Development Corporation (VBEDC) following a public hearing at a meeting of the

## **Template Van Buren County PACE Special Assessment Agreement**

VBEDC. Following the public hearing and review of the project, the VBEDC may recommend the project for approval to Van Buren County Board of Commissioners. The final approval of projects will be the sole responsibility of the Van Buren County Board of Commissioners.

Mail or deliver your application and attachments to:

Attn: PACE Program Lead  
Market Van Buren  
32849 E. Red Arrow Hwy #100  
Paw Paw, MI 49079

Applications and attachments may also be e-mailed to the Program Administrator at [morrisz@marketvanburen.org](mailto:morrisz@marketvanburen.org) or for questions regarding the status of your application please contact the Program Administrator at 269-215-4861.

**Template Van Buren County PACE Special Assessment Agreement**

**Van Buren County PACE Program Application**

**1. Property Owner(s) Legal Name(s) (as they appear on property tax records)**

	Name	Parcel Number(s)
Owner 1		
Owner 2		
Owner 3		

**2. Property Owner(s) Contact Information**

Name	Mailing Address	Email Address	Phone Number

**3. Property Owner(s) Types – select all that apply**

Individual     Corporation     LLP     LLC     Corporation

Other (please specify) \_\_\_\_\_

**4. Property Type – select all that apply and provide legal property description**

<input type="checkbox"/> Commercial:
<input type="checkbox"/> Industrial:

## Template Van Buren County PACE Special Assessment Agreement

### 5. Property Addresses & Parcel Number

Physical Property Address of Improvements:
Mailing Address (if different):
Assessors' Parcel Number:

### 6. Balance of Any Mortgage(s) on Property

	Amount of Mortgage	Name of Mortgage Holder
<b>First Mortgage</b>	\$	
<b>Second Mortgage</b>	\$	
<b>Other</b>	\$	
<b>State Equalized Value (SEV)</b>	\$	
<b>Requested Assessment Amount</b>	\$	

*Note: The lien to value ratio (including the mortgage, if any, and excluding the requested financing amount) cannot exceed 80% of two times the State Equalized Value.*

\_\_\_\_\_ Yes, consent by mortgage holder(s) obtained, if subject to a mortgage. Please attach consent.

\_\_\_\_\_ No, consent by mortgage holder(s) is not obtained. *Note: Consent of mortgage holder(s) is required for consideration of an application.*

\_\_\_\_\_ Not applicable – property is not subject to a mortgage.

### 7. Existing Liens Against Property (tax, special assessment, water or sewer charges, etc.)

Amount	Type	End Date
\$		
\$		
\$		
<b>Total: \$</b>		



## Template Van Buren County PACE Special Assessment Agreement

### 12. PACE Project Developer & Contractors

Name	Mailing Address	Email Address	Phone Number

**Overall Energy Project Cost:** \_\_\_\_\_

**Savings to Investment Ratio\*** (as provided in Savings Guarantee)

<b>Year 1:</b>	
<b>Overall:</b>	

<b>Useful Life of Energy Project Measures (in years)</b>	
--	--

## PACE Loan Details

### 13. PACE Lender/Capital Provider

Name	Mailing Address	Email Address	Phone Number

<b>Energy Project Cost</b>	<b>\$</b>
<b>Energy Audit</b>	<b>\$</b>
<b>Engineering/Architecture Plans</b>	<b>\$</b>
<b>Building Permit Fees</b>	<b>\$</b>
<b>Other (please explain)</b>	<b>\$</b>
<b>Total</b>	<b>\$</b>

**Requested Assessment Repayment Period:** \_\_\_\_\_ years

**Interest Rate Offered by Lender:** \_\_\_\_\_%

*Note: The lien to value ratio (including the mortgage, if any, and excluding the requested financing amount) cannot exceed 80% of two times the State Equalized Value. The assessment to assessed value ratio cannot exceed 25% of two times the State Equalized Value.*

### All Attachments to Application:

- Appraisal
- Baseline energy audit on the property, including useful life calculations of individual measures.
- Cash flow analysis (savings guarantee)
- Lender Consent from mortgage holder Mortgage statement
- Property tax record title report
- *For Projects Over \$250,000:* Please attach details regarding provisions for ongoing measurement of energy savings and information regarding performance guarantees.

# Template Van Buren County PACE Special Assessment Agreement

## APPENDIX G

### FORM OF CERTIFICATE OF ASSIGNMENT

This Certificate of Assignment of the Special Assessment Agreement (“**Assignment**”), dated effective as of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), is made by INSERT LENDER (“**Assignor**”) to \_\_\_\_\_ (“**Assignee**”). Assignor and Assignee are referred to at times, each individually as a “**Party**,” and collectively as the “**Parties**.”

#### Agreement

1. For good and valuable consideration and the payment of [INSERT PAYMENT AMOUNT] ([INSERT NUMERICAL VALUE]), the receipt and sufficiency of which is hereby acknowledged, confessed, stipulated and agreed upon by Assignor, Assignor ASSIGNS, BARGAINS, GIVES, SETS OVER, CONVEYS, TRANSFERS and DELIVERS to Assignee all of Assignor’s rights, title, interest, obligations, and duties under the Special Assessment Agreement entered into by Assignor, \_\_\_\_\_, and

\_\_\_\_\_ (the “**Transferred Interest**”), together with all of Assignor’s rights to receive payments from \_\_\_\_\_ attributable to the Transferred Interest arising on and after the date of this Assignment.

2. Assignor warrants that: (i) it is authorized to execute this document; (ii) it is conveying good, indefeasible title to the Transferred Interest; and (iii) the Transferred Interest is free and clear of all liens and encumbrances, and no party has any rights in or to acquire, or hold as security, or otherwise, the Transferred Interest.

3. Assignor hereby agrees to make, execute and deliver to Assignee any and all further instruments of conveyance, assignment or transfer, and any and all other instruments, as may be necessary or proper to carry out the purpose and intent of this Assignment and/or to fully vest Assignee in all rights, titles, interests obligations, and duties of Assignor in and to the Transferred Interest, which instruments shall be delivered to Assignee as soon as possible without any condition or delay on the part of Assignor.

4. Assignee hereby accepts all of Assignor’s rights, title, interest, obligations, and duties under the Special Assessment Agreement and agrees to be bound by its terms. From and after the date of this Assignment and satisfaction of the conditions contained in Section 8.02(b) of the Special Assessment Agreement, Assignee shall be a party to the Special Assessment Agreement and shall have the rights and obligations of the Assignor specified thereunder, and Assignee shall be deemed to be the “Lender” for all purposes of the Special Assessment Agreement.

5. All notices, certificates or communications provided pursuant to the Special Assessment Agreement to Assignee shall be delivered as provided in the Special Assessment Agreement to:

**Template Van Buren County PACE Special Assessment Agreement**

\_\_\_\_\_  
(Attention)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

IN WITNESS WHEREOF, Assignor and Assignee hereby agree to be bound by the terms of this Assignment and each has executed this Assignment to be effective as of the Effective Date.

ASSIGNOR:

[INSERT LENDER]

\_\_\_\_\_

By:

\_\_\_\_\_  
Its:

\_\_\_\_\_

ASSIGNEE:

Name: \_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_  
Its:

\_\_\_\_\_

**Template Van Buren County PACE Special Assessment Agreement**

**APPENDIX H**

**FORM OF LENDER CONSENT**

Lender Consent and Acknowledgement of Owner Participation in Van Buren County, Michigan, PACE Program

This acknowledgement is granted \_\_\_\_\_, 20\_\_, by NAME OF MORTGAGE HOLDER (the “Lender”), and for the benefit of \_\_\_\_\_ (the “Property Owner”), and Van Buren County in the State of Michigan.

**Recitals**

A. Pursuant to Public Act No. 270 of 2010, Van Buren established the Van Buren County Property Assessed Clean Energy (“PACE”) Program on\_, 20\_, by resolution, to promote installation of energy efficiency improvements and/or renewable energy systems.

B. The Property Owner has applied to the Program to finance the amount of \$ AMOUNT OF FINANCING, to be paid back as an assessment on Property Owner’s real property, described in **Appendix D** attached hereto (the “Property”), over a period of twenty years.

C. Owner has previously executed a mortgage, deed of trust, dated \_\_\_\_\_, 20\_, to the Lender, covering the Property, to secure a promissory note in the sum of \$ AMOUNT OF LOAN, and recorded on \_\_\_\_\_, 20\_\_ at \_\_\_\_\_, Page \_\_\_\_\_, \_\_\_\_\_ County Register of Deeds.

D. Repayment by the Property Owner under the PACE Special Assessment Agreement will be a statutory assessment levied against the Property notice of which shall be recorded against the Property in the Office of the County Clerk/Register of Deeds for Van Buren County, and which assessment, together with interest and any penalties, shall constitute a lien (the “Lien”) on the Property, and shall be collected subject to the terms agreed to between the parties and as contained in the PACE Special Assessment Agreement.

**Consent and Acknowledgement**

Lender acknowledges that it has been informed of the Property Owner’s participation in the Van Buren PACE Program, and agrees that Property Owner’s execution of the PACE Special Assessment Agreement will not constitute a default under Lender’s Deed of Trust.

Execution of this Consent and Acknowledgement by Lender’s representative shall constitute full and complete consent to the Property Owner’s participation in the Van Buren PACE Program.

[SIGNATURES ON FOLLOWING PAGE]

