

MASTER LENDER AGREEMENT

This **MASTER LENDER AGREEMENT** (together with each exhibit and schedule attached hereto, this “Agreement”) is made and entered into as of the [] day of [], 20[], between **New York City Energy Efficiency Corporation** (“**NYCEEC**”), a New York not-for-profit corporation, having an office at 1359 Broadway, 19th floor, New York, New York 10018 (together with its successors and assigns, the “Administrator”), and [**LENDER**], a [STATE] [ENTITY TYPE], having an office at [] (together with its successors and assigns, the “Lender”).

RECITALS

1. Whereas, pursuant to Section 119-gg of the New York General Municipal Law, 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 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 (a “PACE Loan Program”).

2. Whereas, pursuant to Section 1, Title 11, Chapter 30 of the New York City Administrative Code, the municipality of New York City (the “City”) has so established a commercial PACE Loan Program (the “Program”) and has appointed NYCEEC as the Administrator of the Program to implement the Program in accordance with the Administration Agreement.

3. Whereas, financing for each Effective Project (as defined herein) listed in Schedule I attached hereto (as such Schedule I may be amended from time to time by the Administrator as projects are added or deleted) will be provided to the applicable Borrower by the Lender in accordance with the PACE Financing Documents described herein or referenced in the Program Guidelines. With respect to each such Effective Project, this Agreement is entered into between the Administrator and the Lender to provide for certain terms related to the repayment of the applicable Loan.

4. Whereas, the Lender desires to be a Qualified Lender (as defined herein) under the Program and pursuant to the letter from the Administrator to the Lender dated [] [], 20[], the Lender has satisfied all applicable requirements necessary to become a Qualified Lender and upon this Agreement becoming effective the Lender will be a Qualified Lender.

Now therefore, the Administrator and the Lender do hereby agree as follows:

ARTICLE I DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions. Whenever used in this Agreement the following terms shall have the meanings specified in this Section 1.1.

“Additional Lender Terms and Conditions” has the meaning set forth in Section 5.1.

“Administration Agreement” means the agreement, dated April 6, 2021, between the City and NYCEEC, pursuant to which, among other things, the City has appointed NYCEEC (along with its successors and assigns) to implement and manage certain aspects of the Program on behalf of the City.

“Amendment of PACE Charge Payment Schedule” has the meaning set forth in Section 5.6(b).

“Approved Project” means a Proposed Project for which the Lender has provided to the Administrator all deliverables in accordance with Section 4.1 herein, and that the Administrator determines has satisfied all of the requirements set forth in this Agreement and the Program Guidelines, including the technical and underwriting assessments.

“Borrower” means a fee simple owner of a Property who receives a Loan from a Qualified Lender.

“Borrower Payment Default” has the meaning set forth in Section 2.1(h).

“Business Day” means the hours between 9:00 a.m. – 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 the Administrator 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.

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

“Closing Date” means, with respect to a given Loan closing, the date on or as of which: (a) all definitive Loan documents, including all applicable PACE Financing Documents, have been fully executed; and (b) the related Project is an Effective Project.

“Collection Agreement” means the agreement executed by the City and the Administrator, and by each Lender and each Borrower upon execution of a Program Financing Agreement, providing for the collection by the City of a PACE Charge, the remittance of such PACE Charge by the City to the Administrator, and the subsequent remittance of such PACE Charge by the Administrator to the Lender.

- “Costs” has the meaning set forth in Section 5.3.

“Early Termination Event” has the meaning set forth in Section 10.3.

“Effective Project” means an Approved Project for which the Administrator has provided the City with the deliverables required in Section 4.2 herein, and for which the Administrator and the City have duly executed and delivered the Collection Agreement and the Master Transfer and Remittance Agreement and which is identified on Schedule I attached hereto or any updated version thereof as may be provided by the Administrator from time to time.

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

“Governmental Authority” means the United States of America, and any state, local, municipal or other political subdivision thereof (including the City), and any agency, department, court, commission, public or other authority, board, bureau or instrumentality of any of them which has jurisdiction over the Program, the Administrator, the Lender, any Project and/or any Borrower.

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

“Lender Certification” has the meaning set forth in Section 4.1(g).

“Loan” means, with respect to each Effective Project, the commercial PACE financing provided by the Lender to the Borrower under the Program that is repaid through a separate charge on the Borrower’s Statement of Account and that is made pursuant to a Program Financing Agreement between the Lender and such Borrower.

“Master Transfer and Remittance Agreement” means the agreement executed by the City, the Administrator, the NYCTL 1998-2 Trust, and the Lender which establishes terms for the collection and remittance of PACE Charge Liens that are sold or transferred to and collected by the NYCTL 1998-2 Trust and remitted to the Administrator for payment to the Lender.

“Mortgage Holder Consent” means, with respect to each Approved Project and the related Property, that certain mortgage lender disclosure form and consent setting forth an amount not less than the financing amount of the Approved Project, requesting confirmation from the related mortgage lender (providing mortgage finance with respect to such Property) that the levy of the PACE Charge will not trigger an event of default or the exercise of any remedies under the related mortgage loan documents, and providing notice to such mortgage lender that such PACE Charge will be collected in installments on the related Statement of Account in the same manner as and subject to the same penalties, remedies and lien priorities as real property taxes, signed by such mortgage lender, in a form materially consistent with the form set forth on Exhibit B attached hereto.

“Notice to Commence Levy and Collection of PACE Charge” means a 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.

“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 5.6.

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

“PACE Financing Documents” means, with respect to each Loan, this Agreement, the related Program Financing Agreement(s) to which the Lender is a party, the Collection Agreement, each Mortgage Holder Consent, the Master Transfer and Remittance Agreement and any and all other agreements, instruments and other documents evidencing and securing or executed in connection with each Loan.

“PACE Loan Notice” means a notice of PACE financing in the form attached to the Collection Agreement.

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

“PACE Minimum Underwriting Standards” has the meaning set forth in Section 5.4.

“Patriot Act” means the USA PATRIOT Act, Title III of Pub. L. 107-56, signed into law October 26, 2001.

“Payment Date” has the meaning set forth in Section 3.3.

“Program” has the meaning given in the recitals to this Agreement.

“Program Administrator Indemnitee” has the meaning set forth in Section 12.1.

“Program Financing Agreement” means any loan, credit, financing or other similar agreement between a Borrower and the Lender providing for the terms and conditions of a Loan by the Lender to such Borrower.

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

“Program Requirements” means, collectively, all requirements established by Section 119-gg of the New York General Municipal Law; the PACE Local Law; the rules promulgated by the City’s Department of Finance to implement the PACE Local Law; and the Program Guidelines.

“Prohibited Person” means any person or entity (a) named on the “Specially Designated Nationals and Blocked Persons” list maintained by the U.S. Department of the Treasury’s Office of Foreign Assets Control at its official website; (b) that is otherwise the target of any economic sanctions program currently administered by any federal Governmental Authority; (c) who has in the prior three (3) years violated, is currently in violation of, or is known to have been under investigation by any Governmental Authority for any potential violation of the Bank Secrecy Act, the Patriot Act, or any other related or similar U.S. law, rule or regulation governing money laundering activities; (d) with whom a U.S. person may not otherwise conduct business by

prohibition of applicable law; or (e) that is owned or controlled by, acting for or on behalf of, or affiliated with any person or entity identified in clauses (a) - (d) of this definition.

“Project” means, as applicable, a Proposed Project, Approved Project or Effective Project.

“Property” means, with respect to each Loan, the real property owned by the applicable Borrower and identified in the applicable Program Financing Agreement and the applicable Collection Agreement.

“Proposed Project” means a project for which (a) a preliminary application has been submitted in accordance with the Program Guidelines; and (b) the Administrator has determined the preliminary eligibility requirements for the Program as set forth in the Program Guidelines have been satisfied.

“Qualified Lender” means any entity which has satisfied the eligibility requirements for becoming a lender qualified to make commercial PACE loans under the Program and which is party to an effective Master Lender Agreement with the Administrator.

“Representative” means, with respect to any entity, any director, officer, official, employee, agent, contractor or other representative of such entity.

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

“Term” has the meaning set forth in Section 10.1.

1.2 Rules of Interpretation. Except as may otherwise be expressly provided herein, the following rules of interpretation shall apply to this Agreement: (i) the singular includes the plural and the plural includes the singular; (ii) the word “or” is not exclusive; (iii) a reference to any law, rule or regulation includes any amendment, modification or replacement to such law, rule or regulation; (iv) a reference to any person or entity includes its permitted successors, permitted replacements and permitted assigns; (v) the words “include”, “includes” and “including” are not limiting; (vi) in the event of any conflict between the provisions of this Agreement (exclusive of the exhibits and schedules hereto) and any exhibit or schedule hereto, the provisions of this Agreement shall control; (vii) unless otherwise expressly provided herein, references to any document, instrument or agreement (A) shall include all exhibits, schedules and other attachments thereto, (B) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (C) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time; (viii) the words “hereof”, “herein” and “hereunder” and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document; (ix) references to “days” shall mean calendar days, unless the term “Business Day” is used; (x) references to a time of day shall mean such time in New York, New York, unless otherwise specified; and (xi) section and other headings are used in this Agreement as a matter of convenience for reference only, are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

ARTICLE II
PROJECT QUALIFICATION AND FINANCING PROCESS

2.1 Qualification and Financing Process. As described in more detail in Sections 4, 5 and other applicable sections of this Agreement, the process for origination, funding and administration of Loans and the relationship between and among the City, the Administrator, the Lender and each applicable Borrower shall be as follows:

(a) With respect to each project for which the Lender desires to provide a Loan, the Lender shall first submit to the Administrator, for the Administrator's review, such information, materials, and/or documents concerning such project.

(b) If the Administrator determines that such project satisfies the preliminary Program eligibility requirements necessary to become a Proposed Project, as set forth in the Program Guidelines, the Administrator will give notice to the Lender of such determination and the project will become a Proposed Project as of the date specified in such notice. Upon receipt of such notice from the Administrator, the Lender, on behalf of the Borrower, may then submit a full application for the Proposed Project in accordance with the Program Guidelines.

(c) In order for a Proposed Project to qualify as an Approved Project, the Lender, on behalf of the Borrower, must submit to the Administrator all documentation required for the full application for the Proposed Project, as described in the Program Guidelines and Section 4.1 of this Agreement. The Administrator shall have no obligation to review any information or materials related to a given Proposed Project until the Administrator determines that such full application is complete and that all required documents and supporting materials have been submitted.

(d) Upon receipt of a satisfactory full application and all other deliverables required in Section 4.1, the Administrator will review the application to determine whether the Proposed Project meets the applicable technical, underwriting and other criteria set forth in the Program Guidelines which must be satisfied in order to qualify as an Approved Project. If the Administrator determines that a Proposed Project meets all such criteria, the Administrator will give notice to the Lender of such determination and the Project will become an Approved Project as of the date specified in such notice.

(e) In order for an Approved Project to qualify as an Effective Project, the criteria set forth in Section 4.2 must be satisfied. Upon the Administrator determining that all conditions- precedent have been satisfied, as set forth under Section 4.2, the Administrator will give notice to the Lender of such determination and the Project will become an Effective Project as of the date specified in such notice.

(f) Commencing on the Closing Date for each Loan, from time to time the Lender may disburse funds to the related Borrower in accordance with the related Program Financing Agreement.

(g) Pursuant to the terms of the Collection Agreement, the related Borrower will thereafter make PACE Charge payments according to the PACE Charge Payment Schedule and the regular Statement of Account billing schedule to the City's Department of Finance, which will remit payment to the Administrator in accordance with the Collection Agreement and the

Administration Agreement. The Administrator will then remit payment to the Lender in accordance with the Collection Agreement and this Agreement.

(h) If any Borrower fails to make any given PACE Charge payment when due in accordance with the PACE Financing Documents to which the Borrower is a party (each, a “Borrower Payment Default”), the applicable provisions of the Collection Agreement and the provisions of Article VI shall apply.

ARTICLE III **ADMINISTRATOR OBLIGATIONS**

3.1 Administrative Responsibilities. The Administrator shall review each deliverable submitted by the Lender, related Borrower or Borrower’s agent with respect to a Proposed Project and upon determining that all applicable Program Requirements are satisfied, provide approval to a Proposed Project as further set forth in Article I above and pursuant to the terms and provisions of the Administration Agreement and the Program Guidelines. In making such determination, the Administrator may rely on the application, statements and signatures contained therein without independent investigation or verification.

3.2 Servicing Responsibilities. The Administrator will- disburse all PACE Charge payments received from the City with respect to each Loan in accordance with the express terms and provisions of the Collection Agreement, the Master Transfer and Remittance Agreement, this Agreement and the Administration Agreement, but will have no obligations with respect to the collection of delinquent payments with respect to any Loan or any other servicing or special servicing duties under this Agreement.

3.3 Administrator Audit Rights. At any time during the Term, the Administrator shall have the right to contact the Lender regarding application materials submitted by the Lender, or to request additional information or materials as the Administrator may consider appropriate. The Lender shall promptly provide all information and materials reasonably requested by the Administrator. In addition, the Lender shall ensure that the Administrator and its Representatives have the right to audit, inspect and make copies of the books and records related to each Project and the Administrator and any Representatives of the Administrator may, upon reasonable advance notice to the Lender and related Borrower, inspect each such Project.

3.4 Administrator Determinations. Unless expressly stated otherwise herein or in any other PACE Financing Document, in all instances where the Administrator is required or has the right to make any type of determination, assessment, evaluation, election, to grant any consent or to otherwise exercise its judgment in connection with performing its obligations hereunder or under any other PACE Financing Document, such determination, assessment, evaluation, election or other exercise of judgment shall in all cases be in the Administrator’s sole and absolute discretion.

3.5 Use of Agents. NYCEEC, in its capacity as the Administrator, may perform any of its obligations under this Agreement or any other PACE Financing Document by or through its contractors, subcontractors, agents or attorneys-in-fact, and shall be entitled to the advice of counsel concerning all matters pertaining to its rights and obligations hereunder or under any other

PACE Financing Document. The Administrator shall not be responsible for the negligence or misconduct of any contractors, subcontractors, agents or attorneys-in-fact selected by it with reasonable care.

3.6 Standard of Performance. The Administrator undertakes to perform such duties and only such duties as are specifically set forth herein and no implied covenants or obligations shall be read into this Agreement against the Administrator. In performing its obligations hereunder, the Administrator shall use the same level of care as it uses for similar transactions but shall not be liable to the Lender for any action taken or omitted to be taken by it hereunder or pursuant hereto, except for the Administrator's failure to make sums remitted to the Administrator by the City's Department of Finance available to the Lender as required under this Agreement and the other applicable PACE Financing Documents. The duties of the Administrator shall be administrative in nature and the Administrator shall not have, by reason of this Agreement, a fiduciary relationship with the Lender, any Borrower or any other person or entity. The Administrator shall not be required to take any action if the Administrator reasonably believes that such action is contrary to law, the Program Guidelines or any other Program Requirements, the terms and provisions of this Agreement or any other PACE Financing Document. As to any matters not expressly provided for by this Agreement, the Administrator shall not be required to exercise any discretion or take any action and in case of any question concerning its rights and duties hereunder, the Administrator may request written instructions from the Lender and refrain from taking action until it receives written instructions from the Lender. The Administrator shall be fully protected and have no liability to any person or entity for acting or refraining from acting hereunder in accordance with the written instructions of the Lender; provided, that the Administrator shall not be required in any event to act, or to refrain from acting, in any manner which is contrary to any PACE Financing Documents, the Program Guidelines, any Program Requirements, advice of any legal counsel (including counsel for the Lender) or applicable law. The Administrator shall, in the absence of actual knowledge to the contrary, be entitled to rely on any written instructions believed in good faith to be genuine and correct and to have been signed by an authorized Representative of the Lender or of any applicable Borrower. The Administrator shall also be entitled to rely on the Lender Certification and the statements made therein without independent investigation or verification.

ARTICLE IV

LENDER OBLIGATIONS

4.1 Approved Project Deliverables. For each Proposed Project to become an Approved Project, the Administrator shall have received from the Lender all of the following, notarized or by other method in accordance with applicable law, in form and substance determined by the Administrator to be satisfactory:

(a) all application materials, including those necessary to satisfy the requirements of the technical assessment, as certified to in the Lender Certification;

(b) a certified true and correct copy of the duly executed Program Financing Agreement in form and substance acceptable to the Administrator which complies with the applicable requirements set forth herein, the minimum criteria of the Program as set forth in the Program Guidelines and is otherwise consistent with all applicable Program Requirements;

(c) if applicable, a true and correct copy of the form of Mortgage Holder Consent, in form and substance acceptable to the Administrator, as is required to make the Loan, which complies with the minimum criteria of the Program as set forth in the Program Guidelines and is otherwise consistent with the Program Requirements;

(d) a certified true and correct copy of the Master Transfer and Remittance Agreement duly executed by the Lender;

(e) a certified true and correct copy of the Collection Agreement duly executed by the Lender and the Borrower; and any other PACE Financing Documents as set forth in the Program Guidelines or as otherwise reasonably requested by the Administrator;

(f) the PACE Charge Payment Schedule for the related Loan;

(g) a copy of the duly executed certification in a form materially consistent with the form set forth on Exhibit A attached hereto (the "Lender Certification"); and

(h) all other documents, information and materials that the Administrator determines are necessary or appropriate.

4.2 Effective Project.

(a) After each Proposed Project becomes an Approved Project, the Administrator shall notify the City of such Approved Project and provide to the City (i) a copy of the executed Program Financing Agreement; (ii) a copy of the Collection Agreement executed by the Lender and Borrower and a copy of the Master Transfer and Remittance Agreement executed by the Lender; and (iii) a Notice to Commence Levy and Collection of PACE Charge in accordance with the Administration Agreement and the Collection Agreement. After each Proposed Project becomes an Approved Project, the Administrator will deliver to the Lender a notarized PACE Loan Notice, executed by the Administrator on the form attached to the Collection Agreement applicable to the Project.

(b) Following (i) delivery of such notice and such documents to the City; (ii) the Administrator's and the City's execution and delivery of the Collection Agreement and the Master Transfer and Remittance Agreement; (iii) receipt by the Administrator of satisfactory evidence that, in accordance with the Collection Agreement, the Lender has duly submitted the PACE Loan Notice for recording with the Office of the City Register or the County Clerk's Office in the real property records of the Property on which the Project is being undertaken; (iv) if applicable, receipt by the Administrator of a certified true and correct copy of each duly executed Mortgage Holder Consent, in form and substance acceptable to the Administrator, as is required to make the Loan, which complies with the minimum criteria of the Program as set forth in the Program Guidelines and is otherwise consistent with the Program Requirements; and (v) delivery by the Administrator of an updated version of Schedule I to this Agreement which identifies such Project as an Effective Project, such Approved Project shall become an Effective Project as of the date specified in the notice from the Administrator given pursuant to Section 2.1(e).

4.3 Compliance with Law. The Lender shall comply with the applicable provisions of federal, state and local laws, rules and regulations. The Lender shall not by act or omission permit itself to be owned, controlled or affiliated with any Prohibited Person.

4.4 Insurance. The Lender shall procure and maintain (or cause to be procured and maintained) in full force and effect at all times liability and other appropriate insurance protecting the Lender against such risks as are customarily insured by other companies engaged in the same or similar businesses similarly situated. All such insurance policies shall be issued by a financially sound and responsible carrier admitted in the State of New York with an A.M. Best rating of not less than A- VIII and provide for at least thirty (30) days' notice to the Administrator prior to cancellation, reduction in policy limits or other material change in coverage. Within five (5) Business Days of the date hereof, and from time to time at the Administrator's request, the Lender shall deliver or cause to be delivered to the Administrator certificates of insurance, copies of insurance policies and/or other evidence acceptable to the Administrator showing that the insurance required hereunder is in full force and effect.

ARTICLE V

FINANCING GUIDELINES

5.1 The Program Financing Agreement. The Lender agrees to make commercially reasonable efforts to execute a Program Financing Agreement with each Borrower for each related Approved Project. The Lender shall cause each such Program Financing Agreement to satisfy the requirements of applicable law, the Program Guidelines and the other Program Requirements, and the requirements specified in this Article V. The Lender may develop and include in the Program Financing Agreements to which it is a party additional terms and conditions it considers necessary or appropriate given the specific facts and circumstances surrounding any specific Approved Project and the related Borrower (the "Additional Lender Terms and Conditions"); provided, that such Additional Lender Terms and Conditions comply with applicable law, the Program Guidelines, the Program Requirements and this Agreement. Prior to the execution of a Program Financing Agreement, the Administrator reserves the right to review and confirm that the form of Program Financing Agreement proposed by the Lender for any and all Projects satisfies the requirements of this Article V.

5.2 Interest Rate. The Lender shall set a fixed rate of interest for the repayment of the principal amount of each Loan at the time such Loan is made. In addition to such fixed rate of interest, the Lender shall be entitled to default interest at the rate charged by the City in the ordinary course in connection with delinquent tax liens. The Program Financing Agreement for each Loan shall set forth such fixed rate and such default rate charged by the City. The Lender shall not amend or modify the rate of interest in any Program Financing Agreement for any Approved Project without the prior written consent of the Administrator.

5.3 Amount of Financing. With respect to each Approved Project financed by the Lender, the original principal amount of the Loan provided by the Lender under the applicable Program Financing Agreement may be in an amount of up to 100% of Costs, subject to all other requirements of applicable law and the Program Requirements. As used herein, the term "Costs" shall mean: (a) the costs of any and all "Eligible Improvements" (as defined in the Program Guidelines) for the Project; and (b) any fees (as outlined in Article VIII) payable by the Borrower

in connection with the closing of the Loan and any other fees, costs or expenses payable by the Borrower in accordance with the PACE Financing Documents, including capitalized interest, which may be financed under the Loan in accordance with the Program Requirements.

5.4 Underwriting Standards.

(a) The Lender shall utilize, as a minimum, the underwriting standards set forth in the Program Guidelines and other applicable Program Requirements (the “PACE Minimum Underwriting Standards”). Prior to the execution of each Program Financing Agreement, the Administrator reserves the right to determine whether such PACE Minimum Underwriting Standards have been satisfied. The Lender may develop additional underwriting standards that comply with applicable law, the Program Guidelines and other applicable Program Requirements (including the PACE Minimum Underwriting Standards) and this Agreement.

(b) From time to time the Administrator, in consultation with the City where appropriate, may determine that modifications to the PACE Minimum Underwriting Standards are necessary or appropriate and in such cases the Administrator may promulgate such modifications. Any such modifications to the PACE Minimum Underwriting Standards will apply only to Approved Projects for which the related notice of approval given under Section 2.1(d) was issued after the effective date of such modifications.

(c) Following any material modifications to the PACE Minimum Underwriting Standards, the Administrator shall promptly provide written notice to the Lender of such modifications to the PACE Minimum Underwriting Standards.

5.5 Credit Evaluation and Independent Investigation.

(a) The Lender agrees that, with respect to each Borrower undertaking a Proposed Project, the Lender shall, independently and without reliance upon the Administrator or any Representative of the Administrator, conduct its own credit evaluation of such Borrower, and review such information as it deems adequate and appropriate in determining whether to execute a Program Financing Agreement with such Borrower. The Lender acknowledges and agrees that the Administrator’s approval of a Proposed Project as an Approved Project does not constitute an endorsement of or recommendation to finance such Approved Project.

(b) The Lender agrees that, with respect to each Project, the Lender shall not rely upon any investigation or analysis conducted by, advice or communication from, nor any warranty or representation by, the City or the Administrator or any Representative of the City or the Administrator, express or implied, concerning the financial condition of such Borrower or such Project.

(c) The Lender acknowledges that the Administrator takes no responsibility for the accuracy, correctness or completeness of any information or documents regarding any Borrower or Project furnished to the Administrator by the Lender.

5.6 PACE Charge. With respect to each Effective Project, and in accordance with the related Program Financing Agreement, the Lender will create a schedule of PACE Charge payments, pursuant to which a PACE Charge shall be scheduled to be repaid semi-annually (each,

a “PACE Charge Payment Schedule”). A PACE Charge shall be placed by the City on each Statement of Account with a due date of January 1 or July 1, as applicable of any City Fiscal Year. The Administrator will set the amount of the PACE Charge to appear semi-annually on the related Borrower’s Statement of Account based on such PACE Charge Payment Schedule, as further provided in the related PACE Financing Documents.

(a) Except with respect to the initial PACE Charge to be levied against the Property, each PACE Charge shall be levied and collected semi-annually by the City, pursuant to the following process:

(i) by the date that is no less than thirty (30) days prior to the PACE Charge Submission Deadline for the applicable period, the Lender shall determine the amount of the PACE Charge to be collected in respect of such period by reference to the then current PACE Charge Payment Schedule and notify the Administrator of such amount;

(ii) upon receipt of such notice from the Lender, the Administrator will confirm that the amount of the PACE Charge to be collected in respect of such period is consistent with the then current PACE Charge Payment Schedule and upon such confirmation, the Administrator, in accordance with the Collection Agreement, will notify the City of such amount by no later than the PACE Charge Submission Deadline for the applicable period;

(iii) if the amount of the PACE Charge submitted by the Lender for such period is inconsistent with the then current PACE Charge Payment Schedule, the related amount on such current PACE Charge Payment Schedule shall be the PACE Charge placed by the City on the Statement of Account for the property for the applicable period; and

(iv) upon receipt of such notice from the Administrator by the applicable PACE Charge Submission Deadline, the PACE Charge shall be placed by the City no later than by the date on which the City’s Department of Finance issues the Statement of Account for the Property for the applicable period.

(b) Amendment of PACE Charge. 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”), no less than sixty (60) days prior to the PACE Charge Submission deadline for the applicable period. Effective immediately upon delivery of such confirmation, 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 and the prior PACE Charge Payment Schedule shall be replaced thereby in all respects.

5.7 Prepayment. With respect to each Effective Project, the parties hereto hereby agree that the related Borrower may prepay the Loan and the related PACE Charge(s) at any time in whole or in part. The Lender shall ensure that all prepayment amounts are paid either: (i) directly to the Administrator (or to such other party as the Administrator may direct); or (ii) directly to the Lender, in which case the Lender shall notify the Administrator of such prepayment within five (5) Business Days of receipt of the payment. Subject to applicable law, any prepayment restrictions and premiums are at the discretion of the Lender. Promptly following any partial

prepayment, the Lender shall provide a revised PACE Charge Payment Schedule to the Administrator within five (5) Business Days of the date of prepayment. If any Loan is prepaid in full, within five (5) Business Days of the date of prepayment the Lender shall notify the Administrator and shall file a notice of release of the Loan in accordance with the Collection Agreement.

ARTICLE VI

BORROWER DEFAULTS AND LENDER REMEDIES

6.1 Limitations on Lender Remedies. With respect to any given Loan, if any Borrower Payment Default occurs and is ongoing, the remedies available to the Lender are subject to the terms and conditions set forth in the Collection Agreement and the Master Transfer and Remittance Agreement. In addition to the terms and conditions set forth in the Collection Agreement and the Master Transfer and Remittance Agreement, if a Borrower Payment Default occurs and is ongoing, the Lender may exercise any and all other remedies available to it by contract (including the applicable Program Financing Agreement) at law or in equity; provided, that such remedies are consistent with applicable law and the Program Requirements.

6.2 Notice of Event of Default. If either party hereto has actual knowledge of any Borrower Payment Default or any other event of default under any Program Financing Agreement, it shall promptly notify the other party thereof. In addition, the Lender shall promptly notify the Administrator of any judicial proceeding(s) against the Borrower or in respect of the Property to enforce the Program Financing Agreement, any other PACE Financing Documents and or any PACE Charges levied against the Property, including, but not limited to, foreclosure actions, breach of contract actions and/or any other suit on the debt.

ARTICLE VII

EXCLUSIVITY

7.1 Exclusivity. With respect to each Proposed Project for which the Lender has provided to the Administrator a letter of intent or memorandum of understanding, executed by and between Lender and Borrower, or other, similar evidence of the Lender's good faith commencement of a Proposed Project that is reasonably satisfactory to the Administrator, then for a period of one-hundred and eighty (180) days (measured from the date of execution of such letter of intent or memorandum of understanding or other applicable date of commencement), the Administrator shall not, and shall ensure that its Representative does not, (a) consummate or close any commercial PACE financing or any other type of financing with the Borrower that is related to the Proposed Project; nor (b) undertake any type of financing origination or loan development activities with such Borrower, except if such Borrower separately requests NYCEEC financing for a materially different project on the same Property, in which case NYCEEC, as lender, and the Representatives of NYCEEC may undertake financing origination or development activities with the Borrower in respect of such other project.

ARTICLE VIII
PROGRAM FEES & EXPENSES

8.1 Fees. The Lender shall pay (or cause to be paid) Program fees set forth in Section 7 of the Program Guidelines as they come due. The Lender agrees that Program fees with respect to each Effective Project will be determined and set at the time the Project becomes an Approved Project, by the Administrator in accordance with the Program Guidelines and other applicable Program Requirements. For each Loan, certain of such Program fees shall be paid to the Administrator on the Closing Date in accordance with Section 8.3.

8.2 Additional Expenses. No provisions of this Agreement shall require the Administrator to (i) expend or risk its own funds except as necessary in the ordinary course of business as the administrator of the Program or to perform its obligations under this Agreement or (ii) otherwise incur any financial liability in the performance of any of its duties hereunder. Any costs or expenses incurred by the Administrator in connection with any actions with respect to this Agreement or relating to any of the transactions contemplated by this Agreement which the Lender has requested shall be borne by the Lender and the Lender shall reimburse the Administrator for any such out-of-pocket costs and expenses incurred by the Administrator within ten (10) days of written demand therefor.

8.3 Payment Terms. The Lender shall make each payment required to be made by it hereunder to the Administrator by the time expressly required (or, if no such time is expressly required, before 12:00 noon), on the date when due, in United States dollars, by check or wire transfer in good funds, without set-off, counterclaim, withholding or deduction of any kind whatsoever. Any amount received after such time and date may, in the Administrator's sole discretion, be deemed to have been received on the following day. If any payment hereunder is due on a date that is not a Business Day, then such payment shall be due and payable on the Business Day that immediately follows such due date.

ARTICLE IX
REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties. The Lender hereby represents and warrants to the Administrator and the City that, as to itself as a Qualified Lender under this Agreement, as of the date of this Agreement; as of the Closing Date of each Loan; and as of the date of each related Collection Agreement; and with respect to any subsequent Lender, as of the related date of Assignment:

(a) (i) the Lender (A) is duly incorporated or organized, validly existing and in good standing under the laws of its state of incorporation or organization, and (B) has full power and authority, and all licenses necessary, to own its properties to carry on its business as now being conducted and has full power and authority to enter into this Agreement and any other PACE Financing Documents to which it is a party, and to carry out the terms and conditions contained herein and therein; and (ii) the execution of this Agreement and each other PACE Financing Document to which it is a party, and its participation in the transactions specified herein and therein is in the ordinary course of its business and within the scope of its existing corporate authority;

(b) there is no action, suit or proceeding pending against the Lender before or by any court, administrative agency or other Governmental Authority which brings into question the validity of, or might in any way impair, the execution, delivery or performance by the Lender of its obligations under this Agreement or any other PACE Financing Document to which it is a party;

(c) except as expressly disclosed in writing to the Administrator, no notice to, registration with, consent or approval of or any other action by any relevant Governmental Authority or any other entity will be required for Lender to execute, deliver, and perform its obligations under this Agreement or any PACE Financing Documents to which Lender is or will become a party;

(d) the execution, delivery and performance by the Lender of this Agreement and any PACE Financing Documents and the performance by the Lender hereunder and thereunder, (i) do not contravene any provisions of law applicable to the Lender; will not result in a breach or violation of any provision of (A) the Lender's organizational documents, (B) any statute, law, writ, order, rule or regulation of any Governmental Authority applicable to the Lender, or (C) any judgment, injunction, decree or determination of any Governmental Authority applicable to the Lender; and (ii) do not conflict and are not inconsistent with, and will not result (with or without the giving of notice or passage of time or both) in the breach of or constitute a default or require any consent under any contract, agreement or other instrument to which the Lender is a party, by which the Lender may be bound, or to which the Lender or its property may be subject;

(e) this Agreement and any PACE Financing Documents constitutes the legal, valid and binding obligation of the Lender, enforceable against the Lender in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization moratorium or similar laws affecting the enforcement of creditors' rights generally, and by applicable laws (including any applicable common law and established equitable principals) and judicial decisions which may affect the remedies provided herein.

(f) the Lender has independently and without reliance upon the Administrator conducted its own credit evaluation of each Borrower to which it wishes to make a Loan, reviewed such information as it has deemed adequate and appropriate and made its own analysis of the PACE Financing Documents;

(g) the Lender has not relied upon any investigation or analysis conducted by, advice or communication from, nor any warranty or representation by, the City or the Administrator or any Representative of the City or the Administrator, express or implied, concerning the financial condition of or tax or economic benefits of an investment in any Project or the PACE Financing Documents;

(h) the Lender has had (or acknowledges by its execution of this Agreement that the Lender will prior thereto have had) access to all financial and other information that it deems necessary to evaluate the merits and risks of an investment in the PACE Financing Documents including the opportunity to ask questions, receive answers and obtain additional information from any such Borrower necessary to verify the accuracy of information provided;

(i) the Lender acknowledges that the Administrator takes no responsibility for any financial information regarding any such Borrower furnished to the Lender by the Administrator, and the Lender and its Representatives acting on its behalf have such knowledge and experience in business and financial matters necessary to evaluate the merits and risks of an investment in each Project financed by the Lender and in the PACE Financing Documents;

(j) the Lender is experienced in making investments in energy upgrade projects similar to the Projects or substantially similar investments and that it is financially able to undertake the risks involved in such investments;

(k) each Program Financing Agreement entered into to-date by the Lender satisfies the requirements of applicable law, the Program Guidelines and the other Program Requirements as of the date of each such Program Financing Agreement, and the requirements specified in Article V;

(l) the Lender acknowledges that the PACE Financing Documents as well as any other documents signed by any Borrower to whom the Lender is making a Loan that are required by the Administrator in connection with such Loan were executed by a duly authorized signatory of such Borrower;

(m) the Lender has independently and without reliance upon the Administrator conducted its own investigation to determine that each Borrower to whom the Lender is extending a Loan owns the Property that is the subject of the Loan;

(n) the Lender and the related Borrower has obtained an executed Mortgage Holder Consent from all existing mortgage holder(s) which hold any mortgage secured by the related Property;

(o) the Lender has independently and without reliance upon the Administrator or any Representative of the Administrator conducted its own investigation to determine that each Project financed by the Lender meets all applicable Program Requirements;

(p) the Lender has received satisfactory documentation and other information required by applicable Governmental Authorities or as otherwise required under applicable “know your customer” and anti-money-laundering rules and regulations, including the Patriot Act; and the Lender has independently and without reliance upon the Administrator or any Representative of the Administrator, satisfied itself that the Borrower is not a Prohibited Person and is not owned or controlled by a Prohibited Person;

(q) neither the Lender nor any of the Representatives of the Lender is a Prohibited Person and the Lender is not owned or controlled by, nor affiliated with, a Prohibited Person;

(r) the Lender is a Qualified Lender in good standing under all applicable Program Requirements;

(s) none of the documents, applications, agreements, spreadsheets, exhibits, schedules or any other written information (other than projections, pro formas, financial models, budgets, forecasts or other information of a general economic or forward-looking nature) submitted or made

available to the Administrator or the City by or on behalf of the Lender in connection with the Program or any PACE Financing Documents (collectively, the “Submittals”), taken as a whole, contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were or are made, taken as a whole, not misleading in any material respect as of the date such information is dated or made; provided, that, to the extent any Submittal was based upon or constitutes a projection, pro forma, financial model, budget, forecast or other information of a general economic or forward-looking nature, Lender represents only that it acted in good faith and utilized assumptions believed by it to be reasonable at the time made; ~~and~~

(t) subsequent to the respective dates on which the Submittals were provided or made available to the Administrator, except as otherwise disclosed to the Administrator in writing, (i) neither the Lender nor any given Borrower has incurred any liabilities, direct or contingent, including any losses or interference with its business from fire, explosion, flood, earthquake, pandemic, accident or other calamity or any other act of god, whether or not covered by insurance, or from any strike, labor dispute or any action, order or decree of any Governmental Authority, that are material, individually or in the aggregate, to the Lender or the Borrower (as the case may be) taken as a whole; and (ii) there has not been any material adverse change in the properties, business, prospects, operations, earnings, assets, liabilities or condition (financial or otherwise) of the Lender or any Borrower, as the case may be (each of clauses (i) and (ii), a “Material Adverse Change”) and to the knowledge of the Lender, after due inquiry, there is no event that is reasonably likely to occur, which if it were to occur, would, individually or in the aggregate, result in a Material Adverse Change-; ~~and~~

(u) all premiums in respect of all insurance maintained by or on behalf of the Lender pursuant to Section 4.4 have been paid; the Lender has determined, acting reasonably, that the insurance maintained by or on behalf of it is adequate; and all such insurance policies have been issued by a carrier admitted in the state of New York and with an A.M. Best rating of not less than A- VIII.

ARTICLE X

TERM AND TERMINATION

10.1 Term. The term of this Agreement (the “Term”) shall commence as of the date hereof and, unless terminated early pursuant to Section 10.2, shall end on the second (2nd) anniversary of the date hereof.

10.2 Early Termination. If the Administrator determines that any Early Termination Event has occurred, and the Administrator elects to terminate this Agreement, then this Agreement shall terminate before the end of the Term on or as of the date specified in a notice from the Administrator related thereto. This Agreement will automatically terminate before the end of the Term on or as of the date upon which the Administrator otherwise ceases to act as the Administrator and where there is no successor Program administrator. The parties hereto may mutually agree in writing to terminate this Agreement prior to the end of the Term.

10.3 Early Termination Events. Upon the Administrator’s determination that any one or more of the following events has occurred (each, an “Early Termination Event”), the Administrator

has the immediate right, but not the obligation, to terminate this Agreement prior to the end of the Term without penalty:

(a) a final judicial or legislative determination that any Loan, PACE Charge or PACE Charge Lien is not valid and/or enforceable under the law, or any unstayed injunctive relief is granted by any court having appropriate jurisdiction, the effect of which is or would be to prevent servicing or collection of any PACE Charge or enforcement of any PACE Charge Lien;

(b) the dissolution of the Lender by insolvency, bankruptcy, failure to maintain applicable licenses, or other similar event;

(c) a breach of this Agreement or any other PACE Financing Document by the Lender that would reasonably be expected to have a material adverse effect on the Lender's ability to comply with this Agreement or any other PACE Financing Document;

(d) the Lender fails at any time to satisfy the requirements necessary to be a Qualified Lender in good standing in accordance with all applicable Program Requirements;

(e) a failure by the Lender to pay any amounts owed to the Administrator in accordance with any PACE Financing Document;

(f) a change of law ending the Program or removing the Administrator as administrator of the Program and where there is no successor Program administrator;

(g) any event of force majeure or similar change of circumstance which make (i) the ability or likelihood of continued funding by the Lender infeasible or (ii) the remittance of payment by the Administrator impracticable; and/or

(h) the Administrator determines that a Material Adverse Change has occurred with respect to the Lender.

10.4 Survival. This Agreement shall continue in full force and effect until all obligations and fees and experts are paid and performed in full, including but not limited to the terms and conditions set forth in Article VIII of this Agreement; and all of the Administrator's obligations under this Agreement are terminated; all representations and warranties and all provisions herein for indemnity of the Administrator and all other Program Administrator Indemnitees (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.

ARTICLE XI **REMEDIES**

11.1 Revocation of Qualified Lender Status. Upon the occurrence of any Early Termination Event, in addition to the right to terminate this Agreement in accordance with Section 9.2, the Administrator shall have the immediate right (but not the obligation) to revoke or temporarily suspend the Lender's status as a Qualified Lender. If the Lender's status as a Qualified

Lender is revoked or suspended, the Administrator will notify the Lender within five (5) Business Days of the date the Administrator decided to revoke or suspend such status.

11.2 Other Remedies. Upon the occurrence of any Early Termination Event, in addition to the Administrator's rights as set forth in Section 10.1, the Administrator is entitled to any and all other remedies available in law or equity, including the right to institute, or cause to be instituted, proceedings for the collection of all amounts then payable on or under this Agreement or any other PACE Financing Documents, enforce any judgment obtained, and collect all monies adjudged due. All rights and remedies granted to the Administrator hereunder and under any other PACE Financing Document, or otherwise available at law or in equity, shall be deemed concurrent and cumulative, and not alternative remedies, and the Administrator may proceed with any number of remedies at the same time until the Lender's obligations are indefeasibly satisfied in full. The exercise by the Administrator of any one right or remedy shall not be deemed a waiver or release of any other right or remedy.

11.3 Notice and Survival. The Lender hereby covenants and agrees to promptly notify the Administrator of the occurrence of any Early Termination Event. The terms and provisions set forth in this Section 10 shall survive the expiration of the Term and any early termination of this Agreement.

ARTICLE XII

TAXES; INDEMNITIES AND LIMITATION OF LIABILITY

12.1 Taxes. With respect to this Agreement, the Lender shall be solely responsible for, and to the fullest extent permitted by applicable law shall indemnify, protect, defend, save and keep 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 federal, state and local taxes, in each such case, to the extent any of the same are attributable to or otherwise assessed or imposed on or asserted against the Lender, any Borrower or any Property with respect to the period subsequent to the date hereof, together with any assessments, penalties, fines additions to tax or interest related thereto, by any federal, state, local or foreign government or taxing authority in connection with or relating to any of the transactions contemplated by this Agreement.

12.2 Indemnification. To the fullest extent permitted by applicable law, the Lender agrees to indemnify and hold harmless each 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 or (ii) 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.

12.3 Notice of Claims. 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 Article XII; 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 Article XII, except to the extent, if any, the other party shall have been materially and adversely prejudiced by such failure.

12.4 Limitation of Liability. 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 OTHER PACE FINANCING DOCUMENT, 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.

ARTICLE XIII **MISCELLANEOUS PROVISIONS**

13.1 Transfer or Assignment. The Lender may not assign or delegate its respective rights or obligations hereunder without the prior written consent of the Administrator. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon, the successors and permitted assigns of the Lender. Aside from the City, there is no third-party beneficiary of this Agreement.

13.2 Applicable 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.

13.3 Forum Selection. THE ADMINISTRATOR AND THE LENDER HEREBY IRREVOCABLY (A) SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN THE COUNTY OF NEW YORK OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER PACE FINANCING DOCUMENTS, (B) WAIVE ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT, (C) WAIVE ANY CLAIM THAT SUCH PROCEEDINGS OR ACTIONS HAVE BEEN BROUGHT IN AN INCONVENIENT FORUM, AND (D) WAIVE THE RIGHT TO OBJECT, WITH RESPECT TO SUCH ACTION OR PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY.

13.4 Jury Trial Waiver. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE ADMINISTRATOR AND THE LENDER EACH HEREBY IRREVOCABLY AND EXPRESSLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY OR THE ACTIONS OF THE ADMINISTRATOR OR THE LENDER IN THE NEGOTIATION, ADMINISTRATION OR ENFORCEMENT THEREOF.

13.5 Amendments and Waiver. No modification, consent, amendment or waiver of any provision of this Agreement, or consent to any departure by the Lender therefrom, shall be effective unless the same shall be in writing and signed by an authorized Representative of the Lender and the Administrator, and then shall be effective only in the specified instance and for the purpose for which given.

13.6 Course of Dealing. Any delay or failure by the Administrator at any time or times in enforcing its rights under the provisions set forth in this Agreement in strict accordance with their terms shall not be construed as having created a course of dealing or performance modifying or waiving the specific provisions of this Agreement.

13.7 Severability. The unenforceability or invalidity of any provision of this Agreement shall not affect the enforceability or validity of any other provision herein and the invalidity or unenforceability of any provision of this Agreement with respect to any particular transaction, person or circumstance shall not affect the enforceability or validity of such provision as it may apply to other transaction, persons or circumstances.

13.8 Marketing and Publicity. The Administrator and the City may, in their sole and absolute discretion, promote or market Lender's role in the Program, including details of the Loan, ~~Energy Measures~~the energy measures and Energy Data of any Effective Project, by using Lender's Marketing Material, that includes the copyrighted, trademarked or registered names or logos of Lender for the purposes of publicly promoting the Program, in any medium, now or hereafter derived, during the period in which Lender is a Qualified Lender. Lender shall not promote, market or otherwise utilize the names or logos of the Administrator, the City or the Program in any Marketing Material or otherwise, without the prior written consent of the Administrator (such consent not to be unreasonably withheld, conditioned or delayed). As used herein, the term "Marketing Material" means each advertisement, media interview, press or public statement, marketing material, signage, banner, report, white paper, information on websites and any other material developed by or prepared for any Lender for any marketing, sales, advertising, publicity, public relations or other purposes.

13.9 Energy Data. Lender hereby agrees to cause Borrower to share with the Administrator and the City monthly Energy Data on the Project and the property, ~~(including but not limited to such data as required in the "Measurement and Verification" section of the Program Guidelines;)~~ and to grant Representatives of the Administrator and/or the City access to the property of the Borrower as contemplated in the following sentence. Lender further agrees that each of the Administrator and the City has the right to (a) monitor, verify, and assess such Energy Data; and, including the right to, with reasonable prior notice to Borrower, for Representatives of

the Administrator and/or the City to physically enter the related property on a Business Day during regular business hours in order to inspect the Project; (b) such additional information or documents as is reasonably necessary to ascertain and/or verify such Project's performance and such Energy Data; and (c) report such Energy Data as contemplated herein, and to other third parties on a portfolio and anonymized basis.

13.10 No Construction Against Drafter. Each party hereto represents and warrants to the other party 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 both 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.

13.11 Agreement Controlling. Except as otherwise provided in this Agreement and except as otherwise provided in other PACE Financing Documents by a specific reference to the applicable provisions of this Agreement, to the extent there is a conflict between the terms and provisions of this Agreement and any PACE Financing Document, this Agreement shall control.

13.12 No Partnership, Etc. The Administrator has no fiduciary or other special relationship with or duty to the Lender and none is created by any PACE Financing Documents related to a Loan. Nothing contained in any PACE Financing Documents, and no action taken or omitted pursuant to such PACE Financing Documents, is intended or shall be construed to create any partnership, joint venture, association, or special relationship between the Administrator and the Lender. In no event shall the Lender's rights and interests under PACE Financing Documents be construed to give the right to control, or be deemed to indicate that the Administrator is in control of, the business, properties, management or operations of the Lender. Any inspection or audit of the books and records of the Lender, or the procuring of documents and financial or other information, by or on behalf of the Administrator shall be for the Lender's protection only and shall not relieve the Lender of any of its obligations hereunder.

13.13 City Not a Party. Under this Agreement there exists no privity of contract between the Lender and the City, and neither the Lender nor any of its Representatives is or shall be an agent, servant or employee of the City by virtue of this Agreement or by virtue of any approval, permit, license, grant, right or other authorization given by the City, the Administrator or any of their respective Representatives. The City shall incur no liability under this Agreement, including by virtue of any act, omission, negligence or obligation of the Administrator to the Lender.

13.14 Further Assurances. From time to time the Lender shall promptly upon request and as applicable execute, acknowledge and/or deliver to the Administrator any confirmation, acknowledgement, affidavit, schedule, certificate, contract, instrument or other document as Lender may reasonably request from time to time in connection with this Agreement or any other PACE Financing Document, any Project financed by the Lender, or any Borrower receiving a Loan from the Lender.

13.15 USA Patriot Act Notice. The Administrator hereby notifies the Lender that pursuant to the requirements of the Patriot Act, the Administrator expects to obtain, verify and record information that identifies the Lender and each Borrower, which information includes the

name and address of such parties and other information that will allow the Administrator to identify such parties and undertake the Administrator's customary "know your customer" compliance evaluations.

13.16 ~~[Confidentiality.]~~⁺Confidentiality. If applicable, the rights and obligations of the parties hereto with regard to the protection of confidential information shall be as set forth in a separate confidentiality, non-disclosure or other agreement (if any) which may be entered into on or around the date hereof.

~~13.16~~

13.17 Freedom of Information Law. Notwithstanding anything to the contrary set forth herein or in any other agreement or instrument, information provided to the Administrator may be subject to disclosure under New York's Freedom of Information Law, Article 6 of the Public Officers Law ("FOIL") when the information requested does not fall into one of FOIL's exceptions to disclosure, which determination shall be made by the Administrator.

13.18 Addresses for Notices; Effective Date of Notices; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by electronic mail ("e-mail"), and all notices and other communications expressly permitted hereunder to be given shall be made to the address, e-mail address or telephone number specified for such person on its signature page. Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when delivered. Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. The Lender or the Administrator may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided, that approval of such procedures may be limited to particular notices or communications. Unless the Administrator otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, return e-mail or other written acknowledgment); provided, that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day, and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

⁺To follow.

13.19 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by the Administrator and when the Administrator shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

[This space is left intentionally blank. Signature pages follow.]

|

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

**New York City Energy Efficiency Corporation
acting as Administrator on behalf of the City of
New York**

By: _____

Name: _____

Title: _____

Address: [●]

[LENDER]

By: _____

Name: _____

Title: _____

Address: [●]

SAMPLE

EXHIBIT A

FORM OF LENDER CERTIFICATION

I, [_____] , an authorized signatory of [_____] (the “**Lender**”), pursuant to Section 4.1(g) of the Master Lender Agreement, dated as of [_____] [____], 20[____] (the “**Master Lender Agreement**”), by and between the New York City Energy Efficiency Corporation (the “**Administrator**”) and the Lender, hereby issue this Lender Certification (this “**Certificate**”) to the Administrator and the City of New York. Except as otherwise indicated herein, capitalized terms used but not defined in this Certificate have the meanings assigned to them in the Master Lender Agreement. On behalf of the Lender, I hereby certify to the Administrator and the City of New York that:

1. each of the Lender’s representations and warranties made in the Master Lender Agreement is true and correct in all material respects as of the date hereof;

2. all of the terms, covenants, conditions and obligations of the Master Lender Agreement required to be complied with and performed by the Lender at or prior to the date hereof have been duly complied with and performed in all material respects;

3. all conditions set forth in Section 4.1 of the Master Lender Agreement have been satisfied;

4. the Program Guidelines (as defined in the Master Lender Agreement) in effect as of the date hereof are those certain Program Guidelines as revised [April 22, 2021] (the “**Guidelines**”);

5. the information set forth in Exhibit A attached hereto is all true and accurate;

6. the Lender has received (a) the audit report identified in Exhibit A attached hereto (the “**Audit**”) as prepared by the auditor identified in such Exhibit A (the “**Auditor**”); and (b) the Auditor’s technical certification identified in Exhibit A attached hereto (the “**Auditor’s Certification**”); true, complete and correct copies of both the Audit and the Auditors Certification have been provided to Lender and since the date they were each issued, neither the Audit nor the Auditor’s Certification has been modified, amended, replaced or rescinded;

7. I have discussed all matters I believe are pertinent to this Certificate with the Auditor and any other third party deemed appropriate, and I have made such inspections, site visits, reviews, examinations and investigations as I believe were reasonably necessary to establish the accuracy of the matters covered in this Certificate. On the basis of the forgoing and on the understanding and belief that the Lender has been provided true, correct and complete information from the Auditor and such other parties as to the matters covered by this Certificate, I, acting for and on behalf of Lender, hereby certify as follows:

(a) the Auditor is a Certified Energy Audit Contractor (as defined in the Guidelines);

(b) with respect to the “Workbook” described in the Auditor’s Certification, the Lender has taken such action and undertaken such independent reviews as it considers necessary and appropriate to conclude that to the best of the Lender’s knowledge and belief (after due inquiry) the data, figures and other information entered into such Workbook by the Auditor is true, accurate and complete and to the extent such Workbook includes forward

looking estimates or calculations, such estimates or calculations were made by the Auditor in a reasonable manner that are consistent with the “Standard of Care” described in the Auditor’s Certification;

(c) the property identified in Exhibit A (the “**Property**”) is an Eligible Site (as defined in Guidelines);

(d) the project that is the subject of this Certificate and that is to be financed by the Lender under the Master Lender Agreement will be undertaken on the Property, and such project (the “**Project**”) is an Energy Efficiency Project (as defined in the Guidelines);

(e) the expected SIR (as defined in the Guidelines) for the Project is as set forth in Exhibit A attached hereto and such SIR has been calculated in a manner materially consistent with all applicable Program Requirements and NYSERDA Guidance (as defined in the Guidelines);

(f) the loan identified in Exhibit A (the “**Loan**”) will be used to finance the Project and such Loan meets all applicable Program Requirements;

8. I have reviewed and understand all applicable Program Requirements (as defined in the Master Lender Agreement);

9. I am a duly authorized representative of the Lender, authorized to execute and deliver this Certificate for and on behalf of the Lender; and

10. I understand that the Administrator and the City of New York are each relying on the certifications I am making herein.

[Signature on the next page]

IN WITNESS WHEREOF, the undersigned has executed this Lender Certification as of _____, 20[___].

[LENDER]

By: _____
Name:
Title:

Exhibit A
to Lender Certification

“Property”	The real property located at _____, <i>(insert full street address)</i> (designated as lot _____ on block _____ for the borough of <i>(insert lot #)</i> <i>(insert block #)</i> _____ on the New York City tax map). <i>(insert borough)</i>
“Auditor”	_____ <i>(insert full legal name of auditor)</i>
“Audit”	_____ <i>(insert full title and date of audit report)</i>
“Loan”	A commercial PACE loan in an original principal amount of \$ _____ to be made to _____ <i>(insert amount)</i> <i>(insert full name of borrower)</i> by Lender.
“SIR”	_____ <i>(insert expected SIR)</i>

**FORM OF
PACE FINANCING
MORTGAGE HOLDER CONSENT**

RE: Mortgage Holder Consent for the PACE Financing and PACE Charge for Property Improvements

GENERAL INFORMATION	
<i>Property</i>	
<i>Property Owner</i>	
<i>Mortgage Lender Name</i>	
<i>Mortgage Lender Street Address</i>	
<i>Mortgage Lender City/State</i>	

PACE Consent Request

Pursuant to New York General Municipal Laws, Section 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.

Pursuant to Section 1, Title 11, Chapter 30 of the New York City Administrative Code, the City has so established a commercial PACE loan program (the “Program”) and has named the New York City Energy Efficiency Corporation (the “Administrator”) as the program administrator to implement the Program.

The Property Owner (the “Property Owner”) owns real property located in the City, commonly referred to as [ENTER ADDRESS] (the “Property”). In accordance with the requirements of the Program, the Property Owner proposes to renovate or retrofit the Property to install energy efficiency improvements or a renewable energy system to service the Property (the “Project”). The Property Owner has applied to [] (the “Lender”) for financing for the Project (the “PACE Financing”).

For more information regarding the Property and the Project, please see Attachment 1 attached hereto and incorporated by reference herein. For more information regarding the PACE Financing, please see Attachment 2 attached hereto and incorporated by reference herein.

This package has been prepared to request a consent to the PACE Financing.

PACE Consent Request

The Mortgage Lender representative signing below acknowledges that:

1. The Mortgage Lender representative has been duly authorized to sign this Mortgage Holder Consent.
2. The Mortgage Lender is the holder and owner of the Loan Documents (as defined in the Loan Agreement, dated as of [_____] [____], 20[____], between the Property Owner and [____] (the “Loan Agreement”), including but not limited to [____]).
3. The PACE financing will result in the levy of a charge against the Property (the “PACE Charge”) and the remittance of sums collected and received pursuant to the PACE Charge and any applicable fees and interest to the Administrator (or if there is no program administrator, to the Lender directly).
4. 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 payment schedule included in [Schedule A] attached hereto (the “PACE Charge Payment Schedule”); plus (ii) any capitalized interest or 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.
5. To Mortgage Lender’s knowledge, no default or Event of Default exists as to the performance of any of the terms or conditions of the Loan Documents, nor, to Mortgage Lender’s knowledge, is there any uncured default or Event of Default which with the giving of notice or the passage of time or both would constitute a default or an Event of Default with respect to the Loan Documents as of the date of this Mortgage Holder Consent.
6. The Mortgage Lender has received and reviewed all PACE Financing Documents and consents to the execution and delivery thereof by the Property Owner, as applicable. As used herein and in the Loan Agreement, the PACE Financing documents means the documents listed in [Schedule A] attached hereto. The Mortgage Lender affirms that all of the conditions set forth in that certain Loan Documents relating to the Property Owner’s creation or incurrence of indebtedness and liens in connection with the PACE Financing have been satisfied or waived.
7. Furthermore, the PACE financing and PACE Charge as set forth in the PACE Financing Documents will not constitute a default, breach or violation of any covenants or other provisions under the Loan Documents, including any provisions of the related documents encumbering the Property, or trigger the exercise of any remedies under the Loan Documents.

PROPERTY DESCRIPTION AND PROJECT SUMMARY

PROPERTY DESCRIPTION

PROPERTY	
<i>Property Type:</i>	
<i>Building Size:</i>	
<i>Borough, Block, and Lot:</i>	
PROPERTY SUMMARY	
Property Address	
APN/Parcel ID	
Property Owner	
Mortgage Loan Number or ID:	
Current Mortgage Balance:	
Loan Maturity Date:	
Interest Rate:	
Interest Type:	<input type="checkbox"/> Principal & Interest <input type="checkbox"/> Interest Only
Loan is:	<input type="checkbox"/> Cross Defaulted <input type="checkbox"/> Cross Collateralized
Monthly Payment Amount:	
	Includes: Taxes: <input type="checkbox"/> Yes <input type="checkbox"/> No \$ _____ Insurance: <input type="checkbox"/> Yes <input type="checkbox"/> No \$ _____

PROJECT SUMMARY	
<i>Project Objective:</i>	
<i>Scope of Improvements:</i>	
<i>Property Benefits per Improvement:</i>	

PROPOSED PACE FINANCING AND ASSESSMENT**PACE Financing Amount (est.):****Annual PACE Payment (est.):****Annual Property Tax Payment (before PACE):****Annual Property Tax Payment (after PACE):****Current Mortgage Principal Balance ([DATE]):****As-Complete Appraised Property Value ([DATE] Appraisal):****Maximum PACE Lien to Value (LiTV):****Maximum Loan to Value (LTV):****PACE Financing Interest Rate Spread:****PACE Financing & Amortization Term:**

SAMPLE

**PROGRAM FINANCING AGREEMENT AND RELATED PACE FINANCING
DOCUMENTS**

1. Program Financing Agreement, dated as of [____][_], 20[_], by and between [Lender] and [Borrower].
- 2.
- 3.
- 4.

SAMPLE

SCHEDULE I
to Master Lender Agreement

LIST OF EFFECTIVE PROJECTS²

No.	Name of Borrower	Project Location (address and BBL)	Date Project became an Effective Project
1.			
2.			
3.			
4.			
5.			

SAMPLE

² List to be updated from time to time by the Administrator pursuant to Section 4.2 as Projects qualify to become Effective Projects.