

# FORM

## GUARANTY AGREEMENT

This GUARANTY AGREEMENT (this "**Guaranty**"), dated as of [\_\_\_\_\_] [\_\_\_\_], 202[2], is made by [\_\_\_\_], a [New York limited liability company] ("**Guarantor**"), in favor and for the benefit of the NEW YORK CITY ENERGY EFFICIENCY CORPORATION ("**NYCEEC**"), a not-for-profit corporation incorporated under the laws of the State of New York, acting in its capacity as Administrator and as Paying Agent.

### RECITALS

WHEREAS, NYCEEC has been retained by the City of New York (the "**City**") to serve as the City's designated administrator of the City's commercial property assessed clean energy program known as the "NYC Accelerator: PACE Financing Program" (the "**Program**") and in such capacity, NYCEEC is referred to herein as "**Administrator**";

WHEREAS, acting on behalf of the City, Administrator released a certain Request for Qualifications for Qualified Lenders for the Program, with an "Original Release Date" of April 22, 2021 and as "Revised" on [September 27, 2022 (version 2.1)]<sup>1</sup>, and excluding any subsequent amendment or replacement thereto, the "**RFQ**";

WHEREAS, in accordance with the RFQ, [\_\_\_\_], a [Delaware limited liability company] ("**Lender**") wishes to qualify as a Qualified Lender (as defined in the RFQ) under the Program;

WHEREAS, pursuant to the RFQ and other applicable Program requirements, to qualify as a Qualified Lender (as defined in the RFQ), Lender has entered into a Master Lender Agreement, dated as of the date hereof, with Administrator and Paying Agent (the "**MLA**");

WHEREAS, pursuant to the MLA, NYCEEC has been designated by Lender to act as paying agent pursuant to and in accordance with the MLA (NYCEEC, acting in such capacity, is the "**Paying Agent**");

WHEREAS, Guarantor is directly or indirectly affiliated with (or is under common ownership or control with) the Lender, and as such Guarantor will derive substantial direct and indirect benefits from the transactions contemplated under the MLA; and

WHEREAS, to induce Administrator and Paying Agent to enter into the MLA, Guarantor wishes to guaranty certain of the Lender's obligations arising under the MLA on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto hereby agree as follows:

**1. Definitions and Rules of Interpretation.** Capitalized terms used but not otherwise defined herein shall have the meanings set forth below. Except as otherwise set forth herein, capitalized terms used but not defined herein shall have the meanings given in the MLA and the rules of interpretation set forth in Section 1.2 of the MLA shall apply to this Guaranty.

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<sup>1</sup> NOTE TO FORM: Confirm this refers to the current version of the RFQ in effect at the time the guaranty is executed.

"**Financial Statements**" means a copy of a minimum of Lender's previous two (2) years audited financial statements, as described in Section 5.1.1, Item 13(a) of the RFQ.

"**Lender Obligations**" means (a) all payment obligations of Lender arising under or in connection with the MLA (including Lender's obligations to pay the Administration Fee and the Servicing Fee in accordance with the MLA); and (b) all other obligations of Lender arising under or in connection with [Section 9.2 and/or Article XIII]<sup>2</sup> of the MLA.

"**Material Adverse Effect**" means, with respect to Guarantor (a) Guarantor 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 Guarantor, taken as a whole; or (ii) there has occurred any material adverse change in the properties, business, prospects, operations, earnings, assets, liabilities or condition (financial or otherwise) of Guarantor.

"**Person**" means any individual, corporation, partnership, joint venture, limited liability company, trust, unincorporated association, Governmental Authority, or any other entity.

"**Termination Date**" means the earlier of: (a) the date on which Administrator provides Lender with written confirmation of (i) its receipt and satisfactory review of the Financial Statements, and (ii) Administrator's final approval of Lender as a "Qualified Lender" (as such term is defined in the MLA), authorized to make Loans under the Program without any credit- or other support from Guarantor and otherwise in accordance with the RFQ, which review and approval set forth in clause (i) and (ii) above, as applicable, shall pursuant to the RFQ, be in Administrator's sole discretion; and (b) the date, as confirmed by Administrator in writing, as of which indefeasible payment of all amounts payable in respect of the Lender Obligations has been made, and full performance of all other obligations of Lender arising in respect of the Lender Obligations has occurred.

2. **Guaranty.** Until the Termination Date, Guarantor absolutely, unconditionally and irrevocably undertakes, agrees and guarantees the full and punctual payment and performance of the Lender Obligations (the "**Guarantor Obligations**", and together with the Lender Obligations, the "**Obligations**"). The Guarantor Obligations under this Guaranty are independent of the Lender Obligations, and a separate action or actions may be brought and prosecuted against Guarantor to enforce this Guaranty. No payment or payments made by the Lender or any other Person or received or collected by Administrator from the Lender or any other Person by virtue of any action or proceeding or any set-off or appropriation or application, at any time or from time to time, in reduction of or in payment of the Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of Guarantor hereunder.

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<sup>2</sup> Note to Form: to be confirmed that this cross reference is accurate.

**3. Guaranty Absolute and Unconditional.** Until the Termination Date, Guarantor agrees that its Obligations under this Guaranty are irrevocable, continuing, absolute and unconditional and shall not be discharged or impaired or otherwise affected by, and Guarantor hereby irrevocably waives any defenses to enforcement it may have (now or in the future) by reason of:

(i) any illegality, invalidity, uncollectability or unenforceability of any Obligation or the MLA or any related agreement or instrument, or any law, regulation, decree or order of any jurisdiction or any other event affecting any term of the Obligations;

(ii) any change in the time, place or manner of payment or performance of, or in any other term of any of the Obligations, or any rescission, waiver, release, assignment, amendment or other modification of the MLA;

(iii) the act of creating the Obligations or any part thereof being ultra vires;

(iv) claims or offsets (whether at law, in equity or by agreement) which render the Obligations wholly or partially uncollectible;

(v) the execution signature pages of the MLA having been forged or otherwise is irregular or not genuine or authentic, it being agreed that Guarantor shall remain liable hereon regardless of whether Lender or any other Person be found not liable on the Obligations or any part thereof for any reason;

(vi) any exercise or failure by Administrator to exercise any rights against Guarantor or any other Person (including Guarantor);

(vii) any right to require Administrator to proceed against Lender, or pursue any other remedy;

(viii) any defense arising by reason of any disability or other defense of Lender, or the cessation from any cause whatsoever of the liability of Lender;

(ix) any defense based on any claim that the Guarantor Obligations exceed or are more burdensome than the Lender Obligations;

(x) the benefit of any statute of limitations affecting Guarantor's liability hereunder;

(xi) the failure of any other Person to execute or deliver this Guaranty or any other agreement or the release or reduction of liability of Guarantor or surety with respect to the Obligations; or

(xii) any other agreements or circumstance of any nature whatsoever that might otherwise constitute a defense available to, or a discharge of, this Guaranty and/or the obligations of Guarantor hereunder.

**4. Certain Waivers; Acknowledgments.** Until the Termination Date, Guarantor further acknowledges and agrees as follows:

(a) Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty, and acknowledges that this Guaranty is continuing in nature and applies to all presently existing and future Obligations, until the Termination Date;

(b) Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of non-performance, default, acceleration, protest or dishonor and any other notice with respect to any of the Obligations and this Guaranty; and

(c) Guarantor agrees that its guaranty hereunder shall continue to be effective or be reinstated, as the case may be, if at any time all or part of any payment of any Obligation is voided, rescinded or recovered or must otherwise be returned by Administrator upon the insolvency, bankruptcy or reorganization of Lender.

**5. Subrogation.** Until the Termination Date, neither any payment made by or for the account of Guarantor nor any performance or enforcement of any Obligation pursuant to this Guaranty shall entitle Guarantor by subrogation, indemnity, exoneration, reimbursement, contribution or otherwise to any payment by Lender or to any payment from or out of any property of Lender, and Guarantor shall not exercise any right or remedy against Lender or any property of Lender by reason of any performance by Guarantor of this Guaranty. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Guarantor Obligations shall not have been paid in full or performed, such amount shall be held in trust for the benefit of Administrator and shall forthwith be paid to Administrator to be credited and applied upon the Guarantor Obligations, whether matured or unmatured, in accordance with the terms of this Guaranty and the MLA, if applicable. Any obligations of Lender to Guarantor, now or hereafter existing, including any obligations to Guarantor as subrogee of Administrator or resulting from Guarantor's performance under this Guaranty, are hereby subordinated to the Guarantor Obligations. In addition to Guarantor's waiver of any right of subrogation as set forth in this Guaranty with respect to any obligations of Lender to Guarantor as subrogee of Administrator, Guarantor agrees that, if Administrator so requests, such Guarantor shall not demand, take, or receive from Lender, by setoff or in any other manner, payment of any other obligations of Lender to Guarantor until the Guaranteed Obligations have been paid in full and any commitments of Administrator or facilities provided by Administrator with respect to the Guarantor Obligations have been terminated. If any payments are received by Guarantor in violation of such waiver or agreement, such payments shall be received by Guarantor as trustee for Administrator and shall be paid over to Administrator on account of the Guarantor Obligations, but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty.

**6. Representations and Warranties.** To induce Administrator to enter into the MLA, Guarantor represents and warrants to Administrator and the City that:

(a) (i) Guarantor (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 Guaranty and to carry out the terms and conditions contained herein; and (ii) the execution of this Guaranty, and Guarantor's participation in the transactions specified herein, 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 Guarantor 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 Guarantor of its obligations under this Guaranty;

(c) except as expressly disclosed in writing to 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 Guarantor to execute, deliver, and perform its obligations under this Guaranty;

(d) the execution, delivery and performance by Guarantor of this Guaranty and the performance by Guarantor hereunder, (i) do not contravene any provisions of law applicable to Guarantor; will not result in a breach or violation of any provision of (A) Guarantor's organizational documents, (B) any statute, law, writ, order, rule or regulation of any Governmental Authority applicable to Guarantor, or (C) any judgment, injunction, decree or determination of any Governmental Authority applicable to Guarantor; 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 Guarantor is a party, by which Guarantor may be bound, or to which Guarantor or its property may be subject;

(e) this Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor 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) neither Guarantor nor any of the Representatives of Guarantor is a Prohibited Person and Guarantor is not an Affiliate of any Prohibited Persons;

(g) none of the documents, financial statements, 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 Administrator, Paying Agent or the City, with respect to the Guarantor, by or on behalf of Guarantor in connection with the Program, the RFQ or any PACE Financing Documents (collectively, the "**Guarantor 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 Guarantor 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, Guarantor represents only that it acted in good faith and utilized assumptions believed by it to be reasonable at the time made; and provided, further, that Guarantor makes no representation or warranty with respect to any documents, financial statements, applications, agreements, spreadsheets, exhibits, schedules or any other written information submitted or made available to the Administrator, Paying Agent or the City that is not a Guarantor Submittal; and

(h) subsequent to the respective dates on which the Guarantor Submittals were provided or made available to Administrator and/or Paying Agent, except as otherwise disclosed to Administrator or Paying Agent in writing, no event has occurred that has had a Material Adverse Effect on Guarantor, and to the knowledge of Guarantor, 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, have a Material Adverse Effect on Guarantor.

## **7. Covenants.**

(a) Guarantor shall promptly notify Administrator and Paying Agent in writing of the occurrence of (i) any Event of Default (as defined below) or default or breach by Guarantor of any obligation hereunder; (ii) any event, circumstance or condition that has had, or has a reasonable likelihood of having, a Material Adverse Effect on Guarantor; or (iii) any Material Legal Issue arises with respect to Guarantor.

(b) If any Merger or Consolidation or any Change of Control occurs with respect to Guarantor, Guarantor shall notify Administrator and Paying Agent within thirty (30) Business Days following the occurrence of such Merger or Consolidation or such Change of Control.

(c) Guarantor shall maintain and preserve its legal existence, its rights to transact business and all other rights, franchises and privileges necessary or desirable in the normal course of its business and operations and the ownership of its properties, except to the extent non-compliance with the foregoing does not, and could not reasonably be expected to have, a Material Adverse Effect on Guarantor.

(d) Any payments made by Guarantor to Administrator or any other Program Administrator Indemnitee shall be free and clear of, and without deduction or withholding for, any taxes; provided, that if Guarantor shall be required by law to deduct or withhold any taxes from any sums payable to Administrator or any other Program Administrator Indemnitee, then Guarantor shall: (i) make such deductions or withholdings and pay such amounts to the relevant authority in accordance with applicable law; (ii) pay to Administrator or the other Program Administrator Indemnitee (as the case may be) the sum that would have been payable had such deduction or withholding not been made; and (iii) at the time such payment is made, pay to Administrator or the other Program Administrator Indemnitee (as the case may be) all additional amounts as specified by Administrator to preserve the after-tax yield Administrator or the other Program Administrator Indemnitee would have received if such tax had not been imposed. This provision does not apply to income taxes payable by Administrator on its taxable income.

**8. Events of Default.** It is hereby understood and agreed by the parties hereto (including Lender) that an Early Termination Event under the MLA shall be deemed to have occurred if any one or more of the following shall occur (each, an “**Event of Default**”):

(a) Guarantor shall default in the timely payment of any amount required to be paid by it under this Guaranty;

(b) Any representation, warranty or certification made or deemed made herein by Guarantor or any certificate furnished by Guarantor to Administrator pursuant to the provisions thereof, shall prove to have been false or misleading in any material respect as of the time made or furnished;

(c) Except as otherwise set forth in this Section 8, Guarantor shall fail to observe, perform or comply with any material term, covenant, provision or agreement contained in this Guaranty, and such failure to observe, perform or comply (as the case may be) shall continue unremedied (if remediable) for a period of ten (10) Business Days after Administrator gives notice of such failure to Guarantor;

(d) the dissolution of Guarantor by insolvency, bankruptcy, or other similar event; or

(h) Administrator determines that any event has occurred that has had a Material Adverse Effect on Guarantor, or that any Material Legal Issue has arisen with respect to Guarantor.

**9. Miscellaneous.**

(a) PACE Financing Document. The parties hereto hereby agree that this Guaranty is a PACE Financing Document.

(b) Further Assurances. From time to time Guarantor shall promptly upon request and as applicable execute, acknowledge and/or deliver to Administrator any confirmation, acknowledgement, affidavit, schedule, certificate, contract, instrument or other document (including financial statements, other reports or other financial information regarding Guarantor) as Administrator may reasonably request from time to time in connection with this Guaranty.

(c) Conflicts. Except as otherwise provided in this Guaranty and except as otherwise provided in other PACE Financing Documents by a specific reference to the applicable provisions of this Guaranty, to the extent there is a conflict between the terms and provisions of this Guaranty and any other PACE Financing Document or the Program Guidelines, the Collection Agreement shall control, followed by the MLA, followed by this Guaranty.

(d) Freedom of Information Law. Notwithstanding anything to the contrary set forth herein or in any other agreement or instrument, information provided to Administrator or the Paying Agent or any other party in accordance with the terms and provisions of the MLA 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 Administrator.

(e) Addresses for Notices; Effective Date of Notices; Electronic Communications.

(i) Notices Generally. Except as provided in subsection 9(e)(ii) 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, or e-mail address specified for such Person on its signature page. Notices sent by overnight courier service shall be deemed to have been given one (1) Business Day after the date such notice or other communication was deposited with such service. Notices sent by certified or registered mail shall be deemed to have been given five (5) Business Days after the date such notice or other communication was deposited with the U.S. postal service. Notices delivered by hand shall be deemed to have been given on the date of receipt. Notices delivered through electronic communications to the extent provided in subsection (ii) below, shall be effective as provided in such subsection (ii).

(ii) Electronic Communications. Guarantor, Administrator or Paying Agent, may, in their respective 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 Administrator otherwise prescribes, (A) 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 (B) 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 (A) of notification that such notice or communication is available and identifying the website address therefor.

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

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

(h) No Partnership, Etc. Administrator and Paying Agent have no fiduciary or other special relationship with or duty to Guarantor and none is created by any PACE Financing Document. 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 or among Administrator, Paying Agent and Guarantor. In no event shall the rights and interests of Administrator and Paying



Agent under PACE Financing Documents be construed to give the right to control, or be deemed to indicate that Administrator or Paying Agent is in control of, the business, properties, management or operations of Guarantor. Any inspection or audit of the books and records of Guarantor, or the procuring of documents and financial or other information, by or on behalf of Administrator or Paying Agent shall be for the protection of Administrator and Paying Agent only and shall not relieve Guarantor of any of its obligations hereunder.

(i) Indemnification. To the fullest extent permitted by applicable law, Guarantor agrees to indemnify, defend and hold harmless each Program Administrator Indemnitee from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, taxes or disbursements of any kind or nature whatsoever (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 Guaranty or (ii) any action taken or omitted by any Program Administrator Indemnitee in connection with this Guaranty or otherwise in connection with the Program; provided, that, Guarantor shall not be liable to Administrator for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting directly from the gross negligence or willful misconduct of Administrator or any other Program Administrator Indemnitee as determined in a final non-appealable judgment or order of a court of competent jurisdiction that is binding on Administrator or the other applicable Program Administrator Indemnitee (as the case may be).

(j) Limitation of Liability. ADMINISTRATOR SHALL NOT HAVE ANY LIABILITY TO GUARANTOR (WHETHER SOUNDING IN TORT, CONTRACT, EQUITY OR OTHERWISE) FOR LOSSES SUFFERED BY GUARANTOR IN CONNECTION WITH, ARISING OUT OF, OR IN ANY WAY RELATED TO THE TRANSACTIONS OR RELATIONSHIPS CONTEMPLATED BY THIS GUARANTY 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 ADMINISTRATOR THAT THE LOSSES WERE THE RESULT OF ACTS OR OMISSIONS CONSTITUTING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ADMINISTRATOR. GUARANTOR HEREBY WAIVES ALL FUTURE CLAIMS AGAINST ADMINISTRATOR FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES.

(k) Governing Law. THIS GUARANTY AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(l) Forum Selection. THE PARTIES HERETO 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 GUARANTY, (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.

(m) Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9(e) HEREOF AND AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY MANNER PERMITTED BY APPLICABLE LAW.

(n) Jury Trial Waiver. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO HEREBY IRREVOCABLY AND EXPRESSLY WAIVE 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 GUARANTY OR THE TRANSACTIONS CONTEMPLATED THEREBY OR THE ACTIONS OF ADMINISTRATOR, GUARANTOR OR LENDER IN THE NEGOTIATION, ADMINISTRATION OR ENFORCEMENT THEREOF.

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

(p) Termination. Upon the Termination Date this Guaranty shall terminate; provided that in accordance with Section 9(n) below, certain Sections of this Guaranty shall survive any such termination.

(q) Survival. All representations and warranties and all provisions herein for indemnity of 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 this Guaranty. Any provision of this Guaranty that by its nature would survive termination of this Guaranty shall remain in effect after this Guaranty is terminated.

(r) Course of Dealing. Any delay or failure by Administrator at any time or times in enforcing its rights under the provisions set forth in this Guaranty 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 Guaranty.

(s) No Construction Against Drafter. Each party hereto 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 Guaranty. As such, this Guaranty 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 Guaranty and are expressly waived to the maximum extent permitted by applicable law.

(t) Severability. The unenforceability or invalidity of any provision of this Guaranty shall not affect the enforceability or validity of any other provision herein and the invalidity or unenforceability of any provision of this Guaranty 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.

(u) USA Patriot Act Notice. Administrator and Paying Agent hereby notify Guarantor that pursuant to the requirements of the Patriot Act, Administrator and Paying Agent expect to obtain, verify and record information that identifies Guarantor, which information includes the name and address of such party and other information that will allow Administrator to identify such party and undertake Administrator's and Paying Agent's customary "know your customer" compliance evaluations.

(v) 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 first set forth above.

(w) Entire Agreement. This Guaranty constitutes the entire contract among the parties hereto relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

(x) Effectiveness. When this Guaranty has been duly executed by Guarantor, Administrator and Paying Agent, and acknowledged by Lender, and when Administrator and Paying Agent have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, then this Guaranty shall become effective as of the date first set forth above.

(y) Counterparts and Electronic Signatures. This Guaranty, and any waiver or amendment hereto, may be executed by the parties hereto in separate counterparts, each of which shall be considered an original, but all of which shall together constitute one and the same instrument. Any signature (including any signature delivered by e-mail transmission in ".pdf" format and any electronic symbol or process attached to, or associated with, this Guaranty or any other record related hereto that is adopted or approved by an individual with the intent to sign, authenticate, approve or accept this Guaranty for and on behalf of a Party) to this Guaranty or to any waiver or amendment hereto, shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state Law based on the Uniform Electronic Transactions Act, and the parties hereto hereby waive any objection to the contrary.

IN WITNESS WHEREOF, the parties hereto have executed this Guaranty as of the day and year first above written.

**GUARANTOR**

[\_\_\_\_\_]

By: \_\_\_\_\_

Name:

Title:

Address: [\_\_\_\_\_]

[\_\_\_\_\_]

Attn: [●]

Email: [●]

**PAYING AGENT**

NEW YORK CITY ENERGY EFFICIENCY CORPORATION

By: \_\_\_\_\_

Name:

Title:

Address: 1359 Broadway, 19th Floor  
New York, NY 10018  
Attn: General Counsel  
Email: PACE@nyceec.com

**ADMINISTRATOR**

NEW YORK CITY ENERGY EFFICIENCY CORPORATION

By: \_\_\_\_\_

Name:

Title:

Address: 1359 Broadway, 19th Floor  
New York, NY 10018  
Attn: General Counsel  
Email: PACE@nyceec.com

Acknowledged and Agreed:

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title: