

C-PACE PROGRAM ADMINISTRATION AGREEMENT

BETWEEN

ENERGY IMPROVEMENT CORPORATION

AND

[CAPITAL PROVIDER]

RELATING TO

ENERGIZE NY OPEN C-PACE FINANCING PROGRAM

DATED AS OF [DATE]

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C-PACE PROGRAM ADMINISTRATION AGREEMENT

THIS C-PACE PROGRAM ADMINISTRATION AGREEMENT (this “**Agreement**”) is made as of this [DAY] day of [MONTH], [YEAR], by and between the ENERGY IMPROVEMENT CORPORATION, a Local Development Corporation formed under the laws of the State of New York (“**EIC**”), with an address at 2875 Route 35, Katonah, NY 10536, acting on behalf of the applicable New York municipal corporations that have entered into Municipal Agreements described below (each a “**Municipality**” and, collectively, the “**Municipalities**”) and [CAPITAL PROVIDER] (the “**Capital Provider**”). Each of EIC and the Capital Provider are sometimes referred to as a “**Party**” and collectively as the “**Parties**.”

BACKGROUND

WHEREAS, it is the policy of the State of New York (the “**State**”) to achieve energy efficiency and renewable energy goals, reduce greenhouse gas emissions and mitigate the effect of global climate change and advance a clean energy economy as provided in Article 5-L of the General Municipal Law, as amended from time to time (the “**Enabling Act**”);

WHEREAS, pursuant to the Enabling Act EIC has established the Energize NY Open C-PACE Financing Program (“**Open C-PACE**” or the “**Program**”) as a sustainable energy program through which member Municipality may levy charges against qualified property within their geographical boundaries for the purpose of promoting, facilitating and financing clean energy improvements, thereby promoting the public good.

WHEREAS, the Municipalities have (i) adopted a local law (the “**Local Law**”) authorizing the provision of financing of certain energy improvements to properties (each a “**Project**” and, collectively, the “**Projects**”) through Open C-PACE; and (ii) entered into a Municipal Agreement with EIC (the “**Municipal Agreements**”) to authorize EIC to act on its behalf to effectuate Open C-PACE in the Municipality.

WHEREAS, each borrower must be pre-qualified by EIC for financing of its Project under the Program in accordance with the Enabling Act, the Local Law, NYSERDA Guidelines and EIC Guidelines (such guidelines, as may be amended from time to time, collectively, the “**Program Guidelines**”).

WHEREAS, in accordance with the requirements of the Program, each borrower will propose to make certain energy improvements to properties, which will be permanently affixed to the such properties and will apply to EIC and the Capital Provider for financing for the applicable Project through a Finance Agreement between such borrower and Capital Provider (each, a “**Finance Agreement**”), which will be secured by a voluntary benefit assessment against the property benefited by such improvements (each, a “**Benefit Assessment**”).

WHEREAS, EIC and Capital Provider desire to enter into this Agreement to set forth the terms and conditions pursuant to which the Capital Provider will participate in the Program.

NOW, THEREFORE, the Parties do hereby agree as follows:

1. **Benefit Assessment and Benefit Assessment Lien.**

- (a) As soon as practicable but no later than five (5) Business Days after the execution of a Finance Agreement and satisfaction of the conditions in Section 4 hereof, EIC, on behalf of the applicable Municipality, will levy a Benefit Assessment and file a Certificate of Levy and Lien of Benefit Assessment, in form and substance

substantially similar to Exhibit A (a “**Certificate of Levy**”), as such form may be amended from time to time, evidencing a lien against the applicable property in an amount sufficient to pay the estimated costs of the Project, Finance Agreement and related agreements and any associated costs (including financing costs) which will benefit such Property (the “**Benefit Assessment Lien**”). For the avoidance of doubt, EIC shall not be liable for the recording of the Certificate of Levy on the land records of the Municipality, which recording shall be performed by the County Clerk or other responsible municipal officer in due course, and evidence of which will be supplied by EIC to the Capital Provider promptly upon receipt. As used herein, “**Business Day**” means any day on which EIC is open for business and banks are not required by law to close in New York, New York. The Certificate of Levy shall include a schedule of installment payments (the “**Annual Installment Amounts**”) due and payable pursuant to the Benefit Assessment and the Finance Agreement. In addition, EIC, on behalf of the applicable Municipality, shall assign to Capital Provider all powers and rights under the applicable Benefit Assessment Lien by (i) entering into a CPACE Benefit Assessment and Lien Assignment Agreement (the “**Assignment Agreement**”) with such Capital Provider and (ii) filing an Assignment of Benefit Assessment Lien, in substantially the form attached hereto as Exhibit B (an “**Assignment of Benefit Assessment Lien**”), as such form may be amended from time to time, on the land records for the Municipality. As used herein, “**Financing Documents**” means, collectively, the Finance Agreement, the Certificate of Levy, the Assignment Agreement, the Assignment of Benefit Assessment Lien, and the Consent(s) of Mortgage Holders, if any, in each case relating to a Benefited Property.

- (b) Capital Provider is responsible for drafting and providing to EIC each completed form of (i) the Certificate of Levy, (ii) the Assignment Agreement, and (iii) the Assignment of Benefit Assessment Lien, in each case for EIC’s signature and, in the case of the Certificate of Levy and the Assignment of Benefit Assessment Lien, recording on the land records for the Municipality.
- (c) Upon execution of a Finance Agreement by the Capital Provider and the applicable borrower, the property that is the subject of such Finance Agreement shall be deemed a “**Benefited Property**.”

2. **EIC’s Warranties and Representations; Disclaimer.**

- (a) *Warranties and Representations.* EIC hereby warrants and represents that:
 - (i) EIC is a local development corporation, duly organized under section 1411 of the Not-For-Profit Corporation Law of the State, authorized to implement the Program by arranging financing for the applicable borrower and providing for repayment from monies collected by or on behalf of the applicable Municipality as a Benefit Assessment;
 - (ii) for all purposes of this Agreement, EIC is authorized to act on behalf of the Municipality in levying, recording and assigning the Benefit Assessment Lien, and recording any amendments thereto and the release thereof, and EIC has full power and authority to enter into this Agreement and to carry out the terms and conditions contained herein;

- (iii) there is no action, suit or proceeding pending against EIC before or by any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair, the execution, delivery or performance by EIC of this Agreement;
- (iv) no approval of, or consent from, any governmental authority is required for the execution, delivery or performance by EIC of this Agreement;
- (v) the execution, delivery and performance by EIC of this Agreement and the transactions contemplated hereby (A) do not contravene any provisions of law applicable to EIC, and (B) do not conflict and are not inconsistent with, and will not result (with or without the giving of notice or passage of time or both) in the breach of or constitute a default or require any consent under any credit agreement, indenture, mortgage, purchase agreement, deed of trust, security agreement, lease, guarantee or other instrument to which EIC is a party, by which EIC may be bound, to which EIC or its property may be subject, the Enabling Act or EIC's bylaws; and
- (vi) this Agreement constitutes the legal, valid and binding obligation of EIC, enforceable against EIC in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided herein.

3. Capital Provider's Warranties and Representations.

With respect to this Agreement, Capital provider hereby warrants and represents that effective on the date on which Capital Provider executes this Agreement:

- (a) Capital Provider is duly incorporated or organized, validly existing and in good standing under the laws of its state of incorporation or organization, and has full power, and all licenses necessary, to own its property to carry on its business as now being conducted and has full power to enter into this Agreement and to carry out the terms and conditions contained herein;
- (b) the execution of this Agreement on Capital Provider's behalf and its participation in the transaction specified herein is in its ordinary course of business and within the scope of its existing corporate authority;
- (c) there is no action, suit or proceeding pending against Capital Provider before or by any court, administrative agency or other governmental authority that brings into question the validity of, or might in any way impair, the execution, delivery or performance by Capital Provider of this Agreement;
- (d) no approval of, or consent from, any governmental authority is required for the execution, delivery or performance by Capital Provider of this Agreement or it has been obtained;
- (e) the execution, delivery and performance by Capital Provider of this Agreement and the performance by Capital Provider hereunder and the transactions contemplated hereby, (i) do not contravene any provisions of law applicable to Capital Provider, and (ii) do

not conflict and are not inconsistent with, and will not result (with or without the giving of notice or passage of time or both) in the breach of or constitute a default or require any consent under any credit agreement, indenture, mortgage, purchase agreement, deed of trust, security agreement, lease, guarantee or other instrument to which Capital Provider is a party, by which Capital Provider may be bound, to which Capital Provider or its property may be subject, or Capital Provider's charter or bylaws; and

- (f) this Agreement constitutes the legal, valid and binding obligation of Capital Provider, enforceable against Capital Provider in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided herein.

4. Conditions to Benefit Assessment Lien.

EIC's obligation to execute and deliver a Certificate of Levy, Assignment Agreement and an Assignment of Benefit Assessment Lien shall be subject to the satisfaction of the following conditions.

- (a) The Capital Provider and the applicable borrower shall have entered into a Finance Agreement for the Project, which shall set forth the terms and conditions for the disbursement and repayment of the loan (the "**Loan**") and the duties and obligations of the parties with respect to the acquisition, construction and installation of the Project.
- (b) The Finance Agreement shall provide the following, in form and substance reasonably satisfactory to EIC:
 - (i) EIC and the Municipality shall be express third-party beneficiaries of the Finance Agreement;
 - (ii) the legal description of the proposed Benefited Property and the Project, which shall constitute a "Qualified Project" under the Enabling Act and the Local Law;
 - (iii) a representation by the applicable borrower that it will use the Loan proceeds solely to pay for eligible costs and expenses of the Project as expressly permitted under the Enabling Act, the Local Law and NYSEDA Guidelines and approved in advance by EIC and the Capital Provider, and not for any other costs of the Project which are not deemed eligible by EIC and the Capital Provider, or for personal, family or household purposes;
 - (iv) the total Benefit Assessment that will be levied against the proposed Benefited Property, which shall include the cost of the Project together with any eligible costs and finance charges approved by EIC and by the Capital Provider;
 - (v) the fixed rate of interest on the Loan;
 - (vi) a schedule of the Annual Installment Amounts due on the Loan;
 - (vii) disclosures of the finance charges and risks associated with participation in the Program, including the risk of foreclosure in case of nonpayment of any Annual Installment Amount; and

- (viii) the following covenants of the applicable borrower:
 - (A) the borrower shall maintain the Project in good condition and repair and the Project will not be removed from the Benefited Property through the term of the Finance Agreement,
 - (B) if requested, borrower shall promptly deliver or cause to be promptly delivered a written status report of the Project to EIC,
 - (C) the borrower shall grant EIC, its agents and representatives the right to enter and visit the Benefited Property at any reasonable time, after giving reasonable notice to the borrower, for a period of two (2) years from the completion of the Project,
 - (D) the Project and all agreements and contracts creating a third-party arrangement shall be transferable to any new property owner or tenant for the duration of the term of the Finance Agreements,
 - (E) the borrower shall agree to notify Capital Provider and EIC at least thirty (30) days in advance of any proposed sale, of all or any portion of the Benefited Property,
 - (F) the borrower shall agree to participate in all surveys conducted about the Program,
 - (G) the borrower agrees to execute the Customer Release of Utility Data a form of which is attached hereto as Appendix A, as such form may be amended from time to time, and
 - (H) the indemnification provision set forth in Appendix B hereto, or such other indemnification provisions as may be required by EIC from time to time, which indemnification provisions shall survive the termination of the applicable Financing Agreements.
- (c) Capital Provider shall have delivered to EIC all of the following, in form and substance reasonably satisfactory to EIC:
 - (i) certified true and correct photocopies or pdf scans of EIC's approval of the borrower's application for financing of the Project,
 - (ii) certified true and correct photocopies or pdf scans of the duly executed Finance Agreement related to the proposed Benefited Property,
 - (iii) a certified true and correct photocopy or pdf scan of the Assignment Agreement duly executed by Capital Provider,
 - (iv) original copies of the completed Certificate of Levy and the Assignment of Benefit Assessment Lien for EIC's signature and recording on the land records for the Municipality, and
 - (v) original copies of the completed consents to the Benefit Assessment in accordance with the Enabling Act from all existing mortgage holder(s) which hold any mortgage secured by the proposed Benefited Property.

- (d) All of Capital Provider's and EIC's respective representations and warranties provided herein shall be true and correct on the date of the execution of this Agreement.
- (e) The Capital Provider shall not have defaulted under this Agreement.

5. Covenants.

During the term of this Agreement, Capital Provider and EIC agree as follows:

- (a) Capital Provider shall not enter into an assignment and assumption agreement with any assignee that as of the date of such assignment and assumption agreement is not in compliance in all material respects with applicable federal laws, rules and regulations.
- (b) EIC and Capital Provider shall not, without the prior written consent of the other, take any action that impairs the rights of the other party (or its assignee or successor) with respect to the Financing Documents.

6. Limitation of Liability.

EIC undertakes to perform such duties and only such duties as are specifically set forth herein and no implied covenants or obligations shall be read into this Agreement against EIC. In performing its obligations hereunder, EIC shall use the same level of care as it uses for transactions in which it holds the entire interest for its own account, but shall not be liable to Capital Provider for any action taken or omitted to be taken by it hereunder or pursuant hereto, except for EIC's gross negligence or willful misconduct. The duties of EIC shall be mechanical and administrative in nature and EIC shall not have by reason of this Agreement a fiduciary relationship with Capital Provider. EIC shall not be required to take any action if EIC shall have been advised by counsel that such action is contrary to law, the provisions of this Agreement or the provisions of the Financing Documents. As to any matters not expressly provided for by this Agreement, EIC shall not be required to exercise any discretion or take any action and in case of any question concerning its rights and duties hereunder, EIC may request written instructions from Capital Provider and refrain from taking action until it receives written instructions from Capital Provider. EIC shall be fully protected and have no liability to any person for acting or refraining from acting hereunder in accordance with the written instructions of Capital Provider. EIC shall, in the absence of knowledge to the contrary, be entitled to rely on any written instructions believed in good faith to be genuine and correct and to have been signed by an officer of Capital Provider. No provision of this Agreement shall require EIC (i) to expend or risk its own funds except as necessary in the ordinary course of business as the statewide administrator of the Program or to perform its obligations under this Agreement or (ii) to otherwise incur any financial liability in the performance of any of its duties hereunder. Any expenses incurred by EIC in connection with any actions with respect to the Financing Documents which Assignee has requested shall be borne by Capital Provider and Capital Provider shall reimburse EIC for any such out-of-pocket costs and expenses incurred by EIC.

7. Titling.

Each set of Financing Documents shall demonstrate that EIC, on behalf of the Municipality, is the original holder of the Benefit Assessment and is contractually obligated to immediately assign such Benefit Assessment to the Capital Provider, such that the Capital Provider shall become the holder of the Benefit Assessment and Benefit Assessment Lien upon the Benefited Property. EIC, on behalf of

the Municipality, shall be responsible for promptly recording the original Assignment of the Benefit Assessment Lien in the applicable land records, with the costs of recording to be paid by Capital Provider. Any subsequent Assignment of Benefit Assessment Lien shall be the sole responsibility of the Capital Provider unless otherwise agreed to by EIC with payment of EIC's costs.

8. Indemnity.

Capital Provider agrees to indemnify and hold harmless EIC, the Municipality, and each of their respective officers, directors, employees and agents (each an “**EIC Indemnitee**”) from and against any and all liabilities, obligations, losses, damages (including consequential damages), penalties, actions, judgment, suits, costs, expenses, taxes or disbursements of any kind or nature whatever (together hereinafter referred to as a “**Loss**” or “**Losses**”), which may be imposed on, incurred by or asserted against any of them, and to reimburse each EIC Indemnitee for any reasonable and customary fees or other out-of-pocket expenses (including all reasonable out-of-pocket litigation costs and reasonable attorneys' fees), insofar as such Losses related directly or indirectly to, or arising out of or in connection with any Financing Documents; provided, however, that Capital Provider shall not be liable to EIC for any portion of such Losses resulting from the gross negligence or willful misconduct of any EIC Indemnitee; and provided, further, that any Losses suffered by an EIC Indemnitee as a result of any assignee of the Capital Provider under an Assignment Agreement not being in compliance in all material respects with applicable federal laws, rules or regulations shall be included in the indemnity provided in this Section 8.

9. Miscellaneous.

- (a) *Assignment.* Neither party may assign or delegate its respective rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, this Agreement inures to the benefit of, is binding upon, and may be performed by, the successors and assigns of the parties hereto, except that no assignment, pledge or other transfer of this Agreement by the Capital Provider (or its successors and assigns) shall operate to release the Capital Provider (or its successors and assigns) from any of its obligations under this Agreement unless EIC (or its successors and assigns) consents in its sole discretion in writing to the assignment, pledge or other transfer and expressly releases the Capital Provider (or its successors and assigns) from its obligations hereunder.
- (b) *Notices.* All notices and other communications hereunder shall be in writing, personally delivered or sent by nationally recognized overnight courier, email or certified mail, return receipt requested, addressed to the other party at its respective address stated below or at such other address as such party shall from time to time designate in writing to the other party; and shall be effective from the date of receipt.

EIC:

Susan Morth
Chief Executive Officer
Energy Improvement Corporation
2875 Route 35
Katonah, NY 10536
E-mail: smorth@eicpace.org

Alain Pierroz
Chief Operating and Financial Officer
Energy Improvement Corporation
2875 Route 35
Katonah, NY 10536
E-mail: apierroz@eicpace.org

[CAPITAL PROVIDER]

- (c) *Governing Law.* THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.
- (d) *Entire Agreement.* This Agreement, the Assignment Agreement, the Certificate of Levy and the Assignment of Benefit Assessment Lien constitute the entire agreement between the parties with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties.
- (e) *Titles.* Section titles are for convenience of reference only and shall not be of any legal effect.
- (f) *Further Assurances.* The parties further covenant and agree to do, execute and deliver, or cause to be done, executed and delivered, and covenant and agree to use their respective reasonable best efforts to cause their successors and assigns to do, execute and deliver, or cause to be done, executed and delivered, all such further acts, transfers and assurances, for implementing the intention of the parties under this Agreement, as the parties and their successors and assigns reasonably shall request.
- (g) *Transaction Expenses.* Capital Provider shall bear and be responsible for (i) all costs and expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and any other agreements, documents, certificates and instruments relating hereto including, without limitation, the reasonable legal fees incurred by EIC, and (ii) any fees or costs which are not promptly paid to EIC in accordance with the Assignment Agreement, it being understood by the Parties that the Capital Provider shall not have any right of reimbursement or indemnity for such costs, expenses and fees as against EIC.
- (h) *Counterparts.* With respect to each of this Agreement and the Assignment Agreement, each such agreement may be executed in any number of counterparts (including those delivered by facsimile or other electronic means), all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

- (i) *Survival.* The respective representations and warranties of EIC and Capital Provider contained in this Agreement shall survive the termination of this Agreement. Section 6 and Section 8 shall survive the termination of this Agreement.
- (j) *Recitals.* Both parties agree that all of the recitals are hereby incorporated herein and are acknowledged as being true and correct.
- (k) *Waiver of Jury Trial.* EACH OF EIC AND CAPITAL PROVIDER HEREBY UNCONDITIONALLY WAIVE ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, ANY OF ANY FINANCING DOCUMENTS, ANY DEALINGS BETWEEN EIC AND CAPITAL PROVIDER RELATING TO THE SUBJECT MATTER HEREOF OR THEREOF, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN EIC AND CAPITAL PROVIDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY SPECIFICATION OR ANY FINANCING DOCUMENTS. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.
- (l) *Authorized Representatives.* Capital Provider shall provide a list of authorized representatives on whose instructions and directions EIC may rely until such time as an updated list has been provided, as set forth on Exhibit D hereto.

10. Limitation on Recourse.

All liabilities and obligations of (a) EIC under this Agreement are subject and limited to the funding available under New York law, and (b) Capital Provider under this Agreement are limited to its assets and no officer, director, employee, partner, member, investor or shareholder shall have any personal liability for such liabilities or obligations.

11. Term.

Except for those provisions that expressly survive the termination hereof, this agreement may be terminated by 60-days written notice by either Party. A termination of this Agreement shall not affect either party's obligations under any existing Assignment Agreement or related Financing Agreement.

12. Freedom of Information Law.

EIC is a "public agency" for purposes of the New York Freedom of Information Law ("FOIL"). This Agreement and information received pursuant to this Agreement will be considered public records and will be subject to disclosure under the FOIL, except for information falling within one of the exemptions in NY Public Officers Law § 87.

Because only the particular information falling within one of these exemptions can be withheld by EIC pursuant to a FOIL request, Capital Provider should specifically and in writing identify to EIC the information that Capital Provider claims to be exempt. Capital Provider should further provide a statement stating the basis for each claim of exemption. It will not be sufficient to state generally that the information is proprietary or confidential in nature and not, therefore, subject to release to third parties. A convincing explanation and rationale sufficient to justify each exemption consistent with NY Public Officers Law § 87.

Capital Provider acknowledges that (a) EIC has no obligation to notify Capital Provider of any FOIL request it receives, (b) EIC may disclose materials claimed by Capital Provider to be exempt if in its judgment such materials do not appear to fall within a statutory exemption, (c) EIC may in its discretion notify Capital Provider of FOIL requests and/or of complaints made to the Freedom of Information Commission concerning items for which an exemption has been claimed, but EIC has no obligation to initiate, prosecute, or defend any legal proceeding, or to seek to secure any protective order or other relief to prevent disclosure of any information pursuant to a FOIL request, (d) Capital Provider will have the burden of establishing the availability of any FOIL exemption in any such legal proceeding, and (e) in no event shall EIC or any of its officers, directors, or employees have any liability for the disclosure of documents or information in EIC's possession where EIC, or such officer, director, or employee, in good faith believes the disclosure to be required under the FOIL or other law.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

ENERGY IMPROVEMENT CORPORATION [CAPITAL PROVIDER]

By: _____
Name: Susan C. Morth
Title: CEO

By: _____
Name:
Title:

OWNER - DATA RELEASE AUTHORIZATION FORM
EIC-NY Open C-PACE Program



PROPERTY OWNER INFORMATION

Contact Name	Contact Phone	Contact E-mail
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Account Number	Account Mailing Address	City	State	Zip
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Account Number	Account Mailing Address	City	State	Zip
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Account Mailing Address	City	State	Zip
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Account	Mailing Address	City	State	Zip
<i>(oil, propane, steam, etc.)</i>				

Title

APPENDIX B
to Program Administration Agreement

Indemnification. (a) Without limitation of any other obligation or liability of the borrower or any right or remedy of Lender, the Municipality or EIC contained herein, the borrower agrees to indemnify and hold harmless Lender, the Municipality and EIC, as well as their respective directors, officers, employees, agents, subsidiaries and affiliates, and the successors and assigns of the foregoing (each, an “**Indemnitee**”), from and against all damages, losses, settlement payments, obligations, liabilities, claims, suits, penalties, fines, assessments, citations, directives, demands, judgments, actions or causes of action, whether statutorily created or under the common law, including all costs and expenses (including, without limitation, reasonable fees and disbursements of attorneys, engineers and consultants) and all other liabilities whatsoever (including, without limitation, liabilities under any applicable environmental laws, regulations or rules) which shall at any time or times be incurred, suffered, sustained or required to be paid by any such Indemnitee (except any of the foregoing which result from the gross negligence or willful misconduct of the Indemnitee) (collectively, the “**Indemnified Amounts**”) on account of or in relation to or in any way in connection with (i) any of the arrangements or transactions contemplated by, associated with or ancillary to the Finance Agreement, the other Financing Documents or any other documents executed or delivered in connection herewith or therewith, all as the same may be amended from time to time, or any action taken or omitted to be taken by any Indemnitee in connection with or under any of the foregoing, whether or not all or part of the transactions contemplated by, associated with or ancillary to this Agreement or any such other documents are ultimately consummated, (ii) any violation or alleged violation of, non-compliance with or liability under any requirements of law, (iii) ownership of, liens on, security interests in or the exercise of rights or remedies under any of the items referred to in the preceding clause (i), (iv) any taxes attributable to the execution, delivery, filing or recording of any Financing Document or any memorandum of any of the foregoing, (v) any lien or claim arising on or against the Property under any requirements of law or any liability asserted against any Indemnitee with respect thereto, (vi) (1) a past, present or future violation or alleged violation of any environmental laws in connection with the Property by any person or other source, whether related or unrelated to borrower, (2) any presence of any hazardous, toxic or harmful substances, materials, wastes, pollutants or contaminants defined as such in or regulated under any environmental law (“**Materials of Environmental Concern**”) in, on, within, above, under, near, affecting or emanating from the Property, (3) the failure to timely perform any investigation, inspection, site monitoring, containment, clean-up, removal, response, corrective action, mitigation, restoration or other remedial work of any kind or nature because of, or in connection with, the current or future presence, suspected presence, Release (defined below) or threatened Release in or about the air, soil, ground water, surface water or soil vapor at, on, about, under or within all or any portion of the Property of any Materials of Environmental Concern, including any action to comply with any applicable environmental laws or directives of any governmental authority with regard to any environmental Laws, (4) any past, present or future activity by any person or other source, whether related or unrelated to borrower in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Materials of Environmental Concern at any time located in, under, on, above or affecting the Property, (5) any past, present or future actual generation, treatment, use, storage,

transportation, manufacture, refinement, handling, production, removal, remediation, disposal, presence or migration of Materials of Environmental Concern on, about, under or within all or any portion of the Property (a “**Release**”) (whether intentional or unintentional, direct or indirect, foreseeable or unforeseeable) to, from, on, within, in, under, near or affecting the Property by any person or other source, whether related or unrelated to borrower, (6) the imposition, recording or filing or the threatened imposition, recording or filing of any lien on the Property with regard to, or as a result of, any Materials of Environmental Concern or pursuant to any environmental law, or (7) any misrepresentation or failure to perform any obligations pursuant to any Financing Document to environmental matters in any way, and (vii) borrower’s conduct, activities, actions and/or inactions in connection with, relating to the borrower’s participation in the Program or arising out of any of the foregoing clauses of this Section ___, that, in each case, results from any conduct, act or failure to act by the borrower or its affiliates or related parties or the use or intended use of the proceeds of the Benefit Assessment Advance. To the extent that the undertaking to indemnify and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all liabilities set forth in the preceding sentence incurred by any Indemnatee. In the case of an investigation, litigation or other proceeding to which the indemnification in this Section ___ applies, such indemnification shall be effective whether or not such investigation, litigation or proceeding is brought by borrower, an Indemnatee or any other person is otherwise a party thereto and whether or not any transactions contemplated by this Agreement are entered into. In any investigation, proceeding or litigation, or the preparation therefor, Lender, the Municipality and EIC shall each select its own counsel and, in addition to the foregoing indemnity, the borrower agrees to pay promptly the reasonable fees and expenses of such counsel. In the event of the commencement of any such proceeding or litigation, the borrower shall be entitled to participate in such proceeding or litigation with counsel of its choice at its own expense, provided that such counsel shall be reasonably satisfactory to Lender, the Municipality and EIC. This section shall survive the execution, delivery, performance and repayment of this Agreement and the Benefit Assessment, and the extinguishment of the Benefit Assessment Lien.

(b) If for any reason the indemnification provided in this Section ___ is unavailable to any Indemnatee or is insufficient to hold an Indemnatee harmless, even though such Indemnatee is entitled to indemnification under the express terms thereof, the borrower shall contribute to the amount paid or payable by such Indemnatee as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative benefits received by such Indemnatee on the one hand and borrower on the other hand, the relative fault of such Indemnatee, and any other relevant equitable considerations.¹

(c) An Indemnatee may at any time send borrower a notice showing in reasonable detail the basis for and calculation of Indemnified Amounts, and borrower shall pay such Indemnified Amounts to such Indemnatee within fifteen (15) days after borrower receives such notice. The obligations of borrower under this Section ___ shall apply to assignees and survive the termination of this Agreement.

¹ This paragraph only applies when there are multiple Borrowers.
101149059.11 (Date:12.10.2021)

(d) No Indemnatee shall have any liability to the borrower or any other Indemnatee on account of (i) the borrower engaging a contractor from the list of contractors submitted by the Lender to the borrower, (ii) the services performed by the contractor, or (iii) any neglect or failure on the part of the contractor to perform or properly perform its services. No Indemnatee assumes any obligation to the borrower or any other Indemnatee concerning contractor, the quality of construction of the Project or the absence thereof of defects. The making of a Benefit Assessment Advance by Lender shall not constitute Lender's approval or acceptance of the construction theretofore completed. Lender's inspection and approval of the budget, the construction work, the improvements, or the workmanship and materials used therein, shall impose no liability of any kind on Lender, the sole obligation of Lender as the result of such inspection and approval being to make the Benefit Assessment Advances if, and to the extent, required by this Agreement. Any disbursement made by Lender without Lender having received each of the items to which it is entitled under this Agreement shall not constitute breach or modification of this Agreement, nor shall any written amendment to this Agreement be required as a result thereof.

EXHIBIT A
to Program Administration Agreement

FORM OF CERTIFICATE OF LEVY AND LIEN OF BENEFIT ASSESSMENT

Record and return to:

Energy Improvement Corporation
2875 Route 35
Katonah, NY 10536
Attn: Alain Pierroz

CERTIFICATE OF LEVY AND LIEN OF BENEFIT ASSESSMENT

Energy Improvement Corporation, located at 2875 Route 35, Katonah, NY, 10536, a local development corporation formed under the laws of the State of New York (“EIC”), acting on behalf of [County/City/Town/Village] (the “Municipality”) pursuant to Article 5-L of the General Municipal Law of the State of New York and the Local Law adopted by the Municipality establishing the Energize NY Open C-PACE Financing Program in the Municipality, and the Municipal Agreement between the Municipality and EIC dated _____, 20____, HEREBY LEVIES A BENEFIT ASSESSMENT AGAINST AND LIEN UPON certain real property commonly referred to as _____ and described more particularly in the attached **Attachment 1** (the “Benefited Property”), situated in the Municipality and owned on the date hereof in whole or in part by _____ (the “Benefited Property Owner”), located at [Property Owner Address], said levy and lien shall secure the repayment of financing for energy improvements or other improvements from time to time authorized by the Enabling Act made or to be made to the Benefited Property pursuant to that certain Finance Agreement, by and between the Benefited Property Owner and [Capital Provider], located at [Capital Provider Address], dated _____, 20____, as may be amended (the “Finance Agreement”). The amount and repayment of said levy and lien, as determined by EIC, on behalf of the Municipality, are as follows: an installment payment schedule set forth in the attached **Attachment 2** is in effect for payment of the Benefit Assessment, and is based on the principal amount of the Benefit Assessment of \$____, with interest thereon at a fixed rate equal to ____% per annum, with [#] annual installments of principal and interest (the “Annual Installment Amount”) due and payable pursuant to the Finance Agreement. The Annual Installment Amount may be adjusted to reflect any permitted prepayments received or additional interest or charges due to late payments or defaults, as provided in the Finance Agreement.

Each Annual Installment Amount shall be considered a charge upon the Benefited Property and shall become a lien on the Benefited Property as of the first day of January of the fiscal year for which levied (the “Annual Installment Lien”) and shall remain a lien until paid. In the event that any Annual Installment Amount shall remain unpaid for thirty days after the same shall become due and payable, interest and other charges shall be charged upon the unpaid Annual Installment Amount at the rate of ____% per annum, as provided in the Finance Agreement. All existing holders of any mortgage on the Benefited Property have consented to the levy and assessment of the Benefit Assessment Lien by the Municipality against the Benefited Property, and copies of such consents have been provided to EIC.

At such time as the principal and interest payments of the Benefit Assessment have been satisfied and paid in full, a Satisfaction and Release of Benefit Assessment Lien shall be filed by EIC, on behalf of the Municipality, in the land records for the Municipality evidencing such release.

This Certificate constitutes a certificate of lien and is filed pursuant to the provisions of the Local Law to evidence a lien for the Benefit Assessment levied upon the Benefited Property for the special benefits conferred upon said Benefited Property by the energy improvements related thereto. Pursuant to the Act, this lien shall take precedence over all other liens or encumbrances except a lien for taxes of the Municipality on real property, municipal charges, or governmentally imposed assessments in respect of services or benefits to the Benefited Property, which liens shall have priority over this lien.

The portion of this Certificate which constitutes a levy of Benefit Assessment and notice of installment payment of Benefit Assessment is filed pursuant to the provisions of the Local Law and the General Municipal Law of the State of New York, as amended.

The filing of this Certificate is done pursuant to the Local Law No. ____ of 20__ of the Municipality, as such law may be amended from time to time, to Establish a Sustainable Energy Loan Program (OPEN C-PACE) and the Municipal Agreement, by and between the Energy Improvement Corporation (EIC) and the [MUNICIPALITY]. Accordingly, EIC is a constituted authority acting as an agent of the [MUNICIPALITY] and the recording of this lien shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the [MUNICIPALITY].

Effective this ____ day of _____, 2020

[SIGNATURE PAGES TO FOLLOW]

ENERGY IMPROVEMENT CORPORATION

By: _____

Name: Susan C. Morth

Title: CEO

STATE OF NEW YORK)
) ss.
COUNTY OF _____)

On the ____ day of _____, in the year 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Attachment 1 to Certificate of Levy - Property Description

Attachment 2 to Certificate of Levy - Payment Schedule

EXHIBIT B
to Program Administration Agreement

FORM OF ASSIGNMENT OF BENEFIT ASSESSMENT LIEN

Record and return to:

Energy Improvement Corporation
2875 Route 35
Katonah, NY 10536
Attn: Alain Pierroz

ASSIGNMENT OF BENEFIT ASSESSMENT LIEN

KNOW ALL PERSONS BY THESE PRESENTS, that Energy Improvement Corporation, a local development corporation located at 2875 Route 35, Katonah, NY 10536, and formed under the laws of the State of New York (hereinafter referred to as “EIC” or the “Assignor”), acting on behalf of [County/City/Town/Village], a New York municipal corporation (the “Municipality”), pursuant to Article 5-L of the General Municipal Law of the State of New York and the Local Law adopted by the Municipality establishing the Energize NY Open C-PACE Financing Program in the Municipality, and the Municipal Agreement between the Municipality and EIC dated _____, 20__ (the “Municipal Agreement”), in consideration of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, hereby quit-claims, grants, bargains, sells, conveys, assigns, transfers and sets over unto [Capital Provider] (the “Assignee”), located at [Capital Provider Address], under that certain Finance Agreement, by and between the Benefited Property Owner and [Capital Provider] dated _____, 20__, as may be amended (the “Finance Agreement”), without warranty and without recourse, all of its right, title and interest in and to that certain Benefit Assessment Lien and each Annual Installment Lien and the debts secured thereby together with such interest, fees, and expenses of collection as may be provided by law, filed by EIC, on behalf of the Municipality, on the land records, on property owned on the date hereof in whole or in part by _____ and as described on **Attachment 1** and also commonly referred to as _____, filed simultaneously herewith and made a part hereof (the “Benefit Assessment Lien”), to have and to hold the same unto the said Assignee, its successor and assigns forever.

This Assignment is made, given, and executed pursuant to the authority granted to Assignor as agent of the Municipality pursuant to Article 5-L of the General Municipal Law of the State of New York, the Local Law, and the Municipal Agreement.

By execution of this Assignment, the Assignor assigns to Assignee, and the Assignee assumes, all of the rights at law or in equity, obligations, powers and duties as the Assignor or the Municipality would have with respect to the Benefit Assessment Lien, if the Benefit Assessment Lien had not been assigned with regard to precedence and priority of such Benefit Assessment Lien, the accrual of interest, charges, fees and expenses of collection, pursuant to the Local Law.

This Assignment by the Assignor is absolute and irrevocable and the

[County/City/Town/Village] shall retain no interest, reversionary or otherwise, in the Benefit Assessment Lien.

The filing of this Assignment is done pursuant to the Local Law No. ____ of 20__ of the Municipality, as such law may be amended from time to time, to Establish a Sustainable Energy Loan Program (OPEN C-PACE) and the Municipal Agreement, by and between the Energy Improvement Corporation (EIC) and the [MUNICIPALITY]. Accordingly, EIC is a constituted authority acting as an agent of the [Municipality] and the recording of this Assignment shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the [MUNICIPALITY].

Effective this ____ day of _____, 2020.

[SIGNATURE PAGES TO FOLLOW]

**ENERGY IMPROVEMENT
CORPORATION**

By: _____
Name: Susan C. Morth
Title: CEO

STATE OF NEW YORK)
) ss.
COUNTY OF _____)

On the ____ day of _____, in the year 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

[CAPITAL PROVIDER]

STATE OF NEW YORK)
) ss.
COUNTY OF _____)

On the ____ day of _____, in the year 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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**Attachment 1 to Assignment of Benefit Assessment
Lien - Property Description**

EXHIBIT C to
Program Administration Agreement

FORM OF CONSENT OF MORTGAGE HOLDERS

Date: _____

Address: _____

Owner: _____

Municipality: _____

APN: _____

Loan Number: _____

Estimated Annual Installment Amount: _____

Maximum Benefit Assessment Amount: _____

This Mortgage Holder Consent to Benefit Assessment (this “Consent”) is given by the undersigned entity, which is a mortgage holder (“Mortgage Holder”) on the above-referenced property (the “Property”) with respect to the above-referenced loan (the “Loan”).

RECITALS

Mortgage Holder is hereby notified that the above-referenced owner of the Property (the “Property Owner”) intends to finance installation on the Property of certain energy efficiency and/or renewable energy improvements that will be permanently fixed to the Property (the “Authorized Improvements”) by participating in the Energize NY Open C-PACE Financing Program (the “Program”), sponsored by the Municipality. New York State General Municipal Law Article 5-L authorizes municipal corporations to create a sustainable energy financing program, such as the Program, to provide loans to property owners to achieve statewide energy efficiency and renewable energy goals, reduce greenhouse gas emissions and mitigate the effect of global climate change, and advance a clean energy economy.

Mortgage Holder understands that, as a result of an agreement between Energy Improvement Corporation (“EIC”), on behalf of the Municipality, and the Property Owner, the Benefit Assessment will be levied on the Property, and that the Benefit Assessment will be collected in installments in the same manner as and subject to the same remedies and lien priorities as real property taxes or municipal charges.

CONSENT

The undersigned hereby represents that it is authorized to execute this Consent on behalf of Mortgage Holder. Mortgage Holder hereby confirms:

Mortgage Holder understands that, as a result of an agreement between EIC, on behalf of the Municipality, and the Property Owner, the Benefit Assessment described herein will be levied on the Property, and that the Benefit Assessment will be collected in installments in the same manner as and subject to the same remedies and lien priorities as real property taxes or municipal charges. Mortgage

Holder acknowledges that each annual installment in respect of the Benefit Assessment shall create an Annual Installment Lien, and if such annual installment is not paid when due, each Annual Installment Lien shall constitute a statutory lien on the Property that is superior to the lien of the Loan.

Mortgage Holder acknowledges that the Benefit Assessment constitutes a statutory lien on the Property that is superior to the lien of the Loan.

This Consent shall not prohibit Mortgage Holder from pursuing any and all rights and remedies available to collect from Property Owner all amounts due to it under the Loan documents. Mortgage Holder shall have the right to cure any nonpayment by Property Owner of real property taxes and assessments (including the Benefit Assessment) to the same extent as Mortgage Holder has a right to cure nonpayment of real property taxes.

Mortgage Holder agrees that the levy of the Benefit Assessment will not constitute an event of default or trigger the exercise of any remedies under the Loan documents.

Mortgage Holder hereby acknowledges that the Property Owner and the Municipality will rely on the representation and consent of Mortgage Holder set forth in this Consent.

Dated this ____ day of _____, 20__

MORTGAGE HOLDER: [MORTGAGE HOLDER
NAME]

By: _____
Name:
Title:

STATE OF NEW YORK)
) ss.
COUNTY OF _____)

_____, 20__

On the ____ day of _____, in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT D to
Program Administration Agreement

AUTHORIZED REPRESENTATIVES FOR [CAPITAL PROVIDER]

The following individuals are authorized to provide instructions and directions to EIC, on behalf of the above named entity until such time as an updated list has been provided. Instructions may be provided via electronic mail and are valid so long as one of the individuals below are copied thereto.

Name: Title: Email:

Name: Title: Email:

Name: Title: Email:

Name: Title: Email:

Name: Title: Email:

Name: Title: Email: