

COLLECTION AGREEMENT

This PACE CHARGE COLLECTION AGREEMENT (this “Agreement”) is made and entered into as of this _____ day of _____, 20____, by and among **The City of New York**, a municipal corporation organized under the laws of the State of New York, acting by and through the Department of Finance (the “City”), the **New York City Energy Efficiency Corporation** (“NYCEEC”), a not-for-profit corporation incorporated under the laws of the State of New York, acting as Administrator (as defined herein), [**BORROWER**], a [STATE] [ENTITY TYPE] (the “Borrower”), and [**LENDER**], a [STATE] [ENTITY TYPE] (together with its successors and assigns, the “Lender”).

RECITALS

1. Whereas, a Property Assessed Clean Energy (“PACE”) program is a program to facilitate loan financing for energy efficiency improvements and renewable energy systems to private properties by utilizing a state or local tax assessment mechanism to provide security for repayment of such loans.

2. Whereas, pursuant to New York General Municipal Law, Section 119-gg (“GML 119-gg”), the legislative body of any municipal corporation may, by local law, establish a sustainable energy loan program pursuant to which such program may make loans to the owners of real property located within the municipal corporation to finance the installation of renewable energy systems and energy efficiency improvements, related energy audits and renewable energy system feasibility studies and the verification of the installation of such systems and improvements.

3. Whereas, pursuant to Title 11, Chapter 30 of the New York City Administrative Code (the “PACE Local Law”), the City has so established a commercial PACE loan program (the “Program”);

4. Whereas, pursuant to a contract, dated as of _____, between the City and NYCEEC (the “Administration Agreement”), the City has appointed NYCEEC (along with its successors and assigns, the “Administrator”) to implement and manage certain aspects of the Program on behalf of the City.

5. Whereas, pursuant to a certain Master Lender Agreement, dated as of [DATE] (the “Master Lender Agreement”, attached hereto as Schedule I), by and between the Administrator and the Lender, the Lender shall make loans to property owners to pay for projects authorized by the Program (each such loan, a “Loan”).

6. Whereas, the Borrower owns real property located within the confines of New York City, commonly referred to as [ENTER ADDRESS], and more particularly described in Exhibit A attached hereto and incorporated herein (the “Property”). In accordance with the requirements of the Program, the Borrower proposes to [a short description of the project] (the “Project”) and has applied to the Lender for a Loan to finance the Project.

7. Whereas, the Lender has provided a Lender certification to the Administrator pursuant to the PACE Financing Documents and the Lender and Borrower have subsequently memorialized the related financing in that certain Program Financing Agreement, dated [DATE], by and between

the Borrower and the Lender and attached hereto as Exhibit B (the “Program Financing Agreement”).

8. Whereas, pursuant to GML 119-gg and the PACE Local Law, the City is authorized to assess and levy (i) charges against the Property (each such charge a “PACE Charge”) as per the “PACE Charge Payment Schedule” (as defined herein) representing payments due on the Loan made to the Borrower and (ii) such interest and fees assessed on such PACE Charges as provided for herein, and to remit such amounts collected by the City to the Lender.

9. Whereas, the Administrator, the City, the Borrower and the Lender (each a “Party” and collectively, the “Parties”) wish to enter into this Agreement to delineate their respective rights and obligations concerning the collection and remittance of the PACE Charges (and any interest thereon) collected in connection with the Project and such other matters as are set forth herein.

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

Section 1. Defined Terms. Whenever used in this Agreement, including hereinabove set forth, the following words and phrases, unless the context otherwise requires, shall have the meanings specified in this Section 1. Capitalized terms used but not defined herein have the meanings set forth in the “PACE Rules”.

“Administration Agreement” has the meaning set forth in recital #4.

“Administrator” has the meaning set forth in recital #4.

“Amendment of PACE Charge Payment Schedule” has the meaning set forth in Section 5.

“Borrower” has the meaning set forth in the preamble hereof.

“Business Day” means the hours from, and including, 9:00 a.m. to 4:00 p.m., Eastern time, Monday through Friday, other than the following days: (a) New Year’s Day, Dr. Martin Luther King, Jr. Day, Lincoln’s Birthday, Washington’s Birthday (celebrated on President’s Day), Memorial Day, the day before Independence Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans’ Day, the day before and after Thanksgiving Day, Thanksgiving Day, Christmas Eve, Christmas Day and New Year’s Eve; (b) a legal holiday in the State of New York; and (c) any other day on which the U.S. Federal Reserve Bank or commercial banks in New York State are authorized or required by law to close. For purposes hereof, if any day listed above as a day on which Lender is closed falls on a Sunday, such day is celebrated on the following Monday. If any day listed above as a day on which a bank is closed falls on a Saturday, such day is celebrated the preceding Friday.

“Certificate of Completion” has the meaning set forth in Section 8(f).

“City” has the meaning set forth in the preamble hereof.

“City Fiscal Year” means July 1 of each calendar year through and including June 30 of the succeeding calendar year.

“Collection Account” has the meaning set forth in Section 3(f).

“Corresponding Loan Amount” has the meaning set forth in Section 7(j).

“Days” means calendar days unless otherwise specifically noted to mean Business Days.

“Energy Data” means monthly data and other information concerning the energy performance of the Project and the property.

“Erroneous Payment” has the meaning set forth in Section 7(h).

“Erroneous Payment Return Deficiency” has the meaning set forth in Section 7(j).

“Lender” has the meaning set forth in the preamble hereof.

“Loan” has the meaning set forth in recital #5 hereof.

“Loan Term” means the period of time that begins on [DATE] and ends upon the satisfaction of all payment obligations under the PACE Financing Documents.

“Master Lender Agreement” has the meaning set forth in recital #5.

“Master Transfer and Remittance Agreement” means the agreement dated as of [DATE] among the City, the Administrator, the NYCTL 1998-2 Trust, and the Lender which establishes terms for (i) the collection and remittance of PACE Charge Liens that are transferred to and collected by the NYCTL 1998-2 Trust on behalf of the Lender and remitted to the Administrator for payment to the Lender or (ii) alternatively, the sale of PACE Charge Liens by the Lender to the NYCTL 1998-2 Trust.

“Notice to Commence Levy and Collection of PACE Charge” means the document provided by the Administrator to the City pursuant to the Administration Agreement that triggers the City’s obligations to levy, collect and disburse collected PACE Charges to the Administrator, a form of which is attached hereto as Exhibit C.

“PACE Charge” means the amount due on a Statement of Account, pursuant to the Program Financing Agreement, in furtherance of repayment of the Loan.

“PACE Charge Lien” means a lien upon the Property benefitted by a Loan due to the non-payment of a PACE Charge on a Statement of Account.

“PACE Charge Payment Schedule” has the meaning set forth in Section 2.

“PACE Charge Submission Deadline” means May 1 and November 1 of each City Fiscal Year.

“PACE Financing Documents” means this Agreement, the Master Lender Agreement, the Program Financing Agreement, the Master Transfer and Remittance Agreement and any and all other agreements, instruments or other documents evidencing and securing or executed in connection with the Loan.

“PACE Loan Notice” means a notice of PACE financing in the form attached hereto as Exhibit D.

“PACE Local Law” means §§11-3001 *et seq.* of the New York City Administrative Code.

“PACE Rules” means the City rules promulgated to implement the PACE Local Law.

“Payment Date” has the meaning set forth in Section 3(f).

“Payment Recipient” has the meaning set forth in Section 7(h).

“Program” has the meaning set forth in recital #3.

“Program Administrator Indemnitee” has the meaning set forth in Section 7(e).

“Program Financing Agreement” has the meaning set forth in recital #7.

“Program Guidelines” means the program guidelines governing the PACE Program published by the City, as may be amended, restated, modified or supplemented from time to time by the City.

“Program Requirements” means, collectively, GML 119-gg, the PACE Local Law, the PACE Rules and the Program Guidelines.

“Project” has the meaning set forth in recital #6.

“Property” has the meaning set forth in recital #6.

“Statement of Account” means the property tax bill issued to the Property by the Department of Finance.

“Term” has the meaning set forth in Section 8(o).

Section 2. Levy of PACE Charge.

(a) The Lender and the Borrower agree to the City (i) levying a PACE Charge against the Property; (ii) collecting the sum payable pursuant to such PACE Charge including any applicable fees and interest; and (iii) remitting such sum collected by the City to the Administrator, or its authorized assignee for the benefit of the Lender or, if there is no program administrator, to

the Lender directly.

(b) The PACE Charge payment schedule for the Loan as of the date hereof, which (i) has been provided by the Lender; (ii) covers the entirety of the Loan Term; and (iii) may be amended and replaced from time to time in accordance with the Master Lender Agreement, is attached hereto as Schedule II (the “PACE Charge Payment Schedule”). The Borrower and the Lender hereby represent and warrant to the City and the Administrator that such PACE Charge Payment Schedule is a true and accurate statement, as of the date hereof, of all Loan payments to be made by the Borrower pursuant to the Program Financing Agreement over the Loan Term.

(c) During the Loan Term, the City shall levy each PACE Charge against the Property, the sum of which amounts shall represent the total payments due under the Loan, in accordance with the PACE Charge Payment Schedule, as such schedule may be amended and replaced from time to time pursuant to Section 5 below.

(d) Each PACE Charge shall be levied and collected by the City in accordance with the following process:

- i. Prior to the levy of the initial PACE Charge, the Administrator shall issue to the City the “Notice to Commence Levy and Collection of PACE Charge”;
- ii. the Administrator will notify the City of the PACE Charge by no later than the PACE Charge Submission Deadline for the applicable period; and
- iii. upon receipt of such notice from the Administrator by the applicable PACE Charge Submission Deadline, the PACE Charge shall be placed by the City on the Statement of Account for the Property for the applicable period.

(e) Each PACE Charge shall be placed on the Property’s Statement of Account by the City as a separate, clearly identified line item.

(f) The Borrower agrees that each PACE Charge will be included on the Property’s Statement of Account and agrees to pay such PACE Charge and any interest and penalties thereon as they become due and payable as indicated by the Statement of Account.

(g) The amount and repayment of each PACE Charge are as follows: (i), the principal amount of the PACE Charge, with interest thereon at a rate equal to ____% per annum due and payable for the related period in accordance with the PACE Charge Payment Schedule; plus (ii) any additional fees and expenses agreed upon in the Program Financing Agreement; plus (iii) any interest amounts that accrue for delinquent payments pursuant to law, with installments of principal and interest due and payable pursuant to the PACE Charge Payment Schedule.

(h) As evidenced in the PACE Charge Payment Schedule, a PACE Charge will be included on the Statement of Account.

(i) In accordance with §11-3005(b) of the New York City Administrative Code, the PACE Rules and this Agreement, the City shall collect each PACE Charge in the same manner

that it collects the property taxes of the City on real property, including, without limitation, with respect to payment due dates.

Section 3. Statement of Account, PACE Charge Billing, Collections and Disbursements.

(a) During the period in which each PACE Charge is levied against the Property, each Statement of Account for the Property shall clearly identify property taxes, other City charges and fees, and the applicable PACE Charge (including any interest or penalties thereon that are due and payable). A payment by the Borrower against each such Statement of Account shall be applied as follows: (i) first, to the payment of all due and payable property taxes, other City charges and fees, and any interest or penalties thereon; and (ii) second, to the payment of any delinquent water and sewer fees and any interest and penalties thereon due and payable to the New York City Water Board; and (iii) third, to the payment of any due and payable PACE Charge including any interest and penalties thereon.

(b) The City shall segregate all payments made on the Property's Statement of Account that are applied to the PACE Charge from all other funds of the City and deposit such payments into a separate account for the benefit of the Administrator, as the beneficial owner, or such other trustee agent of the Administrator.

(c) The City disclaims any ownership interest or other interests in such account, or the amount collected in payment of the PACE Charge. In addition, the City shall deposit payments received with respect to the PACE Charges into an account for the benefit of the Administrator, its trustee, successors, or its permitted assignees, no later than fifteen (15) Business Days after the last day of the month in which the amount is collected and will simultaneously provide a collection report to the Administrator detailing actual collections with respect to such Loan to the Administrator.

(d) In the event the Administrator ceases to act as the program administrator and there is no successor program administrator, the City hereby agrees to forward the payments in connection with the related Loan to the Lender within thirty (30) Days after the last day of the month in which the amount is collected.

(e) After the City deposits payments received for a PACE Charge (including any related interest and fees) into an account for the benefit of the Administrator, or otherwise disburses payments received with respect to a PACE Charge to the Administrator or its agent in accordance with this Section 3 except as provided for in subsection 8(b) hereof, the City disclaims any and all responsibility or liability for any losses or damages related to such disbursed funds and each of the Borrower and the Lender hereby agree that it shall only look to the Administrator for the resolution of any dispute or claim of loss or damage.

(f) All monies received by the Administrator pursuant to the terms and provisions of the Program Financing Agreement shall be held by the Administrator, or its designee, for the benefit of the Lender for the purpose for which they were paid, in a general or other deposit account maintained by the Administrator, or on behalf of the Program (the "Collection Account"). The Administrator, or its designee, shall pay all monies from the Collection Account due under the

Program Financing Agreement within ten (10) Business Days of receipt of such funds in the Collection Account (each such date, a “Payment Date”); provided, that the Administrator, or its designee, has collected payment in good funds from the City, such as received wire or cleared check; provided, further, that prior to remitting any such amounts to the Lender, the Administrator shall be entitled to deduct from such amounts any accrued and unpaid fees and any other amounts that are due and owing to the Administrator or to which the Administrator is entitled hereunder with respect to any Project and its related Loan (including those fees and additional expenses set forth in the Master Lender Agreement and Program Guidelines, as in effect as of the date this Agreement is executed by all Parties). Notwithstanding the forgoing, if the applicable Payment Date is not a Business Day, then the Payment Date shall be deemed to be the next Business Day. The Administrator, or its designee, shall make such monies available to the Lender by automated clearing house transfer or such other means as agreed to by the Administrator at such account identified in Schedule III attached hereto.

Section 4. Interest Collections; Delinquencies.

(a) In accordance with §11-3005(a) of the New York City Administrative Code, the Parties hereby acknowledge that the PACE Charge and any accrued interest, fees or penalties thereon shall constitute a PACE Charge Lien on the Property if not paid when due and owing. In the event the Borrower fails to make a payment for the PACE Charge when due, the City, shall provide written notice to the Administrator, its successors, or its permitted assignees of such delinquency within thirty (30) Days of the date on which such payment becomes delinquent. The Administrator shall provide written notice to the Lender, its successors, or its permitted assignees of such delinquency within five (5) Business Days from the date on which the Administrator received written notice of such delinquency.

(b) The Parties hereby acknowledge and agree that in the event of a defaulted or delinquent PACE Charge, such PACE Charge shall accrue interest and penalties equivalent to delinquent property taxes and the resulting PACE Charge Lien will be collected by the City in accordance with the laws of the City and State of New York, the Program Requirements and such other provisions of the New York City Administrative Code, as applicable; provided, however, a PACE Charge or a PACE Charge Lien shall not be eligible to be paid via any installment agreement or deferral program authorized by the City’s Administrative Code.

(c) The Borrower hereby acknowledges and agrees that if it is delinquent in paying, or defaults on the payment, of a PACE Charge, the related PACE Charge Lien may be subject to the terms of the Master Transfer and Remittance Agreement, including the transfer or sale of such lien to a tax lien collections trust and possible foreclosure proceedings.

(d) Any PACE Charge and related PACE Charge Lien shall remain payable until all principal, interest, fees and penalties payable pursuant to the Loan, are paid in full, regardless of a change in ownership of the Property, whether voluntary or involuntary.

(e) In the event that the Borrower fails to make a PACE Charge payment when due, the City shall provide written notice to the Administrator of such delinquency within thirty (30) days of the date on which such payment became delinquent. The City shall remit to the Administrator all funds collected to satisfy any such delinquent PACE Charge payments prior to

the transfer or sale of a PACE Charge Lien pursuant to the terms of the Master Transfer and Remittance Agreement.

(f) In the event the Administrator ceases to act as the program administrator and there is no successor program administrator, the City hereby agrees to provide written notice to the Lender of any such delinquency within thirty (30) Days.

Section 5. Amendment of PACE Charge.

(a) The Lender may submit an amended PACE Charge Payment Schedule with respect to amounts due under the Program Financing Agreement (an “Amendment of PACE Charge Payment Schedule”) to the Administrator in accordance with the Master Lender Agreement. The Administrator, its successors, or its permitted assignees shall forward any such Amendment of PACE Charge Payment Schedule that it receives from the Lender to the City. Notwithstanding the provisions of Section 9 hereof, effective immediately upon delivery of such confirmation by the Administrator, each Amendment of PACE Charge Payment Schedule shall automatically (and without the need for any further written instrument or notice) constitute the then current PACE Charge Payment Schedule hereunder and the prior PACE Charge Payment Schedule shall be replaced thereby in all respects; provided, however, that interest on a PACE Charge that accrued pursuant to §11-3004(a) of the Administrative Code, and any other applicable law, prior to such amendment shall not be subject to amendment or diminution and shall continue to constitute a due and payable PACE Charge Lien against the affected Property.

(b) In the event the Administrator ceases to act as the program administrator and there is no successor program administrator, the Lender may submit an Amendment of PACE Charge Payment Schedule directly to the City, through the Department of Finance, no later than thirty (30) Days prior to the next PACE Charge Submission Date and the City shall amend the PACE Charge to reflect the adjustment.

Section 6. Filing.

(a) Upon receipt of the fully executed version thereof, the Lender shall promptly file a PACE Loan Notice in the Office of the City Register or the Richmond County Clerk’s Office under the Borough-Block-Lot (BBL) or other parcel number identifying the Property.

(b) Upon repayment in full of all amounts due and owing under a Loan, the Lender shall file a notice of release of the Loan in the Office of the City Register or the Richmond County Clerk’s Office.

Section 7. Liability; Indemnification.

(a) The Borrower and the Lender hereby acknowledge and agree that neither the City nor the Administrator has any responsibility or liability for any indebtedness and obligations of the Borrower to the Lender under the Program Financing Agreement or for any costs associated with the collection of amounts due under the Program Financing Agreement. In entering into this Agreement, the parties hereto acknowledge and agree that the Administrator shall be entitled each of the rights, protections and indemnities of the Administrator as set forth in the Master Lender

Agreement, mutatis mutandis.

(b) The Borrower, the Lender and the Administrator hereby acknowledge and agree that, after the disbursement by the City of any collected PACE Charge related to the Property to the Administrator or its agent, the City has no responsibility or liability for any losses or damages related to such disbursed funds in accordance with Section 3 and the Master Transfer and Remittance Agreement, if applicable, and none of the Borrower, the Lender or the Administrator shall look to the City for the resolution of any dispute or claim of loss or damages in relation thereto following such disbursement; provided, however, that in the event the City disburses an amount less than the amount collected and which is due and payable to the Administrator, the City shall correct such error within thirty (30) Days of actual knowledge or written notice of the error; and provided, further, the Parties agree that except in the event of actual material harm to the Administrator caused by such disbursement error, in lieu of any other remedy, to which a Party may be entitled at law or in equity with respect to any act or failure to act by the City or any City personnel or officers acting under this Agreement including monetary damages, which remedies are irrevocably waived, each of the Borrower, the Lender and the Administrator shall solely be entitled to seek an injunction or injunctions (without the posting of any bond and without proof of actual damages) to prevent breaches or threatened breaches of this Agreement on the part of the City and/or to compel specific performance of this Agreement; provided further, in the event the City disburses more than the amount collected and which is due and payable, upon the discovery by the City, and notice to the Lender and the Administrator, of such overpayment, the Parties hereby agree that such overpayment, to the extent that such overpayment was received in the Collection Account or by the Lender, shall be subtracted from the next disbursement of the amount collected by the City and that is due and payable to the Administrator.

(c) In addition, it is expressly understood and agreed by the parties hereto that this Agreement is executed and delivered by the Administrator at the direction of the City, solely in its capacity as program administrator and nothing contained herein shall be construed as creating any liability on the Administrator, or its employees, officers or agents, individually or personally, to perform any covenant other than what is expressly set forth herein, and all such liability, if any, is expressly waived by the Parties hereto.

(d) To the fullest extent permitted by law, the Administrator shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments, damages, costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Administrator and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Administrator, the City and its officials and employees shall be partially indemnified by the Administrator to the fullest extent permitted by law.

(e) To the fullest extent permitted by applicable law, the Lender agrees to indemnify and hold harmless the Administrator and the City, and their respective officers, officials, directors, employees and agents (each, a "Program Administrator Indemnitee") from and against any and all

liabilities, obligations, losses, damages, penalties, actions, judgment, suits, costs, expenses, taxes or disbursements of any kind or nature whatever (including attorneys' fees, costs and expenses) which may be imposed on, incurred by or asserted against any of them in any way relating to or arising out of (i) this Agreement, (ii) the Loan or the related PACE Financing Documents, (iii) the Project; and (iv) any action taken or omitted by any Program Administrator Indemnitee in the performance of its obligations under and the transactions contemplated in this Agreement; provided, that, the Lender shall not be liable to the Administrator for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgment, suits, costs, expenses or disbursements resulting directly from the gross negligence or willful misconduct of the Administrator or any Program Administrator Indemnitee as determined in a final non-appealable order of a court of competent jurisdiction.

(f) Each of the Administrator and the Lender agrees to notify the other party promptly after becoming aware of any taxes or claims, whether pending or threatened that are the subject of indemnification pursuant to this Agreement; provided, however, that the failure by either such party to so notify the other party will not in any manner affect such other party's obligations under this Agreement, except to the extent, if any, the other party shall have been materially and adversely prejudiced by such failure.

(g) The Administrator shall not have any liability to the Lender (whether sounding in tort, contract, equity or otherwise) for losses suffered by the Lender in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement or any of the Pace Financing Documents, or any act, omission or event occurring in connection therewith, unless it is determined by a final and nonappealable judgment or court order binding on the administrator that the losses were the result of acts or omissions constituting gross negligence or willful misconduct of the Administrator. The Lender hereby waives all future claims against the Administrator for special, indirect, consequential or punitive damages.

(h) If the Administrator notifies the Lender under this Agreement, or any Person who has received funds on behalf of the Lender, (such Lender or other applicable recipient, a "Payment Recipient") that the Administrator has determined in its sole discretion that any funds received by such Payment Recipient from the Administrator or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to the Lender, or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrator and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrator, and the Lender, shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter, return to the Administrator the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrator in same day funds at the greater of the Overnight Rate/Federal Funds Rate and a rate determined by the Administrator in

accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrator to any Payment Recipient under this subsection 7(h) shall be conclusive, absent manifest error. If a Payment Recipient receives any payment, prepayment or repayment of principal, interest, fees, distribution or otherwise and does not receive a corresponding payment notice or payment advice, such payment, prepayment or repayment shall be presumed to be in error absent written confirmation from the Administrator to the contrary.

(i) The Lender hereby authorizes the Administrator to set off, net and apply any and all amounts at any time owing to the Lender under the PACE Financing Documents, or otherwise payable or distributable by the Administrator to the Lender from any source, against any amount due to the Administrator under immediately preceding subsection 7(h) or under the indemnification provisions of this Agreement.

(j) For so long as an Erroneous Payment (or portion thereof) has not been returned by any Payment Recipient who received such Erroneous Payment (or portion thereof) (such unrecovered amount, an "Erroneous Payment Return Deficiency") to the Administrator after demand therefor in accordance with immediately preceding subsection 7(i), (i) the Administrator may elect, in its sole discretion on written notice to the Lender, that all rights and claims of the Lender, with respect to the Loan owed to such Person up to the amount of the corresponding Erroneous Payment Return Deficiency in respect of such Erroneous Payment (the "Corresponding Loan Amount") shall immediately vest in the Administrator upon such election; after such election, the Administrator (x) may reflect its ownership interest in Loans in a principal amount equal to the corresponding Loan amount in the Register, and (y) upon five business days' written notice to the Lender, may sell such Loan (or portion thereof) in respect of the corresponding Loan amount, and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrator shall retain all other rights, remedies and claims against the Lender, (and/or against any Payment Recipient that receives funds on its behalf), and (ii) each party hereto agrees that, except to the extent that the Administrator has sold such Loan, and irrespective of whether the Administrator may be equitably subrogated, the Administrator shall be contractually subrogated to all the rights and interests of the Lender, with respect to the Erroneous Payment Return Deficiency. For the avoidance of doubt, no vesting or sale pursuant to the foregoing clause (i) will reduce the commitments of the Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(k) The Parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any PACE Charges owed by the Borrower, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrator from the Borrower for the purpose of making such Erroneous Payment.

(l) No Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrator for the return of any Erroneous Payment received, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(m) Each party's obligations, agreements and waivers under this Section 7 shall survive the resignation or replacement of the Administrator, any transfer of rights or obligations by, or the replacement of the Lender, the termination of the Loan and/or the repayment, satisfaction or discharge of all obligations (or any portion thereof) under the PACE Financing Documents.

Section 8. Miscellaneous.

(a) Further Assurances. From time to time, the Borrower and the Lender shall promptly upon request and as applicable execute, acknowledge, provide and/or deliver to the Administrator any information, confirmation, acknowledgement, certificate, contract, instrument or other document as the Administrator may reasonably request from time to time in connection with the Program, the Loan, this Agreement or any other PACE Financing Document, including as reasonably necessary to confirm that applicable Program Requirements are being met.

(b) Assignment. The City of New York may not assign or transfer its rights or obligations under this Agreement except in accordance with applicable Program Requirements. Subject to the Master Lender Agreement, with the consent of the Administrator (in its sole and absolute discretion), the Lender may assign any or all of its rights arising under this Agreement without the consent of the City or the Borrower; provided, that (i) the Lender provides thirty (30) Days prior notice of the assignment to the City, the Borrower and the Administrator, except that with respect to assignments to wholly owned subsidiaries or affiliates, the Lender shall provide notice on or prior to the date of assignment, and (ii) the assignee provides to the City a written acknowledgement and agreement to the terms of this Agreement. The Parties hereby agree that this Agreement shall inure to the benefit of, and shall be binding upon, the Parties and their successors and permitted assignees.

(c) Successors and Assigns. This Agreement shall inure to the benefit of, and shall be binding upon, the Parties and their respective successors and permitted assignees.

(d) Periodic Deliverables. With respect to the Project and related Loan, the Lender and Borrower shall comply with reporting obligations as set forth in the Program Guidelines.

(e) Energy Data. The Borrower agrees to share with the Administrator and the City monthly Energy Data on the Project and the Building, including but not limited to such data as required in the "Measurement and Verification" section of the Program Guidelines; that the Administrator and the City has the right to monitor, verify, and assess such Energy Data; and the right to report such Energy Data as contemplated herein, and to other third parties on a portfolio and anonymized basis.

(f) Project Completion. Within thirty (30) days after the Project is completed, the Lender shall provide the Administrator with a Certificate of Completion for the Project notarized by the Lender, Borrower and the primary Project contractor(s), if any (the "Certificate of Completion"). The Certificate of Completion must certify that the Project conforms in all material respects with the Project as described in the application materials, including those required for the technical certification required by the Program Guidelines, and as determined in the Administrator's sole discretion.

(g) No Construction Against Drafter. Each Party hereby represents and warrants to the other Parties that it, together with its counsel, has had the opportunity to review and participate in the drafting and negotiation of this Agreement. As such, this Agreement shall be deemed to be the product of all of the Parties and any rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Agreement and are expressly waived to the maximum extent permitted by applicable law.

(h) No Third-Party Beneficiaries. There is no third-party beneficiary of this Agreement.

(i) Entire Agreement. This Agreement represents the entire agreement and understanding between the Parties with respect to its subject matter and supersedes all prior communications, agreements and understandings relating to its subject matter.

(j) Amendments. Except with respect to changes to Schedule II hereto which are made in accordance with Section 5(a) hereof, this Agreement may be amended, modified or waived only in a written instrument signed by the Parties.

(k) Unenforceability. If any clause or provision of this Agreement is illegal, or unenforceable, then it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby, and the Parties shall negotiate in good faith to replace each clause or provision that is illegal, invalid or unenforceable with a clause or provision that is similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

(l) Choice of Law. THIS AGREEMENT AND ALL OTHER PACE FINANCING DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO NEW YORK'S PRINCIPLES OF CONFLICTS OF LAW).

(j) Venue Selection. All disputes arising under this Agreement, unless resolved by mutual agreement of the Parties, shall be resolved in the Supreme Court of the State of New York, located in the County of New York or, if such court does not have jurisdiction, by a Federal Court located in the borough of Manhattan in the City of New York. The Parties hereby irrevocably (i) consent to the jurisdiction of the Federal court or Courts of the State of New York located in the borough of Manhattan, for all purposes in connection with any action or proceeding that arises under, or relates to this Agreement, and (ii) waive all objections as to venue and any and all rights they may have to seek a change of venue with respect to any such action or proceedings.

(m) WAIVER OF JURY TRIAL. THE PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION THAT MAY BE BROUGHT HEREUNDER.

(n) NO CONSEQUENTIAL DAMAGES. THE PARTIES HEREBY WAIVE ALL FUTURE CLAIMS AGAINST ONE ANOTHER FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES.

(o) Term and Survival. The term of this Agreement shall run from the date of the last signature affixed hereto and remain in effect until the satisfaction of all payment obligations under the PACE Financing Documents (the "Term"). The City shall have, in its sole discretion, the option to renew this Agreement for one additional six (6) year Term. All provisions herein for indemnity of the Administrator and the City (and any other provisions herein specified to survive) shall survive payment in full, satisfaction or discharge of the obligations, fees and expenses and any release or termination of the Agreement or any other PACE Financing Documents. Any provision of this Agreement that by its nature would survive termination of this Agreement shall remain in effect after the Term has ended.

(p) Conflicts. Except as otherwise provided in state or local law, to the extent there are conflicts between the terms and provisions in this Agreement and terms and provisions in the Master Lender Agreement or any other PACE Financing Document, the provisions of this Agreement shall control.

(q) No Partnership or Joint Venture. Nothing contained herein or in any other PACE Financing Document, and no action taken or omitted pursuant to this Agreement or any other PACE Financing Document, is intended or shall be construed to create any partnership, joint venture, association, or special relationship among any of the Parties.

(r) Notices. (i) All notices and other communications given hereunder shall be in writing and shall be deemed to have been duly given if (A) personally delivered with proof of delivery thereof, (B) sent by United States certified mail, return receipt requested, postage prepaid, (C) sent by reputable overnight courier service or (D) transmitted by e-mail (with written confirmation of receipt); provided, that copy is also sent promptly by mail or in a manner as otherwise herein provided, in each case addressed to the respective parties as follows, or to such other address or party as a Party may have furnished to the others in writing in accordance herewith, except that notices of change of address or addresses shall only be effective upon receipt:

If to the City:

If to the Administrator:

If to the Lender:

If to the Borrower:

Notices shall be deemed given when received if delivered personally or by overnight courier or by e-mail (provided receipt of such e-mail is confirmed prior to 5:00 p.m. on a Business Day, otherwise delivery shall be deemed given on the following Business Day), or if mailed, then [five (5)] Business Days after such mailing in the United States, with failure to accept delivery to constitute delivery for purposes hereof.

(q) Counterparts. This Agreement may be executed in any number of counterparts, 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.

[Remainder of page intentionally left blank, signature page follows.]

**THE CITY OF NEW YORK
DEPARTMENT OF FINANCE**

By: _____

Name: _____

Title: _____

Approved as to Form:

Acting Corporation Counsel

SAMPLE

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On this _____ day of _____ 2020 before me personally came _____, to me known and known to me to be as the _____ of the Department of Finance (DOF) of the City of New York, the person described in executed, the foregoing agreement, and s/he duly acknowledged to me that s/he executed the same on behalf of the City of New York and DOF for the purpose herein mentioned.

Notary Public or Commissioner of Deeds

**NEW YORK CITY ENERGY EFFICIENCY
CORPORATION** acting as Administrator

By: _____

Name: _____

Title: _____

SAMPLE

STATE OF)

ss:

COUNTY OF)

On this ____ day of _____, 2020 before me personally came _____ who being by me duly sworn, did depose and say that (s)he resides in the City of _____; that (s)he is the _____ of _____, the corporation described in and which executed the foregoing instrument; that (s)he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation; and that (s)he signed his/her name thereto by like order for the purposes therein mentioned.

Notary Public or Commissioner of Deeds

**[BORROWER]
AUTHORIZED REPRESENTATIVE**

By: _____

Name: _____

Title: _____

SAMPLE

STATE OF)

ss:

COUNTY OF)

On this ____ day of _____, 2020 before me personally came _____ who being by me duly sworn, did depose and say that (s)he resides in the City of _____; that (s)he is the _____ of _____, the corporation described in and which executed the foregoing instrument; that (s)he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation; and that (s)he signed his/her name thereto by like order for the purposes therein mentioned.

Notary Public or Commissioner of Deeds

**[LENDER]
AUTHORIZED REPRESENTATIVE**

By: _____

Name: _____

Title: _____

SAMPLE

STATE OF)

ss:

COUNTY OF)

On this ____ day of _____, 2020 before me personally came _____ who being by me duly sworn, did depose and say that (s)he resides in the City of _____; that (s)he is the _____ of _____, the corporation described in and which executed the foregoing instrument; that (s)he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation; and that (s)he signed his/her name thereto by like order for the purposes therein mentioned.

Notary Public or Commissioner of Deeds

EXHIBIT A

PROPERTY DESCRIPTION

Street Address:	<i>[insert street complete street address here]</i>
Borough:	<i>[insert borough here]</i>
Block No.:	<i>[insert block number here]</i>
Lot No.:	<i>[insert lot number]</i>

EXHIBIT B

PROGRAM FINANCING AGREEMENT

SAMPLE

EXHIBIT C

NOTICE TO COMMENCE LEVY AND COLLECTION OF PACE CHARGE

SAMPLE

Exhibit D

FORM OF PACE LOAN NOTICE

SAMPLE

SCHEDULE I
MASTER LENDER AGREEMENT

SAMPLE

SCHEDULE II
PACE CHARGE PAYMENT SCHEDULE

SAMPLE

SCHEDULE III

LENDER WIRE TRANSFER INFORMATION

Lender's Account Information for Wire Transfers	
Bank Name:	[•]
ABA No.:	[•]
Account No.:	[•]
Attn:	[•]
Ref.:	[•]