

MUNICIPAL AGREEMENT

BETWEEN

ENERGY IMPROVEMENT CORPORATION

AND

[PARTICIPATING MUNICIPALITY]

RELATING TO

ENERGIZE NY OPEN C-PACE FINANCING PROGRAM

DATED AS OF _____, 20__

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ENERGY IMPROVEMENT CORPORATION
MUNICIPAL AGREEMENT (OPEN C-PACE)

This Agreement made as of this ___ day of _____, 2020 (the “*Agreement*”), by and between [County/City/Town/Village], a municipal corporation organized and existing under the laws of the State of New York (the “*Participating Municipality*”) and the Energy Improvement Corporation, a local development corporation formed under the laws of the State of New York (“*EIC*”) (both the Participating Municipality and EIC may hereinafter be referred to individually as a “*Party*” and collectively as the “*Parties*”), sets forth the duties and obligations of each Party in connection with the Participating Municipality’s participation in the Energize NY Open C-PACE Financing Program (“*Open C-PACE*” or the “*Program*”), as more fully described herein. Capitalized terms used herein, unless otherwise defined herein, have the meanings assigned to them in Section 1 herein.

WHEREAS, EIC has established the Program as a sustainable energy financing program pursuant to the Enabling Act through which the member municipalities, including the Participating Municipality, may levy charges against Qualified Properties within the Participating Municipality for the purpose of promoting, facilitating and financing clean energy improvements to Qualified Properties, thereby promoting the public good by reducing greenhouse gas emissions, mitigating the effect of global climate change and lessening the burdens of government;

WHEREAS, the Participating Municipality has adopted the Local Law authorizing the provision of financing through Open C-PACE to Qualified Properties within its geographical boundaries and has authorized EIC to act on its behalf to effectuate Open C-PACE within the Participating Municipality; and

WHEREAS, EIC wishes to provide for the terms and conditions pursuant to which the Participating Municipality will participate in Open C-PACE.

Now, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1. Definitions.

“Annual Installment Amount” means, with respect to each Benefited Property, the amount of the Benefit Assessment to be repaid by the Benefited Property Owner in installments made at least annually, in accordance with the schedule attached to the Finance Agreement for such Benefited Property. The Annual Installment Amount may be adjusted to reflect any Financing Charges as provided in Section 4(d) of this Agreement.

“Authority” means The New York State Energy Research and Development Authority, as defined by subdivision two of section 1851 of the Public Authorities Law of the State, or its successor.

“Benefit Assessment” means, as of the date a Finance Agreement is executed, the charge assessed against the Qualified Property, as such assessment may be modified pursuant to Section 4(d) of this Agreement, and as otherwise provided in the Finance Agreement.

“Benefit Assessment Lien” means a lien which evidences a Benefit Assessment and is recorded by EIC, on behalf of the Participating Municipality, on the land records against a Benefited Property.

“Benefited Property” means a Qualified Property for which the Qualified Property Owner has entered into a Finance Agreement for a Qualified Project.

“Benefited Property Owner” means the owner of record of a Benefited Property meeting requirements for participation in the Program as an owner.

“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.

“Eligible Costs” means costs incurred by the Benefited Property Owner in connection with a Qualified Project and the related Finance Agreement, including application fees, EIC’s Program administration fee, closing costs and fees, title and appraisal fees, professionals’ fees, permits, fees for design and drawings and any other related fees, expenses and costs, in each case as approved by EIC and the Financing Party under the Finance Agreement

“Enabling Act” means Article 5-L of the General Municipal Law of the State, or a successor law, as in effect from time to time.

“Energy Audit” is defined to have the meaning assigned thereto in the Enabling Act, as amended from time to time.

“Energy Efficiency Improvement” is defined to have the meaning assigned thereto in the Enabling Act, as amended from time to time.

“Finance Agreement” means a written agreement between a Financing Party and a Qualified Property Owner for the financing of a Qualified Project on the Qualified Property to which EIC, on behalf of the Participating Municipality, shall be a third-party beneficiary.

“Financing Charges” means all charges, fees and expenses related to the Loan including accrued interest, capitalized interest, prepayment premiums and penalties as a result of a default or late payment and costs and reasonable attorneys’ fees incurred by the Financing Party as a result of a foreclosure or other legal proceeding brought against the Benefited Property to enforce any delinquent Annual Installment Liens.

“Financing Party” means any third-party capital provider approved by EIC to provide financing to Qualified Property Owners or other financial support to Open C-PACE which has entered into an agreement with EIC to administer Open C-PACE in the Participating Municipality.

“Loan” means a loan made by a Financing Party to a Qualified Property Owner for a Qualified Project pursuant to Open C-PACE.

“Local Law” means Local Law No. ____ of 20__ pursuant to Municipal Home Rule Law and the Enabling Act, authorizing the provision of financing through the Energize NY Open C-PACE Financing Program.

“Municipal Lien” means a lien on Benefited Property which secures the obligation to pay real property taxes, municipal charges or governmentally imposed assessments in respect of services or benefits to a Benefited Property.

“Non-Municipal Lien” means a lien on Benefited Property which secures any obligation other than the obligation to pay real property taxes, municipal charges, or governmentally-imposed assessments in respect of services or benefits to a Benefited Property Owner or Benefited Property.

“Policies and Procedures” shall have the meaning assigned thereto in Section 3(a)(ii) of this Agreement.

“Qualified Project” means the acquisition, construction, reconstruction or equipping of Energy Efficiency Improvements or Renewable Energy Systems or other projects authorized under the Enabling Act on a Qualified Property, together with a related Energy Audit, Renewable Energy System Feasibility Study and/or other requirements under or pursuant to the Enabling Act, with funds provided in whole or part by Financing Parties under the Program to achieve the purposes of the Enabling Act.

“Qualified Property” means any real property, other than a residential dwelling containing less than three dwelling units, located within the boundaries of the Participating Municipality that has been determined to be eligible to participate in the Program under the procedures for eligibility set forth under this Agreement, the Local Law and the Enabling Act and has become the site of a Qualified Project.

“Qualified Property Owner” means the owner of record of a Qualified Property meeting requirements for participation in the Program as an owner.

“Renewable Energy Systems” is defined to have the meaning assigned thereto in the Enabling Act, as amended from time to time.

“Renewable Energy System Feasibility Study” is defined to have the meaning assigned thereto in the Enabling Act, as amended from time to time.

“RPTL” means the Real Property Tax Law of the State, as amended from time to time.

“State” means the State of New York.

2. Representation and Warranties of the Parties.

(a) EIC.

(i) EIC hereby represents that it 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 Loans to Qualified

Property Owners and providing for repayment of the Loans from monies collected by or on behalf of the Participating Municipality as a Benefit Assessment.

- (ii) EIC represents and warrants that it has complied with all laws and regulations concerning its organization, its existence and the transaction of its business and that all necessary steps have been taken to authorize it to execute, deliver and perform its respective obligations under this Agreement, and no consent or approval of any third-party is required for EIC's execution of this Agreement or the performance of its obligations contained herein. The individual executing this Agreement on behalf of EIC has been and is duly authorized to bind EIC.

(b) Participating Municipality.

- (i) *Authority.* The Participating Municipality is a municipal corporation, constituting a tax district as defined in Section 1102 of the RPTL of the State, duly organized and existing under the laws of the State and has full legal right, power and authority to (i) adopt the Local Law, (ii) assess, collect, remit and assign Benefit Assessments for Benefited Properties located within its geographical boundaries, (iii) levy Benefit Assessment Liens against Benefited Properties located within its geographical boundaries, (iv) conduct its business and own its properties, (v) enter into this Agreement and to comply with its terms, and (vi) carry out and consummate, by contract or otherwise, all other transactions contemplated by its participation in Open C-PACE.
- (ii) *Adoption of Local Law.* The Participating Municipality has on ____ adopted the Local Law authorizing the provision of financing through Open C-PACE to Qualified Properties for Qualified Projects.
- (iii) *Approvals and Consents.* The Participating Municipality has duly approved the execution and delivery of this Agreement and approved implementation of Open C-PACE by EIC and has authorized EIC to act on its behalf in effectuating Open C-PACE; and any and all consents, authorizations and approvals of any third-party required with respect thereto have been obtained.
- (iv) *Capacity.* The Participating Municipality has the legal, institutional, managerial, technical, contractual and financial capability to (a) ensure adequate and timely assessment and collection of property taxes in the Participating Municipality, (b) levy and record Benefit Assessment Liens on Benefited Properties within its geographical boundaries, and (c) assign or authorize EIC, on its behalf, to assign the Benefit Assessment Liens to third-party capital providers in connection with the financing of Qualified Projects.

- (v) *Binding Obligation.* This Agreement has been duly authorized, executed and delivered by the Participating Municipality and constitutes a legal, valid and binding obligation of the Participating Municipality except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and the application of general principles of equity by a court of competent jurisdiction (whether in an action of law or a proceeding in equity); the defense of sovereign immunity is not available to the Participating Municipality in any proceedings by EIC to enforce any of the obligations of the Participating Municipality under this Agreement.
- (vi) *No Action.* There is no claim, action, suit, litigation, proceeding, arbitration, inquiry or investigation of any kind, at law or in equity, before or by any court, public board or body, pending or known to be threatened against the Participating Municipality, nor is there any basis therefore, (i) affecting the creation, organization or existence of the Participating Municipality or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin or in any way contest the execution of this Agreement, the Finance Agreement or any other agreement entered into in connection with the Participating Municipality's participation in the Program, or (iii) seeking to prohibit, restrain, enjoin or in any way contesting or affecting the validity or enforceability of the Local Law, this Agreement or any agreement or instrument relating to any of the foregoing or used or contemplated for use in the consummation of the transactions contemplated by any of the foregoing.
- (vii) *No Material Default.* The Participating Municipality is not in material default under any finance agreement, note, bond, mortgage or other instrument evidencing or securing indebtedness of the Participating Municipality. The execution and delivery of this Agreement, and the adoption of the Local Law and compliance with the respective provisions hereof and thereof, will not conflict with or constitute a breach of or material default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any agreement or other instrument to which the Participating Municipality is a party or by which it or any of its property is bound.

3. Obligations of EIC.

It is understood by the Parties that EIC will be responsible for the performance of the following duties:

- (a) Program Requirements.
 - (i) The establishment and administration of Open C-PACE to provide financing to Qualified Properties within the Participating Municipality in

order to promote, facilitate and finance Qualified Projects in accordance with the terms of the Local Law and this Agreement.

- (ii) Receive and review (or provide for the review of) applications submitted by Qualified Property Owners within the Participating Municipality for the financing of Qualified Projects, and the approval or disapproval of such applications in accordance with the Authority's guidelines, any restrictions imposed by the Participating Municipality, and the policies and procedures adopted by EIC with respect to Open C-PACE (the "*Policies and Procedures*"). The governing Board of EIC reserves the right to reject an application for financing for any reason.
- (iii) Prepare and deliver to the Participating Municipality by February 15th of each calendar year an annual report (the "*Annual Report*") which shall contain information related to each Benefited Property within the Participating Municipality through December 31st of the immediately preceding calendar year, identified in the Annual Report by address and Tax Map Identification (i.e. section, block and lot) including:
 - A. A list of each Benefited Property for which a Qualified Property Owner executed a Finance Agreement during the prior calendar year (for which a Benefit Assessment Lien was added by EIC, on behalf of the Participating Municipality, to its land records in accordance with Section 3(d) below);
 - B. A list of each Benefited Property within the Participating Municipality where the Benefit Assessment and all obligations under the related Finance Agreement have been satisfied or paid in full during the prior calendar year, including the satisfaction date and a copy of the notice of satisfaction;
 - C. The total Annual Installment Amount paid to each Financing Party for each Benefited Property in the Participating Municipality during the prior calendar year;
 - D. For each Benefited Property with an outstanding Benefit Assessment, (i) the Annual Installment Amount collected in the current year, (ii) any amount of the Annual Installment Amount due and remaining uncollected in the current year, including any Financing Charges, and (iii) the Annual Installment Amount due to be collected in the following calendar year; and
 - E. All other information EIC may deem to be relevant to each Benefited Property within the Participating Municipality.

(b) Qualified Project Requirements.

If a Qualified Property Owner requests financing from EIC under the Program, EIC shall:

- (i) Require performance of an Energy Audit or Renewable Energy System Feasibility Analysis on the Qualified Property that assesses the expected energy cost savings of the Energy Efficiency Improvements or Renewable Energy Systems over the useful life of such Energy Efficiency Improvements and/or Renewable Energy Systems before approving such financing;
 - (ii) Impose requirements and criteria to ensure that the proposed Energy Efficiency Improvements or Renewable Energy Systems are consistent with the purpose of the Program;
 - (iii) Require that the Qualified Property Owner obtain the consent of any existing holder of a mortgage on the Qualified Property substantially in the form of Exhibit C attached hereto, prior to the recording of a Benefit Assessment Lien against the Qualified Property;
 - (iv) Receive the certificates of completion executed by the Benefited Property Owner or its duly authorized representative during or following installation or construction of the Qualified Project to determine compliance with the Policies and Procedures; and
 - (v) Verify and report to the Participating Municipality on the installation and performance of Renewable Energy Systems and Energy Efficiency Improvements financed by the Program.
- (c) Finance Agreement for Qualified Project. The Financing Party and the Qualified Property Owner shall enter into a Finance Agreement for the Qualified Project which shall set forth the terms and conditions for the disbursement and repayment of the Loan and the duties and obligations of the parties with respect to the acquisition, construction and installation of the Qualified Project. EIC, on behalf of the Participating Municipality, shall be a third-party beneficiary to the Finance Agreement. The Finance Agreement shall state (a) the legal description of the Benefited Property, (b) the total Benefit Assessment that will be levied against the Benefited Property which shall include the cost of the Qualified Project together with any Eligible Costs and Financing Charges approved by EIC and by the Financing Party, (c) the fixed rate of interest on the Loan, and (d) a schedule of the Annual Installment Amounts due in each year of the Loan. Additionally, the Finance Agreement shall disclose the Financing Charges and risks associated with participation in the Program, including the risk of foreclosure in case of nonpayment of any Annual Installment Amount. Upon execution of the Finance Agreement by the Financing Party and the Qualified Property Owner, the property

that is the subject of the Finance Agreement shall be deemed a “Benefited Property.”

(d) Levy and Recording of Benefit Assessment Lien.

(i) Upon execution of a Finance Agreement, EIC, on behalf of the Participating Municipality, shall promptly record the Benefit Assessment Lien against the Benefited Property in the land records for properties in the Participating Municipality. The Benefit Assessment Lien shall be substantially in the form of Exhibit A to this Agreement and include a legal description of the Benefited Property and a schedule of the Annual Installment Amounts due in each year of the Loan. There shall be no charge, mortgage recording tax or other fee for recording the Benefit Assessment Lien on the land records for the Participating Municipality in the same manner as if recorded by the Participating Municipality. As provided in the Enabling Act and the Local Law, the Benefit Assessment levied pursuant to this Agreement and the interest, fees and any penalties thereon shall constitute a lien against the Benefited Property on which they are made until they are paid. The Benefit Assessment shall be payable by the Benefited Property Owner in Annual Installment Amounts as provided in the Finance Agreement. Only delinquent Annual Installment Amounts that are due and owing may be subject to enforcement.

(ii) Pursuant to the Finance Agreement, the final amount of the Benefit Assessment may be adjusted after the recording of the Benefit Assessment Lien on the land records for the Participating Municipality. Such an adjustment would likely be the result of a change in the energy improvement service contract amount during the construction period, additional Financing Charges, or an amendment to the Finance Agreement. In the event that the final Benefit Assessment needs to be adjusted at the completion of the Qualified Project, or any other time, EIC, on behalf of the Participating Municipality, will record the new Benefit Assessment Lien on the land records to reflect such adjustment, together with a new schedule of Annual Installment Amounts. Such recording of the new Benefit Assessment Lien against the Benefited Property shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the Participating Municipality.

(e) Annual Installment Liens.

(i) As provided in the Local Law, 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. Payment to the Financing Party shall be considered payment for this purpose. Delinquent Annual Installment Amounts may accrue Financing Charges as may be provided in the Finance Agreement. Any additional

Financing Charges imposed by the Financing Party pursuant to the Finance Agreement shall increase the Annual Installment Amount and the Annual Installment Lien for the year in which such overdue payments were first due.

- (ii) The Benefit Assessment Lien shall be automatically reduced annually by the amount of each Annual Installment Lien when each Annual Installment Lien becomes a lien. Each Annual Installment Lien shall be subordinate to all Municipal Liens, whether created by Section 902 of the RPTL or any other State or Local Law. No Annual Installment Amount shall be recovered by the Participating Municipality, EIC, or any assignee upon foreclosure, sale or other disposition of the Benefited Property unless and until all Municipal Liens are fully discharged. Each Annual Installment Lien, however, shall have priority over all Non-Municipal Liens, irrespective of when created, except as otherwise required by law.
 - (iii) Neither the Benefit Assessment Lien nor any Annual Installment Lien shall be extinguished or accelerated in the event of a default or bankruptcy of the Benefited Property Owner. Each Annual Installment Amount shall be considered a charge upon the Benefited Property and shall be collected by EIC, on behalf of the Participating Municipality, at the same time and in the same manner as real property taxes or municipal charges. Each Annual Installment Lien shall remain a lien until paid. Amounts collected in respect of an Annual Installment Lien shall be remitted to EIC or the Financing Party, as may be provided in the Finance Agreement.
- (f) Final Payment and Release. Upon notice from the Financing Party that the Benefit Assessment has been satisfied and paid in full, together with all Eligible Costs and Financing Charges provided under the Finance Agreement, EIC, on behalf of the Participating Municipality, will execute a Satisfaction and Release of Benefit Assessment Lien (the “Release”) substantially in the form attached hereto as Exhibit D, and record the Release on the land records for the Participating Municipality. There shall be no charge, mortgage recording tax or other fee for recording the Release on the land records for the Participating Municipality in the same manner as if recorded by the Participating Municipality.
- (g) Billing and Collection of Annual Installment Amounts.
- (i) The Finance Agreement shall provide for the repayment of the Benefit Assessment in Annual Installment Amounts. EIC will act as the Participating Municipality’s agent in the billing and collection of the Benefit Assessment for each Benefited Property listed in the Annual Report in accordance with the related Finance Agreement.
 - (ii) In the event of a default in payment of any Annual Installment Amount for a Benefited Property, EIC agrees to take at least the following steps to

collect the delinquent Annual Installment Amount on behalf of the Participating Municipality:

- A. Mail a written notice of delinquency and demand for payment to the Benefited Property Owner by both certified mail, return receipt requested, and first class mail; and
- B. Mail a second notice of delinquency to the Benefited Property Owner by both certified mail, return receipt requested, and first class mail at least 30 days after the date of the first notice if the delinquency is continuing.

(iii) If the Benefited Property Owner fails to cure the delinquency within 30 days after the mailing of the second notice of delinquency, then the Financing Party may redeem the Benefited Property and pursue collection of the delinquent Annual Installment Amounts as provided in paragraph (h) of this Section 3.

(h) Collection of Delinquent Payments.

(i) If any Benefited Property Owner fails to pay an Annual Installment Amount, the Financing Party may redeem the Benefited Property by paying the amount of all unpaid Municipal Liens thereon, and thereafter have the right to collect any amounts in respect of an Annual Installment Lien by foreclosure pursuant to the RPTL or any other remedy available at law.

(ii) EIC shall provide written notice to the Participating Municipality of the institution of a judicial foreclosure or other proceeding against any Benefited Property located within the Participating Municipality for payment of delinquent Annual Installment Amounts.

4. Obligations of the Participating Municipality.

(a) Appointment of EIC as Agent. The Participating Municipality hereby appoints EIC to act as its agent in the administration of the Open C-PACE Program within the Participating Municipality and in its dealings with Financing Parties, Qualified Property Owners and Benefited Property Owners. EIC is authorized on behalf of the Participating Municipality to levy and record the Benefit Assessment Lien, any amendments or assignments thereof and the Release in the land records for properties in the Participating Municipality without charge, and to take any reasonable actions in the performance of its duties hereunder.

(b) Assignment of Benefit Assessment Lien.

(i) The Participating Municipality authorizes EIC, on its behalf, to sell or assign any and all Benefit Assessment Liens and Annual Installment Liens to a Financing Party that provides financing to a Qualified Property pursuant to a Finance Agreement. The Assignment of Benefit Assessment Lien shall

be in substantially the form attached hereto as Exhibit B, and shall be filed by EIC, on behalf of the Participating Municipality, in the land records for the Participating Municipality at the same time as the Benefit Assessment Lien.

The Financing Party may sell or assign for consideration any and all Benefit Assessment Lien and Annual Installment Liens received from EIC, on behalf of the Participating Municipality, subject to certain conditions provided in the administration agreement between EIC and the Financing Party. Any such assignment shall be in a form acceptable to EIC, and shall be filed by the Financing Party or, at its request and upon indemnification, by EIC, on the land records for the Participating Municipality. The assignee or assignees of such Benefit Assessment Liens and Annual Installment Liens shall have and possess the same powers and rights at law or in equity as EIC would have had if the Benefit Assessment Lien and Annual Installments Liens had not been assigned with regard to the precedence and priority of such lien, the accrual of interest and the fees and expenses of collection. There shall be no charge, mortgage recording tax or other fee for recording of any assignment on the land records for the Participating Municipality if filed by EIC, in the same manner as if recorded by the Participating Municipality.

(c) Notices.

- (i) Within 10 days of EIC's request, the Participating Municipality will provide written notice to EIC of any delinquency in the payment of real property taxes by a Benefited Property Owner if the Benefited Property is subject to a Benefit Assessment Lien.
- (ii) The Participating Municipality will also provide written notice to EIC of any sale or assignment of its real property taxes or any institution of a judicial foreclosure or other proceeding against any Benefited Property for delinquent real property taxes if such Benefited Property is subject to a Benefit Assessment Lien.

(d) Promotion of Program; Assistance to EIC; Modification of Program.

- (i) The Participating Municipality shall use good faith efforts to assist EIC in local marketing efforts and outreach to the local business community to encourage participation in the Program such as including Program information on the Participating Municipality's website.
- (ii) The Participating Municipality shall use good faith efforts to assist in gathering and providing information for EIC to administer the Program.
- (iii) Except with respect to Qualified Properties for which an application has previously been submitted, the Participating Municipality may at any time modify Open C-PACE by changing the types of properties that may receive financing for Qualified Projects. The Participating Municipality shall

provide written notice to EIC of such proposed modification. The proposed modification shall only become effective upon written approval from EIC provided to the Participating Municipality, which shall not be unreasonably withheld. Such approval shall have no effect on the duties and obligations owed by each Party hereto in connection with this Agreement and any Benefited Property for which a Finance Agreement was executed prior thereto.

5. Indemnification

EIC agrees that it will protect, defend, indemnify and hold harmless the Participating Municipality and its officers, agents and employees from and against all claims, demands, causes of action, damages, judgments, losses and expenses, including reasonable attorney's fees, arising out of or in connection with the negligent actions of EIC's officers, employees and agents under this Agreement. This provision shall survive termination of this Agreement.

6. Term.

The term of this Agreement shall commence upon the date first written above. This Agreement shall be in full force and effect until all of the Benefit Assessments for Benefited Properties in the Participating Municipality have been paid in full or deemed no longer outstanding. The Participating Municipality may opt-out of continuation in the program at any time on sixty (60) days advance notice to EIC, provided that the provisions of this Agreement shall continue with regard to Benefit Assessments assessed prior to such termination date until the Benefit Assessments have been paid in full or are no longer outstanding.

7. Default.

Each Party shall give the other Party written notice of any breach of any covenant or agreement under this Agreement and shall allow the defaulting Party 30 days from the date of its receipt of such notice within which to cure any such default or, if it cannot be cured within 30 days, to commence and thereafter diligently pursue to completion, using good faith efforts to effect such cure and to thereafter notify the other Party of the actual cure of any such default. The Parties shall have all other rights and remedies provided by law, including, but not limited to, specific performance, provided, however, in no event shall either Party have the right to terminate this Agreement prior to the expiration of the Term, except as provided in accordance with Section 6 of this Agreement.

8. Remedies Upon Default.

Should the Participating Municipality default in any of its obligations hereunder, EIC shall be entitled to any remedy it may have at law and as set forth below. EIC may utilize any one or all of these remedies at EIC's sole discretion:

- (a) EIC may sue the Participating Municipality for specific enforcement of this Agreement;

- (b) EIC shall have the right to discontinue providing any new financings to Qualified Properties located within the Participating Municipality.
- (c) EIC may suspend the Participating Municipality's membership in EIC.
- (d) EIC shall have all other rights and remedies provided by law.

9. Miscellaneous.

(a) Assignment or Transfer.

Except as provided in Section 4(b) hereof, neither Party may assign or transfer its rights or obligations under this Agreement to another unit of local government, political subdivision or agency of the State or to a private party or entity without the prior written consent of the other Party.

(b) Severability.

If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

(c) Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

(d) Notices.

Any and all notices, demands, or other communications required or desired to be given hereunder by either Party shall be delivered electronically and in writing by certified mail, return receipt requested as follows:

EIC:

Susan Morth
CEO
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

With a copy to:

Anna Lee, Esq.
Partner
Norton Rose Fulbright US LLP
1301 Avenue of the Americas
New York, New York 10019
E-mail: anna.lee@nortonrosefulbright.com

PARTICIPATING MUNICIPALITY:

[Municipality's Primary Contact Name and Address]

With a copy to:

[Participating Municipality's counsel]

Either Party hereto may change its address for purposes of this Section by providing written notice to the other Party in the manner provided above.

(e) Amendment and Waivers.

Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed to by EIC and the Participating Municipality.

(f) Governing Law.

This Agreement shall be construed and governed in accordance with the laws of the State of New York. Any legal action to be brought under this Agreement must be instituted in State or Federal Courts having jurisdiction located in Westchester County, New York.

(g) Entire Agreement.

This instrument constitutes the entire agreement between the Parties with respect to the Open C-PACE Program and supersedes all previous discussions, understandings and agreements between the Parties relating to the Open C-PACE Program.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first written above.

Date: _____, 20__

ENERGY IMPROVEMENT CORPORATION

By: _____

Name:

Title:

Date: _____, 20__

PARTICIPATING MUNICIPALITY NAME:

By: _____

Name:

Title:

EXHIBIT A

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 “Participating Municipality”) pursuant to Article 5-L of the General Municipal Law of the State of New York and the Local Law adopted by the Participating Municipality establishing the Energize NY Open C-PACE Financing Program in the Participating Municipality, and the Municipal Agreement between the Participating 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 Participating 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 Participating 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 Participating Municipality against the Benefitted 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 Participating Municipality, in the land records for the Participating 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 Participating Municipality on real property, municipal charges, or governmentally imposed assessments in respect of services or benefits to the 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__, 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. _____, 20__
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- Property Description

Attachment 2- Payment Schedule

EXHIBIT B

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 _____, attached hereto 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__, 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]

Attachment 1- Property Description

EXHIBIT C

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 described in the Notice 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:

A. 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.

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

C. 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.

D. 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: [Name of Mortgage Holder]

By: _____

Name:

Title:

EXHIBIT D

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 “Participating 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 Participating Municipality establishing the Energize NY Open C-PACE Financing Program in the Participating Municipality, and the Municipal Agreement between the Participating 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 is done pursuant to the Local Law No. ___ of 20__, 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 Satisfaction and Release 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:

this ____ day of _____, 20____

[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

