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**THE VILLAGE OF FLANAGAN**

LIVINGSTON COUNTY, ILLINOIS

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ORDINANCE NUMBER \_\_\_\_\_

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**AN ORDINANCE REVISING THE VILLAGE OF FLANAGAN'S CODE OF  
ORDINANCES TO PROVIDE FOR MUNICIPAL UTILITY TAXES**

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Village of Flanagan

on \_\_\_\_\_, 2010

**VILLAGE OF FLANAGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE REVISING THE VILLAGE OF FLANAGAN’S CODE OF ORDINANCES TO PROVIDE FOR MUNICIPAL UTILITY TAXES**

WHEREAS, the Village of Flanagan is an Illinois non-home rule municipal corporation organized and operating under the Illinois Municipal Code, 65 ILCS 5/1-1-1, et seq. (the “Code”);

WHEREAS, Section 8-2-11 of the Code authorizes the Village to levy and collect taxes on the delivery and/or consumption of certain utilities, including gas and electricity;

WHEREAS, the President and Board of Trustees hereby declare it necessary to support to operations of the Village and does hereby levy a municipal utility tax in the manner herein described.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Flanagan, Livingston County, Illinois, as follows:

**Section 1. Imposition of Utility Taxes.** A tax is imposed on all persons engaged in the following occupations or privileges:

- A. The privilege of using or consuming electricity acquired in a Purchase at Retail and used or consumed within the corporate limits of the Village at the following rates, calculated on a monthly basis for each Purchaser:
  - (i) For the first 2,000 kilowatt–hours used or consumed in a month; 0.305 cents per kilowatt–hour;
  - (ii) For the next 48,000 kilowatt–hours used or consumed in a month; 0.20 cents per kilowatt–hour;
  - (iii) For the next 50,000 kilowatt–hours used or consumed in a month; 0.18 cents per kilowatt–hour;
  - (iv) For the next 400,000 kilowatt–hours used or consumed in a month; 0.175 cents per kilowatt–hour;

(v) For the next 500,000 kilowatt-hours used or consumed in a month; 0.17 cents per kilowatt-hour;

(vi) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.16 cents per kilowatt-hour;

(vii) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.158 cents per kilowatt-hour;

(viii) For the next 5,000,000 kilowatt-hours used or consumed in a month; 0.155 cents per kilowatt-hour;

(ix) For the next 10,000,000 kilowatt-hours used or consumed in a month; 0.153 cents per kilowatt-hour; and

(x) For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month, 0.150 cents per kilowatt-hour.

- B. Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption, and not for resale, at a rate not to exceed 2.5% of the Gross Receipts therefrom.

**Section 2. Exceptions; Exemptions.**

- A. None of the taxes authorized by this Chapter may be imposed with respect to any transaction in interstate commerce or otherwise to the extent to which the business or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State or any political subdivision thereof; nor shall any persons engaged in the business of distributing, supplying, furnishing, or selling or transmitting gas or electricity, or using or consuming electricity acquired in a Purchase at Retail, be subject to taxation under the provisions of this Chapter for those transactions that are or may become subject to taxation under the provisions of the "Municipal Retailers' Occupation Tax Act" authorized by Section 8-11-1 of the Illinois Municipal Code; nor shall any tax authorized by this Chapter be imposed upon any person engaged in a business or on any privilege unless the tax is imposed in like manner and at the same rate upon all persons engaged in businesses of the same class in the Village, whether privately or municipally owned or operated, or exercising the same privilege within the Village.
- B. Any local governmental body or school district whose territory includes the municipality shall be exempted from the taxes imposed by this Chapter for such accounts attributable to buildings and facilities located in the Village.

**Section 3. Additional Taxes.** Such taxes shall be in addition to other taxes levied upon the taxpayer or a Person Maintaining a Place of Business in this State. All of the taxes enumerated in this Chapter are in addition to the payment of money, or value of products or services furnished to the Village by the taxpayer or Person Maintaining a Place of Business in this State as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon or thereunder of poles, wires, pipes or other equipment used in the operation of its business.

**Section 4. Collection.** The tax authorized by Section 1.A. of this Chapter shall be collected from the Purchaser by the Person Maintaining a Place of Business in this State who delivers the electricity to the Purchaser. This tax shall constitute a debt of the Purchaser to the person who delivers the electricity to the Purchaser and if unpaid, is recoverable in the same manner as the original charge for delivering the electricity. Any tax collected by the Person Maintaining a Place of Business in this State delivering the electricity shall constitute a debt owed to the Village by such Person Maintaining a Place of Business in this State. Persons delivering the electricity shall collect the tax from the Purchaser by adding such tax to the gross charge for delivering the electricity. Persons delivering the electricity shall also be authorized to add to such gross charge an amount equal to 3% of the tax to reimburse the person delivering the electricity for the expense incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the Village upon request. If the person delivering the electricity fails to collect the tax from the Purchaser, then the Purchaser shall be required to pay the tax directly to the Village in the manner prescribed by the Village. Persons delivering the electricity who file returns pursuant to this paragraph shall, at the time of filing such return, pay the Village the amount of the tax collected pursuant to this Chapter.

**Section 5. Reports To Village.** On or before the last day of each month, each Person Maintaining a Place of Business in this State who delivers the electricity to the Purchaser, in the case of the tax imposed by Section 1.A of this Chapter, and each taxpayer, in the case of the tax imposed by Section 1.B of this Chapter, shall make a return to the Village for the preceding month stating:

- a. Its name.
- b. Its principal place of business.
- c. Its Gross Receipts or kilowatt-hour usage, as applicable, during the month upon the basis of which the tax is imposed.
- d. Amount of tax.
- e. Such other reasonable and related information as the corporate authorities may require.

Each person making the return herein provided for shall, at the time of making such return, pay to the Village, the amount of tax herein imposed; provided that in connection with any return, the person may, if he so elects, report and pay an amount based upon a reasonable estimate of the total billings of business subject to the tax during the period for which the return is made (exclusive of any amounts previously billed) with prompt adjustments of later payments based upon any differences between such billings, and the taxable Gross Receipts or kilowatt-hour usage, as applicable.

**Section 6. Credit for Over-Payment.** If it shall appear that an amount of tax has been paid which was not due under the provisions of this Article, whether as the result of a mistake of fact or an error of law, then such amount shall be credited to the extent permitted in Ordinance 10-\_\_\_\_\_, *AN ORDINANCE DESIGNATING LOCALLY IMPOSED AND ADMINISTERED TAX RIGHTS AND RESPONSIBILITIES (TAXPAYERS' BILL OF RIGHTS)*, dated \_\_\_\_\_.

**Section 7. Penalty.** Any Person Maintaining a Place of Business in this State or taxpayer, as the case may be, who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of this Chapter shall be fined in a manner consistent with Ordinance 10-\_\_\_\_\_, *AN ORDINANCE DESIGNATING LOCALLY IMPOSED AND ADMINISTERED TAX RIGHTS AND RESPONSIBILITIES (TAXPAYERS' BILL OF RIGHTS)*, dated \_\_\_\_\_.

**Section 8. Definitions.** For the purpose of this Chapter the following terms shall have the meanings ascribed to them herein:

"Gross Receipts"

The consideration received for distributing, supplying, furnishing or selling gas for use or consumption and not for resale, and for all services rendered in connection therewith valued in money, whether received in money or otherwise, including cash, credit, services and property of every kind and material and for all services rendered therewith, and shall be determined without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service cost, or any other expenses whatsoever; provided, however that "Gross Receipts" shall not include (i) any amounts specifically excluded from the definition of gross receipts in Section 8-11-2(d) of the Illinois Municipal Code and (ii) that portion of the consideration received for the distributing, supplying, furnishing or selling gas to any local governmental body or school district whose territory includes the municipality.

"Person"

Any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, limited liability company, municipal corporation, the State or any of its political subdivisions, any State university created by statute, or a receiver, trustee,

guardian or other representative appointed by order of any court.

“Person Maintaining a Place of Business in this State”

Any person having or maintaining within this State, directly or by a subsidiary or other affiliate, an office, generation facility, distribution facility, transmission facility, sales office or other place of business, or any employee, agent, or other representative operating within this State under the authority of the person or its subsidiary or other affiliate, irrespective of whether such place of business or agent or other representative is located in this State permanently or temporarily, or whether such person, subsidiary or other affiliate is licensed or qualified to do business in this State.

“Public utility”

Shall have the meaning ascribed to it in Section 3105 of the Public Utilities Act, but shall include alternative retail electric suppliers as defined in Section 16102 of that Act.

“Purchaser”

Any person who uses or consumes, within the corporate limits of the Village, electricity acquired in a Purchase at Retail, excluding any local governmental body or school district whose territory includes the municipality.

“Purchase at Retail”

Any acquisition of electricity by a Purchaser for purposes of use or consumption, and not for resale, but shall not include the use of electricity by a Public Utility directly in the generation, production, transmission, delivery or sale of electricity.

**Section 9. Limitation Of Liability.** If the provisions of this Ordinance with respect to the exemption of school districts and units of local government from the taxes imposed by this Ordinance or the application thereof are held unconstitutional or otherwise invalid, the amount of tax due as a consequence of such holding shall be limited to the amount that the taxpayer is authorized to charge and collect from such school districts and units of local government pursuant the provisions of Section 9-221 of the Public Utilities Act or any successor thereto.

**Section 10. Notice: Address List.** The Village Clerk is hereby directed to send a certified copy of this Ordinance to all utilities which provide service to customers within the Village and to cooperate with such utilities in determining addresses of premises subject to the taxes herein described, including but not limited to the names and addresses of each school district and unit of local government which own facilities within the corporate limits of the Village.

**Section 11. Effective Date.** This Ordinance shall be in full force and effect, following its passage, approval and publications as required by law and shall be effective with respect to (i) the use or consumption of electricity and (ii) Gross Receipts actually paid to the taxpayer for services billed on or after the first day of November 1, 2010.

Passed by the Board of Trustees of the Village of Flanagan, Cook County, Illinois, on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES:

NAYS:

ABSENT:

Approved this \_\_\_\_\_ day of \_\_\_\_\_ 2010

\_\_\_\_\_  
R. JEROME ROCKE, Village President

ATTEST:

\_\_\_\_\_  
PAUL INGOLD, Village Clerk

STATE OF ILLINOIS                    )  
  ) SS.  
COUNTY OF LIVINGSTON            )

CERTIFICATE

I, PAUL INGOLD, certify that I am the duly elected and acting Village Clerk of the Village of Flanagan, Cook County, Illinois.

I further certify that on \_\_\_\_\_, 2010, the Corporate Authorities of such municipality passed and approved Ordinance No. \_\_\_\_\_, entitled "An Ordinance Revising the Village of Flanagan's Code of Ordinances to Provide for Municipal Utility Taxes" which provided by its terms that it should be published in pamphlet form. A draft copy of said ordinance was on file for public inspection at least once a week before passage.

The pamphlet form of Ordinance No. \_\_\_\_\_, including the Ordinance and a cover sheet thereof, was prepared and posted in the Village Hall commencing on \_\_\_\_\_, 2010, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request to the Village Clerk.

Dated at \_\_\_\_\_, Illinois, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Village Clerk