

C-PACE BENEFIT ASSESSMENT AND LIEN
ASSIGNMENT AGREEMENT

BETWEEN

ENERGY IMPROVEMENT CORPORATION

AND

[CAPITAL PROVIDER]

RELATING TO

ENERGIZE NY OPEN C-PACE FINANCING PROGRAM

DATED AS OF _____, 20__

Table of Contents

	Page
1. Assignment of Benefit Assessment and Benefit Assessment Lien.	2
2. Amendments to Benefit Assessment Lien.	2
3. Further Assignment of Benefit Assessment Lien.	3
4. EIC’s Warranties and Representations; Disclaimer.	3
5. Capital Provider’s Warranties and Representations.	4
6. Covenants.	6
7. Duties and Limitations.	7
8. Limitations of Liability.	9
9. EIC’s Fees and Costs.	9
10. Miscellaneous.	10

Exhibits

Exhibit A – Form of Certificate of Levy and Benefit Assessment Lien

Exhibit B – Form of Assignment of Benefit Assessment Lien

Exhibit C – Form of Confirmation and Amendment of Benefit Assessment Lien and Payment
Schedule

Exhibit D – Form of Satisfaction and Release of Benefit Assessment Lien

C-PACE BENEFIT ASSESSMENT AND LIEN
ASSIGNMENT AGREEMENT

THIS C-PACE BENEFIT ASSESSMENT AND LIEN ASSIGNMENT AGREEMENT (this “**Assignment 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 _____, a New York municipal corporation (the “**Municipality**”) 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 municipalities 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, [Borrower legal name] (the “**Borrower**”) owns real property located in the Municipality known as [Address] (the “**Property**”) and more particularly described in Schedule I to the Certificate of Levy and Benefit Assessment Lien with for the Property attached as Exhibit A (the “**Certificate of Levy**”).

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

WHEREAS, the Borrower and the Project have been pre-qualified by EIC for financing 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, Borrower proposes to make certain energy improvements to the Property which will be permanently affixed to the Property (the “**Project**”) and has applied to EIC and the Capital Provider for financing for the Project through the [FINANCE AGREEMENT DESCRIPTION] (the “**Finance Agreement**”), which will be repaid through a voluntary benefit assessment against the Property benefited by such improvements (the “**Benefit Assessment**”).

WHEREAS, EIC, on behalf of the Municipality, has agreed to cooperate with the Capital Provider in order for the Capital Provider to provide financing to the Borrower on the terms and conditions set forth in the Finance Agreement and related documents with the Borrower..

WHEREAS, EIC, on behalf of the applicable Municipality, will levy the Benefit Assessment and record the Certificate of Levy evidencing a lien on the 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 the Property (the “**Benefit Assessment Lien**”).

WHEREAS, Capital Provider desires EIC, on behalf of the Municipality, to assign to the Capital Provider the Benefit Assessment and the Benefit Assessment Lien, and bill the Borrower for “Annual Installment Amounts” provided for in the Finance Agreement in the amounts and at the times set forth in the Finance Agreement (“**Annual Installment Amounts**”).

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

1. Assignment of Benefit Assessment and Benefit Assessment Lien.

- (a) EIC, on behalf of the Municipality, hereby assigns to Capital Provider all powers and rights under the Benefit Assessment Lien. EIC shall promptly record the Assignment of Benefit Assessment Lien, attached hereto as Exhibit B on the land records for the Municipality.
- (b) The principal of the Benefit Assessment Lien (inclusive of any financed closing costs or fees) will be [Amount and xx/100] Dollars (\$[#]), the total interest rate payable with respect to the Benefit Assessment Lien will be [Interest Rate] percent ([#]%) per annum. Such total interest rate reflects the sum of (i) an interest rate per annum of []% payable to Capital Provider pursuant to the Finance Agreement *plus* (ii) the rate per annum of the EIC Administration Fee payable to EIC pursuant to Section 9(a)(ii). The term of the Benefit Assessment Lien will be [Term] ([#]) years. The foregoing terms are set forth in the payment schedule attached to the Certificate of Levy.
- (c) The Capital Provider shall have and possess the same powers and rights at law or in equity as EIC and the Municipality would have had if the Benefit Assessment Lien had not been assigned, including, without limitation, those with regard to the precedence and priority of such Benefit Assessment Lien, the accrual of interest and the fees and expenses of collection. In addition, the Capital Provider shall have the right to enforce delinquent Annual Installment Amounts as provided in Section 7(e) of this Assignment Agreement. Costs and reasonable attorneys’ fees incurred by the Capital Provider as a result of any foreclosure action or other legal proceeding and directly related to the proceeding shall be added to the Benefit Assessment Lien in any such proceeding against each person having title to any property subject to the proceedings. Such costs and fees may be collected by the Capital Provider at any time after demand for payment has been properly made by the Capital Provider.

2. Amendments to Benefit Assessment Lien.

- (a) Capital Provider and Borrower may amend the Certificate of Levy to adjust the payment schedule of the Benefit Assessment in accordance with the terms of the Finance Agreement. In such event, Capital Provider shall provide to EIC an executed Confirmation and Amendment of Benefit Assessment Lien and Payment Schedule, in substantially the form attached hereto as Exhibit C, which shall include the new annual installment payment schedule of the Benefit Assessment consistent with the terms of the Finance Agreement. Any request by Capital Provider to amend the Certificate of Levy to adjust the payment schedule of the Benefit Assessment in accordance with the terms of the Finance Agreement shall constitute a certification by the Capital Provider that the

representations and warranties made by the Capital Provider in this Assignment Agreement continue to be true and correct as of the date of such Confirmation and Amendment of Benefit Assessment Lien. EIC, on behalf of the Municipality, shall promptly file such Confirmation and Amendment of Benefit Assessment Lien and Payment Schedule on the land records for such Municipality. EIC shall provide to Capital Provider filed copies of the Certificate of Levy and any Confirmation and Amendment of Benefit Assessment Lien and Payment Schedule, promptly after the filing thereof.

3. Further Assignment of Benefit Assessment Lien.

- (a) Capital Provider may further assign or transfer the right to receive one or more, or all, future Annual Installment Amounts and the Benefit Assessment Lien to any other person, so long as such person also assumes Capital Provider's rights and obligations under this Assignment Agreement in respect thereof.
- (b) Capital Provider shall be bound by the terms of an assignment and assumption agreement, by and between Capital Provider and its assignee, whereby Capital Provider shall be released of its obligations under this Assignment Agreement accruing after the date of the assignment, and all of such obligations shall be assumed by and transferred to such further assignee.
- (c) Borrower and EIC must be notified by Capital Provider in writing of any assignment and any changes to the remittance instructions in accordance with Section 7(a)(i).

4. 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 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 Assignment 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 Assignment 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 Assignment Agreement;
 - (iv) no approval of, or consent from, any governmental authority is required for the execution, delivery or performance by EIC of this Assignment Agreement;
 - (v) the execution, delivery and performance by EIC of this Assignment 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;

(vi) this Assignment 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; and

(vii) this Assignment Agreement, the Benefit Assessment, the Certificate of Levy and EIC's role hereunder comply with the Enabling Act, the Local Law and the Program Guidelines.

(b) *Disclaimer.* Except as expressly set forth in this Section 4 or expressly provided in the Financing Documents: (i) neither EIC nor the Municipality has heretofore made, nor does it make by this Assignment Agreement, any representations or warranties with respect to the Property, including any warranty of title or any environmental matters, (ii) neither EIC nor the Municipality makes any representation or warranty in connection with, or assumes any responsibility with respect to, the solvency, financial condition or statements of the Borrower, or with respect to the performance or observance by the Borrower of its respective obligations under the related Financing Documents, and (iii) neither EIC nor the Municipality makes any representation or warranty in connection with, and neither assumes any responsibility with respect to the accuracy or completeness of the Certificate of Levy or any assignments or amendment thereof which are provided to EIC by Capital Provider for EIC's or Municipality's signature and recording on the land records for the Municipality. As used herein, "**Financing Documents**" means, collectively, the Finance Agreement, the Certificate of Levy, this 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.

5. Capital Provider's Warranties and Representations.

With respect to this Assignment Agreement, Capital Provider hereby warrants and represents that effective on the date on which Capital Provider executes this Assignment 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 Assignment Agreement and to carry out the terms and conditions contained herein; and
- (b) the execution of this Assignment Agreement on Capital Provider's behalf and its participation in the transaction specified herein and therein 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 which brings into question the validity of, or might in any way impair, the execution, delivery or performance by Capital Provider of this Assignment Agreement;

- (d) no approval of, or consent from, any governmental authority is required for the execution, delivery or performance by Capital Provider of this Assignment Agreement or it has been obtained;
- (e) the execution, delivery and performance by Capital Provider of this Assignment 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;
- (f) this Assignment 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;
- (g) Capital Provider has independently and without reliance upon EIC conducted its own credit evaluation of the Borrower, reviewed such information as it has deemed adequate and appropriate and made its own analysis of the Financing Documents;
- (h) Capital Provider has not relied upon any investigation or analysis conducted by, advice or communication from, nor any warranty or representation by, EIC or any agent or employee of EIC, express or implied, concerning the financial condition of the Borrower, or the tax or economic benefits of an investment in the Financing Documents;
- (i) Capital Provider has had (or acknowledges by its execution of this Assignment Agreement, that Capital Provider will prior thereto have had) access to all financial and other information that it deems necessary to evaluate the merits and risks of an investment in the Financing Documents including the opportunity to ask questions, receive answers and obtain additional information from EIC and the Borrower necessary to verify the accuracy of information provided;
- (j) Capital Provider acknowledges that EIC takes no responsibility for any financial information regarding the Borrower furnished to Capital Provider by EIC, and it or its authorized representatives acting on its behalf have such knowledge and experience in business and financial matters necessary to evaluate the merits and risks of an investment in the Financing Documents;
- (k) Capital Provider is experienced in making investments in projects similar to the Project and Financing Documents and that it is financially able to undertake the risks involved in such an investment;
- (l) Capital Provider acknowledges that the Financing Documents as well as any other documents signed by the Borrower and required by EIC in connection with this Assignment Agreement were executed by a duly authorized signatory of the Borrower;

- (m) Capital Provider has independently and without reliance upon EIC conducted its own investigation to determine that Borrower owns the Property;
- (n) the Certificate of Levy and any assignment or amendment thereof which is provided to EIC by Capital Provider for EIC's or Municipality's signature is in compliance with the terms of the Financing Documents and this Assignment Agreement;
- (o) Borrower and Capital Provider have obtained consent to the Benefit Assessment in accordance with the Enabling Act from all existing mortgage holder(s) which hold any mortgage secured by the Property; and
- (p) Capital Provider has independently and without reliance upon EIC conducted its own investigation to determine that the Project meets the requirements of the Enabling Act and the Program Guidelines.

6. Covenants.

(a) *Project Completion.*

- (i) Capital Provider shall provide EIC with the following documents as promptly as practicable (but in any event prior to making the final disbursement of final payment for the Project under the Financing Documents):
 - (A) Confirmation from NYSERDA or a utility program that the improvements were installed (if applicable),
 - (B) a certificate of completion with respect to the Project signed by the Capital Provider and Borrower that complies with the Program Guidelines,
 - (C) a certificate of occupancy or other evidence of the completion of a satisfactory final inspection by an inspector approved by the Municipality;
 - (D) copies of any commissioning and/or measurement and verification reports associated with the Project;
 - (E) for renewable energy generation Projects, a copy of permission to operate from the local utility;
 - (F) a utility data release authorization form signed by the Borrower; and
 - (G) any other information reasonably necessary to confirm that the Project, as constructed and installed, meets all requirements of the Enabling Act, the Local Law and the Program Guidelines.
- (ii) Capital Provider shall notify EIC in writing when it has delivered all the information and materials required by Section 6(a), and certify that the Project, as installed, satisfies the standards used in EIC's pre-qualification of the Project. EIC will notify Capital Provider of its acceptance or rejection of such completion materials.
- (iii) Capital Provider acknowledges that the Enabling Act and the Program Guidelines only permit the levy of the Benefit Assessment Lien in respect of cost-effective energy efficiency improvements and that EIC has approved the Project based on the scope of work and information submitted with the Borrower's application. If, in connection with its review of information and materials submitted to EIC pursuant to Section 6(a), EIC reasonably determines that material changes to the scope of work resulted in the installation of improvements that would not satisfy the standards

used in EIC's pre-qualification of the Project, EIC will provide written notice thereof to Capital Provider and Borrower. EIC shall provide Borrower and Capital Provider a reasonable amount of time to provide such additional information or to make corrections to the Project to re-qualify. If EIC ultimately determines that the Project or a portion thereof does not qualify, EIC shall file, on behalf of the Municipality, file a Confirmation and Amendment of Benefit Assessment Lien and Payment Schedule adjusting the outstanding principal balance of the Benefit Assessment Lien to reflect that portion, if any, of the Project Cost that do qualify. No such reduction shall affect any of the other rights of Capital Provider under the Financing Documents, including any right to recover any resulting deficiency from the Borrower as an indemnity or otherwise.

- (b) *Taxes.* Capital Provider shall pay any and all sales or use taxes or similar taxes, if any, that may be imposed by any federal, state or local government authority on any remittances made by EIC to the Capital Provider pursuant to this Assignment Agreement.
- (c) *Amendments to Financing Documents.* Capital Provider shall not permit any amendment, waiver or other modification to the Financing Agreements that has an adverse effect on the rights or interests that Capital Provider has agreed to include in the Financing Agreements for EIC's or the Program's benefit, without EIC's prior written consent. Capital Provider shall promptly provide copies of all amendments, waivers or other modifications to the Financing Agreement to EIC.
- (d) *No Action.* Other than rights expressly granted to such party hereunder or under the Financing Documents, neither EIC nor Capital Provider shall, without the prior written consent of the other, take any action which impairs the rights of the other party (or its assignee or successor) under the Financing Documents.

7. Duties and Limitations.

The following provisions shall apply except to the extent otherwise provided in the Financing Documents:

- (a) **Billing of Annual Installment Amounts.**
 - (i) Capital Provider shall provide EIC written notice of its billing instructions at least 60 days' before the scheduled payment date for the initial Annual Installment Amount due hereunder, including (A) Borrower's billing address and contact information, (B) remittance instructions, and (B) billing schedule, which shall be no more frequent than semiannually. Capital Provider will provide EIC with prompt written notice of any changes to its billing instructions, and in any event at least 60 days' prior to any scheduled payment date. Otherwise, EIC will send the invoice for any pending payment pursuant to the existing billing instructions. EIC shall not be liable for any incorrect billing instructions provided to it by or on behalf of Capital Provider.
 - (ii) Beginning on the date agreed upon by the Parties (which shall be at least 30 days prior to the date the related payment becomes due) and **every six calendar months after** **each anniversary of** such date thereafter until the Benefit Assessment Lien is paid in full, EIC, on behalf of the Municipality, shall send the Borrower an invoice for each Annual Installment Amount with instructions to remit payment as designated by Capital Provider.

- (iii) The invoices that EIC delivers to the Borrower pursuant to Section 7(a)(ii) will present a single interest component of the relevant Annual Installment Amount, calculated as if the total interest rate set forth in Section 1(b) was a single rate without components.
- (b) *Collection of Annual Installment Amounts.* In the event of a default in payment of any Annual Installment Amount for a Property, EIC agrees to take at least the following steps to collect the delinquent Annual Installment Amount on behalf of the Municipality:
 - (i) mail a written notice of delinquency and demand for payment to the Borrower by both certified mail, return receipt requested, and first class mail within five (5) Business Days after receipt of notice of a delinquency by EIC from Capital Provider;
 - (ii) mail a second notice of delinquency to the Borrower by both certified mail, return receipt requested, and first class mail at least 30 days after the date of the first notice if EIC has been notified by the Capital Provider that the delinquency is continuing; and
 - (iii) if the Borrower fails to cure the delinquency within 30 days after the mailing of the second notice of delinquency, then the Capital Provider may redeem the Property and pursue collection of the delinquent Annual Installment Amounts as provided in Section 7(e) below. 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.
- (c) *Recording of Documents.* EIC, on behalf of the Municipality, shall record the Certificate of Levy, the Assignment of Benefit Assessment Lien, any Amendment of Benefit Assessment Lien and Payment Schedule, and the Satisfaction and Release of Benefit Assessment Lien in substantially the form attached hereto as Exhibit D (the “**Release**”) on the land records for the Municipality. EIC, on behalf of the Municipality, may, upon request and at the expense of Capital Provider, record any subsequent Assignment of Benefit Assessment Lien on the land records for the Municipality.
- (d) *Other Duties of EIC.* Unless EIC indicates in writing to Capital Provider, Capital Provider shall be responsible for all other servicing duties pursuant to the Financing Documents, such as, if applicable, obtaining insurance renewals and financial statements from the Borrower and arranging for Property inspections.
- (e) *Collection of Delinquent Payments.* If the Borrower fails to pay an Annual Installment Amount, the Capital Provider may redeem the Property by paying the amount of all unpaid Municipal Liens thereon (which amounts shall thereafter be added to the related Annual Installment Lien and be enforceable against the Borrower), and thereafter have the right to collect any amounts in respect of an Annual Installment Lien by foreclosure pursuant to the Real Property Tax Law of the State, as in effect from time to time, or any other remedy available at law.
- (f) *Notices.* EIC shall promptly deliver to Capital Provider all notices, demands and similar items received by it relating to the Financing Documents. If either party has actual knowledge of an Event of Default under the Finance Agreement, it shall promptly notify the other party thereof. In addition, Capital Provider shall (i) promptly notify EIC in writing of any agreement(s) with the Borrower for payment of any delinquent amounts pursuant to the Financing Documents and the Benefit Assessment, and (ii) promptly notify

EIC in writing of any judicial proceeding(s) to enforce the Financing Documents and Benefit Assessment, including, but not limited to, foreclosure and a suit on the debt.

8. Limitations 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 Assignment 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 Assignment 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 Assignment Agreement or the provisions of the Financing Documents. As to any matters not expressly provided for by this Assignment 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.

9. EIC's Fees and Costs.

- (a) *Fees.* Capital Provider shall pay EIC for EIC's duties and services provided pursuant to this Assignment Agreement as follows.
 - (i) Upon execution of this Assignment Agreement, an up-front Program administration fee in the amount of \$ (1.5% of the Base Project Cost up to a maximum of \$ [see Open C-PACE Handbook]). As used herein, "**Base Project Cost**" means the total amount of the loan owed under the Finance Agreement (the "**Loan**") minus capitalized interest, EIC's upfront fees, and Capital Provider's upfront fees and other capitalized closing costs.
 - (ii) Within 10 Business Days after actual receipt of each Annual Installment Amount from the Borrower, an administrative fee corresponding to the time period covered by such Annual Installment Amount, calculated based on a rate per annum equal to **[0.25%][0.20%][0.15%]** (the "EIC Administration Fee"). If Capital Provider fails to remit to EIC the EIC Administration Fee within ten (10) Business Days after actual receipt of the applicable Annual Installment Amount from the Borrower, then Capital Provider shall pay interest for the period commencing on the tenth (10th) Business Day after receipt from the Borrower and continuing until the same is paid in full, at the rate of five percent (5%) in excess of the rate of interest otherwise in effect.
- (b) *Cost Reimbursement.* No provision of this Assignment 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

Assignment 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 Capital Provider has requested shall be borne by Capital Provider and Capital Provider shall reimburse EIC for any out-of-pocket costs and expenses incurred by EIC, including any costs associated with the recording on the land records for the Municipality of the Benefit Assessment Lien, the Assignment of Benefit Assessment Lien, the Confirmation and Amendment of Benefit Assessment Lien and Payment Schedule, any subsequent Assignment of Benefit Assessment Lien and the Release of the Benefit Assessment Lien.

10. Miscellaneous.

- (a) *Assignment.* This Assignment Agreement inures to the benefit of, is binding upon, and may be performed by, the successors and permitted assigns of the parties hereto. If the Benefit Assessment Lien is assigned, pledged or otherwise transferred by the Capital Provider (or its successors and assigns) then this Assignment Agreement shall also be assigned to the assignee and holder of the Benefit Assessment Lien.
- (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]

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- (c) *Governing Law.* THIS ASSIGNMENT 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. In the event of a conflict between this Assignment Agreement and the Enabling Act, the Enabling Act shall govern.

- (d) *Entire Agreement.* This Assignment Agreement, the Administration 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 Assignment Agreement, as the parties and their successors and assigns reasonably shall request. EIC shall take any actions reasonably requested in writing by Capital Provider relating to the Capital Provider being named as the holder of the Benefit Assessment and Benefit Assessment Lien relating to the Property.
- (g) *Not an Extension of Credit.* This Assignment Agreement shall in no way be construed as an extension of credit by Capital Provider to EIC. In the event of an insolvency of EIC, EIC shall not claim any such Benefit Assessment or its related Benefit Assessment Lien as an asset of its estate, the parties hereto acknowledging that their intent is to treat assignment as a transfer of EIC's right, title and interest in and to any such Benefit Assessment and its related Benefit Assessment Lien as they relate to the Property.
- (h) *Counterparts.* With respect to each of this Assignment Agreement, the Notice and any of the other documents to be delivered pursuant to this 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 Assignment Agreement and the limitations of liability contained in Section 8 of this Assignment Agreement shall survive the termination of this Assignment 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 ASSIGNMENT AGREEMENT, ANY OF THE 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 ASSIGNMENT AGREEMENT, ANY SPECIFICATION OR THE FINANCING DOCUMENTS. IN THE EVENT OF LITIGATION, THIS ASSIGNMENT AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

- (l) *Limitation on Recourse.* All liabilities and obligations of (i) EIC under this Assignment Agreement are subject and limited to the funding available under New York law, and (ii) Capital Provider under this Assignment 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.
- (m) *Term.* The term of this Assignment Agreement shall commence upon the date first written above. Except for those obligations that by their express terms survive the termination hereof, this Assignment Agreement shall be in full force and effect until the Benefit Assessment has been paid in full or is deemed no longer outstanding and a Satisfaction and Release of Benefit Assessment Lien has been filed by EIC, on behalf of the Municipality, in the land records for the Municipality evidencing such release.
- (n) *Freedom of Information Law.* EIC is a “public agency” for purposes of the New York Freedom of Information Law (“FOIL”). This Assignment Agreement and information received pursuant to this Assignment 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 (i) EIC has no obligation to notify Capital Provider of any FOIL request it receives, (ii) 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, (iii) 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,

(iv) Capital Provider will have the burden of establishing the availability of any FOIL exemption in any such legal proceeding, and (v) 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.

[Signature pages follow.]

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

ENERGY IMPROVEMENT CORPORATION

By: _____
Name: Susan Morth
Title: CEO

[CAPITAL PROVIDER]

By: _____
Name: _____
Title: _____

EXHIBIT A TO
ASSIGNMENT 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: Sarah Smiley

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 _____, 20__

[SIGNATURE PAGES TO FOLLOW]

Acknowledged and Agreed:

PROPERTY OWNER:

[PROPERTY OWNER NAME]

By: _____

[Property Owner Name]

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

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

Attachment 1 to Certificate of Levy - Property Description

Attachment 2 to Certificate of Levy - Payment Schedule

EXHIBIT B TO
ASSIGNMENT AGREEMENT

FORM OF ASSIGNMENT OF BENEFIT ASSESSMENT LIEN

Record and return to:

Energy Improvement Corporation
2875 Route 35
Katonah, NY 10536
Attn: Sarah Smiley

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 “Capital Provider”), 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 Capital Provider, 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 Capital Provider, and the Capital Provider 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 _____, 20__.

[SIGNATURE PAGES TO FOLLOW]

ASSIGNOR:

ENERGY IMPROVEMENT CORPORATION

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

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

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

Acknowledged and Agreed:

[CAPITAL PROVIDER]

BY: _____
[Capital Provider]

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

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

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

EXHIBIT C TO
ASSIGNMENT AGREEMENT

**FORM OF CONFIRMATION AND AMENDMENT OF
BENEFIT ASSESSMENT LIEN AND PAYMENT SCHEDULE**

Record and return to:

Energy Improvement Corporation
2875 Route 35
Katonah, NY 10536
Attn: Sarah Smiley

CONFIRMATION AND AMENDMENT OF
BENEFIT ASSESSMENT LIEN AND PAYMENT SCHEDULE

_____ (the “*Capital Provider*”), located at [Capital Provider Address], and _____ (the “*Borrower*”), located at [Borrower Address], are parties to that certain Finance Agreement dated as of __20__, as may be amended (the “*Finance Agreement*”).

Pursuant to the Finance Agreement, the Borrower has renovated or retrofitted the property located at __ New York (the “*Property*”), in accordance with the requirements of the Program for which Capital Provider has provided the financing for through the Benefit Assessment Advance in the amount of \$ _____, which Benefit Assessment Advance has been converted into a Benefit Assessment against the Property; and

The Borrower is obligated to make benefit assessment payments required by that certain Certificate of Levy and Lien of Benefit Assessment (the “*Benefit Assessment Lien*”) dated _____, 20__ and filed by EIC, on behalf of [Municipality] (the “*Municipality*”) and recorded in the Land Records for the Municipality in Volume __ at Page __; which Benefit Assessment Lien was assigned by EIC, on behalf of the Municipality, to Capital Provider pursuant to that certain Assignment of Benefit Assessment Lien dated _____, 20__ and recorded in the Land Records for the Municipality in Volume __ at Page _____.

Pursuant to the Finance Agreement, the Benefit Assessment Lien shall be repaid in accordance with the installment payment plan attached hereto as Schedule 1 (the “*Payment Schedule*”). The Payment Schedule is based on the principal amount of the Benefit Assessment of \$ __, including any capitalized interest or any additional fees and expenses pursuant to the Finance Agreement, with interest thereon at the rate set forth in the Finance Agreement and with installments of principal and interest coming due as set forth in the Payment Schedule.

Except as amended and modified hereby, the Finance Agreement and the Benefit Assessment Lien shall continue unmodified and in full force and effect and each is hereby ratified and confirmed.

The filing of this Confirmation and Amendment 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 Confirmation and Amendment shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the [Municipality].

Acknowledged and Agreed:

this ___ day of _____, 20__

Property Owner

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

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

Schedule 1 to
Confirmation and Amendment of Benefit Assessment Lien
Payment Schedule

EXHIBIT D TO
ASSIGNMENT AGREEMENT

FORM OF SATISFACTION AND RELEASE OF BENEFIT ASSESSMENT LIEN

Record and return to:

Energy Improvement Corporation
2875 Route 35
Katonah, NY 10536
Attn: Sarah Smiley

SATISFACTION AND RELEASE OF BENEFIT ASSESSMENT LIEN

Energy Improvement Corporation, a local development corporation formed under the laws of the State of New York (“EIC”), located at 2875 Route 35, Katonah, NY, 10536, 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 (the “Enabling Act”) 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__, having filed a Certificate of Levy and Lien of Benefit Assessment against the property of [Property Owner], on the ___ day of _____, 20__ in the land records of _____, Book _____ page _____ on the following described real property in _____, New York in the amount of \$ _____ :

[Property description]

NOW, THEREFORE, the undersigned does hereby acknowledge satisfaction of the Lien of Benefit Assessment and does direct the Clerk of the [County/City/Town/Village] to release, cancel and discharge the Benefit Assessment Lien in accordance with the Enabling Act and the Local Law.

The filing of this Satisfaction and Release of Benefit Assessment Lien 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 _____, 20__.

[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 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

Acknowledged and Agreed:

this ____ day of _____, 20____

[Property Owner]

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

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