

## PACE CHARGE COLLECTION AGREEMENT

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

### RECITALS

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

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

3. WHEREAS, pursuant to Title 11, Chapter 30 of the New York City Administrative Code (the “PACE Local Law”), the City has established a program known as the NYC Accelerator PACE Financing Program (the “Program”) that will provide for commercial PACE loans;

4. WHEREAS, pursuant to a contract, dated April 6, 2021, between the City and NYCEEC (the “Administration Agreement”), the City has appointed NYCEEC (along with its successors and assigns, the “Administrator”) to implement and manage certain aspects of the Program on behalf of the City.

5. WHEREAS, pursuant to a certain Master Lender Agreement, dated as of [DATE] (the “Master Lender Agreement”, attached hereto as Schedule I), by and between Administrator and Lender, Lender desires to make a loan to Borrower under the Program (the “Loan”) to finance the Project (as defined herein) and has appointed NYCEEC to act as its agent for purposes of collecting and disbursing Loan payments made by Borrower (in such capacity, the “Paying Agent”).

6. WHEREAS, [Borrower owns] *OR* [pursuant to an Eligible Lease (as defined herein) dated as of [DATE] between [FULL LEGAL NAME OF LANDLORD] a [STATE] [ENTITY TYPE], as lessor (the “Property Owner”) and Borrower, as tenant or lessee (the “Lease Agreement”), Borrower holds a recordable leasehold interest in] the real property, commonly referred to as [ENTER ADDRESS], and more particularly described in Exhibit A attached hereto and incorporated herein (the “Property”).

7. WHEREAS, in accordance with the requirements of the Program, Borrower [wishes to undertake] OR [has undertaken] an energy efficiency retrofit and/or renewable energy project on the Property involving, among other things, [*insert short description of the project here*] (the “Project”) and has applied to Lender for the Loan to finance the Project.<sup>1</sup>

8. [WHEREAS, Lender has provided to Administrator an owner consent related to the Project, dated as of [DATE] (the “Owner Consent”) duly executed by an authorized Representative of the Property Owner.]<sup>2</sup>

9. WHEREAS, Lender has provided to Administrator a Technical Certification related to the Project, dated as of [DATE] (the “Technical Certification”), and a Lender Certification related to the Project, dated as of [DATE] (the “Lender Certification”), and Lender and Borrower have subsequently memorialized the related financing in that certain Program Financing Agreement, dated [DATE], by and between Borrower and Lender and attached hereto as Exhibit B (the “Program Financing Agreement”).

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

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

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

**Section 1. Defined Terms and Rules of Interpretation.**

(a) Whenever used in this Agreement, including hereinabove set forth, the following words and phrases, unless the context otherwise requires, shall have the meanings specified in this Section 1. Except as otherwise set forth herein, capitalized terms used but not defined herein shall have the meanings set forth in the PACE Rules.

“ACH” means the automated clearing house system.

“Administration Agreement” has the meaning set forth in the recitals hereto.

“Administrator” has the meaning set forth in the recitals hereto.

“Affiliate” means, with respect to any given Person: (a) any other Person that is directly or indirectly Controlled by, under common Control with, or Controls such Person; or (b) any other

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<sup>1</sup> NOTE TO FORM: modify language as appropriate.

<sup>2</sup> NOTE TO FORM: Only include this Recital #8 if the Borrower has a leasehold interest in the Property.

Person owning beneficially, or Controlling, twenty percent (20%) or more of the shares, interests, participations and/or rights in or other equivalents (however designated, whether voting or nonvoting, ordinary or preferred) in the equity or capital of such Person.

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

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

“Borrower Eligibility Requirements” means, with respect to a given Person as of a given date of determination, each of the following criteria: (a) such Person is the Property Owner of the parcel of real property for which the PACE loan is being made; (b) such Person is not an Affiliate of Lender; (c) such Person is not delinquent in the payment of any taxes, civil penalties, or other debt to the City, or any water or sewer charges to the New York City Water Board, or the City’s Department of Environmental Protection at the time the Loan is made; and (d) such Person is not a Prohibited Person.

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

“Certificate of Completion” means a Certificate of Completion for the Project executed by duly authorized Representatives of Lender, Borrower and the primary Project contractor(s) substantially in a form to be provided by Administrator, and otherwise in form and substance acceptable to Administrator, and delivered to Administrator pursuant to Section 8(b).

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

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

“Collection Account” means, collectively, one or more general or other deposit account(s) opened and maintained by Paying Agent as the beneficial owner of such account(s) on behalf of Lender pursuant to the Master Lender Agreement and all other Qualified Lenders pursuant to the related master lender agreements, with (a) JPMorgan Chase Bank, N.A.; (b) any Affiliate thereof that is acceptable to Paying Agent following consultation with the City and Lender; or (c) any other FDIC insured depository institution acceptable to Administrator (in consultation with the City).

“Control” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a given Person, whether through the ownership of

stocks, shares, partnership, membership or other equity interests or voting securities, by contract or otherwise.

“Construction Completion” means, with respect to the Project (a) all Project Equipment has been properly and fully installed (and where required or otherwise applicable, satisfactorily performance tested) and all related work, including “punch list” items, under the contract(s) between Borrower and the primary Project contractor(s), have been fully completed in accordance with the terms of such contract(s); (b) as required or otherwise applicable, all Project Equipment has been commissioned, brought on-line and has commenced regular operation; (c) all necessary approvals, permits, and consents needed from Governmental Authorities having jurisdiction in order to operate the Project Equipment have been obtained, and if required or otherwise applicable, permanent certificate(s) of occupancy in respect of the Project have been issued by the relevant Governmental Authorities; and (d) all approvals, permits and consents needed from such Governmental Authorities in order to undertake the Project, including all relevant construction, building, work and other permits (if any), have been properly closed out; and (e) the primary Project contractor(s) and all other contractors, subcontractors, vendors, suppliers, consultants and service providers who performed Project work or provided any Project Equipment have all been paid in full for their work related to the Project and/or such Project Equipment.

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

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

“DOB” means the City’s Department of Buildings.

“DOF” means the City’s Department of Finance.

“Energy Data” means (a) data and other information concerning the expected energy performance of the Project and/or the Property, as estimated prior to Construction Completion; and (b) monthly data and other information concerning the actual energy performance of the Project and/or the Property after Construction Completion.

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

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

[“Estimated Completion Date” means [\_\_\_\_\_] [\_\_\_], 20[\_\_\_], such date being the outside date by which Lender and Borrower reasonably estimate (as of the date hereof) that Construction Completion will have been achieved.]<sup>3</sup>

“Governmental Authority” means the United States of America; any state, local, municipal or other political subdivision thereof; any agency or department of any of the foregoing; any public authority; any court of competent jurisdiction; any commission; any board; and any public utility; which has jurisdiction over the Program, Administrator, Paying Agent, Lender, the Project and/or Borrower.

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<sup>3</sup> NOTE TO FORM: Omit this definition if the Project is a Retroactive Project.

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

“Loan” has the meaning set forth in the recitals hereto.

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

“Major Renovation” has the meaning set forth in Section 9(a).

“Master Lender Agreement” has the meaning set forth in the recitals hereto.

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

“New Construction” has the meaning set forth in Section 9(a).

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

“NYCTL-1998-2 Trust” means the NYCTL 1998-2 Trust, a not-for-profit trust organized under the laws of the State of Delaware, or another trust as determined by the City of New York.

[“Owner Consent” has the meaning set forth in the recitals hereto.]<sup>4</sup>

“PACE Charge” means the amount due on a Statement of Account pursuant to the Program Financing Agreement.

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

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

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

“PACE Financing Documents” means this Agreement, the Master Lender Agreement, the guaranty issued to Administrator in respect of Lender’s obligations under the Master Lender Agreement (if applicable), the Program Financing Agreement, the Collection Agreement, each Mortgage Holder Consent (if any), the Master Transfer and Remittance Agreement (if any), the Technical Certification (and the workbook referenced therein), the Lender Certification, the TIPLA, the Technical Certificate of Completion, the Certificate of Completion, each wire or similar instruction provided to Administrator or Paying Agent pursuant to this Agreement, and any

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<sup>4</sup> NOTE TO FORM: Only include this definition if the Borrower has a leasehold interest in the Property.

and all other agreements, instruments and other documents evidencing and securing or executed in connection with the Loan, including such additional documents as may be referenced in the Program Guidelines.

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

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

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

“Paying Agent” has the meaning set forth in the recitals hereto.

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

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

“Payment Report” has the meaning set forth in Section 58-02 of the PACE Rules.

“Person” means any individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

“Prohibited Person” means any Person (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 an Affiliate of any Person identified in clauses (a) - (d) of this definition.

“Program” has the meaning set forth in the recitals hereto.

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

“Program Financing Agreement” has the meaning set forth in the recitals hereto.

“Program Guidelines” means the program guidelines governing the PACE Program as revised on [August 19, 2024]<sup>5</sup> (version [3.0]) and published by the City on or around such revision date.

“Program Requirements” means, collectively, New York General Municipal Law 119-ee *et seq.*, the PACE Local Law, the PACE Rules and the Program Guidelines.

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<sup>5</sup> NOTE TO FORM: Confirm that the Guidelines referenced here is the version in effect at the time of Loan Closing.

“Project” has the meaning set forth in the recitals hereto.

“Project Equipment” means all equipment, machinery, materials, building supplies, and/or systems installed within or otherwise implemented or undertaken at the Property in connection with the Project.

“Property” has the meaning set forth in the recitals hereto.

“Property Owner” means the Person who is the owner of the Property as indicated in the City’s real property records maintained by the Office of the City Register or the County Clerk’s Office for Richmond County, New York and by such additional evidence, title reports, or other documentation as may be requested by Administrator.

“Qualified Lender” means any Person which has satisfied (and continues to satisfy) 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 NYCEEC (as Administrator and as Paying Agent).

“Qualified Transferee” means any corporation, partnership, joint venture, association, limited liability company, joint stock company, or trust that is, as of any given point in time, either (i) another Qualified Lender under the Program other than Lender; or (ii) an entity (A) that is in good standing in the jurisdiction in which it was formed and is in good standing and qualified to do business in the State of New York; provided, that a statutory trust need not be qualified to do business in the State of New York if it has duly designated the New York State Secretary of State as its agent for service of process pursuant to Section 18 of the New York State General Associations Law; (B) that is a U.S. Person; (C) that is not a Prohibited Person; (D) with respect to which there exists no Material Legal Issue (as defined in the Master Lender Agreement); and (E) that is not delinquent in the payment of any taxes, civil penalties, or other debt to the City, or any water or sewer charges to the New York City Water Board, or the City’s Department of Environmental Protection.

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

[“Required Completion Date” means the date that is the first anniversary of the Estimated Completion Date.]<sup>6</sup>

“Retroactive Project” means a project under the Program for which Construction Completion was achieved prior to the date hereof.

“Servicing Fee” means, with respect to the Loan (and the Project) the semi-annual servicing fee payable by Lender to Administrator, pursuant to the Program Guidelines and the Master Lender Agreement, in the amount calculated by Lender (and confirmed by Administrator) and memorialized in the PACE Charge Payment Schedule for the Loan (as such PACE Charge Payment Schedule may be replaced from time to time).

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

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<sup>6</sup> NOTE TO FORM: Omit this definition if the Project is a Retroactive Project.

“Technical Certificate of Completion” means a Technical Certificate of Completion for the Project delivered to Administrator pursuant to the Program Guidelines in the form available on the Program website (or in such other form as may have been provided by Administrator) and otherwise in form and substance acceptable to Administrator.

“Term” has the meaning set forth in Section 9(o).

“TIPLA” means the Truth in PACE Lending Acknowledgment for the Project, dated [DATE], executed by Borrower and delivered to Administrator pursuant to the Program Guidelines and the Master Lender Agreement.

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended.

“Wire Instruction Form” means the Wire Instruction Form provided to Administrator and Paying Agent by Lender pursuant to Section 3(g) in the form available on the Program website (or in another form acceptable to Administrator and Paying Agent).

(b) Except as may otherwise be expressly provided herein, the other definitional provisions and rules of interpretation set forth in Section 1.2 of the Master Lender Agreement shall apply to this Agreement as though fully set forth herein.

## **Section 2. Levy of PACE Charge.**

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

(b) The PACE Charge payment schedule for the Loan as of the date hereof, which (i) has been developed and provided by Lender in accordance with the Master Lender Agreement; (ii) covers the entirety of the Loan Term; and (iii) may be amended and replaced from time to time in accordance with the Master Lender Agreement and Section 5 below, is attached hereto as Schedule II (the “PACE Charge Payment Schedule”). Borrower and Lender hereby represent and warrant to the City, to Administrator and to Paying Agent that such PACE Charge Payment Schedule is a true and accurate statement, as of the date hereof, of all Loan payments to be made by Borrower pursuant to the Program Financing Agreement over the Loan Term, and includes all payments of the Servicing Fee to be paid to Administrator in accordance with applicable Program Requirements and the Master Lender Agreement.

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

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



i. Prior to the levy of the initial PACE Charge, pursuant to Section 5.2(a)(iii) of the Master Lender Agreement, Administrator shall have issued to the City the “Notice to Commence Levy and Collection of PACE Charge” for the Loan;

ii. With respect to each PACE Charge and as contemplated in the PACE Charge Payment Schedule, Administrator will notify the City in advance of each PACE Charge to be placed on the Statement of Account for the Property (each, a “Payment Report”). With respect to the initial Payment Report: (A) if the “Closing Date” for the Loan, as per the Master Lender Agreement, occurs more than or equal to thirty (30) days before the PACE Charge Submission Deadline applicable to such initial Payment Report, Administrator shall issue the initial Payment Report to the City on or before the first applicable PACE Charge Submission Deadline that follows such Closing Date; and (B) if the “Closing Date” for the Loan, as per the Master Lender Agreement, occurs less than thirty (30) days before the PACE Charge Submission Deadline applicable to such initial Payment Report, Administrator shall issue the initial Payment Report to the City by no later than the immediately following PACE Charge Submission Deadline. With respect to each Payment Report other than the initial Payment Report, Administrator will issue such Payment Report by no later than the PACE Charge Submission Deadline applicable to the PACE Charge to which such notice relates; and

iii. upon receipt of each Payment Report from Administrator by the applicable PACE Charge Submission Deadline, the applicable PACE Charge described in such Payment Report shall be placed by the City on the Statement of Account for the Property for the applicable period.

(e) In connection with the process set forth in Section 2(d) above, Administrator shall have the right (but not the obligation) to request in writing (including by e-mail) that Lender and/or Borrower confirm the amount of a given PACE Charge to be collected in respect of a given semi-annual pay period. If so requested, and if a given PACE Charge amount is not correct, Lender and Borrower shall notify Administrator within five (5) Business Days of receipt of such request from Administrator.

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

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

(h) The amount and repayment of each PACE Charge are as follows: (i), the principal amount of the PACE Charge, with interest thereon at a rate equal to [ ]% per annum due and payable for the related period in accordance with the PACE Charge Payment Schedule; plus (ii) any additional fees and expenses agreed upon in the Program Financing Agreement (including the Servicing Fee); 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.

(i) As evidenced in the PACE Charge Payment Schedule, a PACE Charge will be

included on the Statement of Account.

(j) In accordance with §11-3005(b) of the New York City Administrative Code, the PACE Rules and this Agreement, the City shall collect each PACE Charge in the same manner that it collects the property taxes of the City on real property, including with respect to payment due dates.

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

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

(b) The City shall segregate all payments made on the Property's Statement of Account that are applied to the PACE Charge from all other funds of the City and deposit such payments into the Collection Account opened and maintained by Paying Agent, as the beneficial owner of such account, for the benefit of Lender and all other Qualified Lenders.

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

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

(e) After the City deposits payments received for a PACE Charge (including any related interest and fees) into the Collection Account, or otherwise disburses payments received with respect to a PACE Charge to Paying Agent, or their designee in accordance with this Section 3, except as provided for in Section 9(c) hereof, the City disclaims any and all responsibility or liability for any losses or damages related to such disbursed funds and each of Borrower and Lender hereby agree that it shall only look to Paying Agent for the resolution of any dispute or claim of loss or damage.

(f) All monies actually received and deposited into or credited to the Collection Account pursuant to the terms and provisions of the Program Financing Agreement shall be held

by Paying Agent, or its designee, for the benefit of Lender for the purpose for which they were paid, in the Collection Account and in accordance with the Master Lender Agreement. Paying Agent, or its designee, shall pay all monies from the Collection Account due under the Program Financing Agreement within ten (10) Business Days of receipt of such funds in the Collection Account (each such date, a “Payment Date”); provided, that payment in good funds from the City, such as received wire or cleared transfer through the ACH system has been made into or for the credit of the Collection Account; provided, further, that prior to remitting any such amounts to Lender, Paying Agent shall be entitled to deduct from such amounts any accrued and unpaid fees and any other amounts that are due and owing to Administrator or to which Administrator is entitled hereunder with respect to the Project and/or the Loan (including the Servicing Fee and any other fees and additional expenses set forth in the Master Lender Agreement (including Section 9.2 therein) and/or the Program Guidelines, as in effect as of the date hereof). Notwithstanding the forgoing, if the applicable Payment Date is not a Business Day, then the Payment Date shall be deemed to be the next Business Day. Paying Agent (or its designee), shall make such monies available to Lender by wire transfer, through the ACH system (or through such other means as agreed to by Paying Agent), at such account identified in the current Wire Instruction Form provided by Lender in accordance with Section 3(g) below.

(g) On or before the date hereof, Lender shall deliver to Administrator and Paying Agent a properly completed Wire Instruction Form. From time to time Lender may designate a different bank account (but not more often than once per calendar quarter) to Administrator and Paying Agent by delivering a properly completed replacement Wire Instruction Form to Administrator and Paying Agent by uploading it into the Program online application or through such other method as Administrator may direct. Neither Paying Agent nor Administrator shall have any obligation to disburse any Loan Collections to any account designated in any replacement Wire Instruction Form that is received less than thirty (30) days prior to the date monies are to be disbursed hereunder.

#### **Section 4. Interest Collections; Delinquencies.**

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

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

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

(d) All PACE Charges and related PACE Charge Liens shall remain payable until all principal, interest, fees and penalties payable pursuant to the Loan, are paid in full, regardless of (i) a change in ownership of the Property, whether voluntary or involuntary (where Borrower is the Property Owner); and (ii) a change in the Person who holds (as lessee or tenant) the leasehold interest in the Property, whether voluntary or involuntary (where Borrower holds a leasehold interest in the Property pursuant to an Eligible Lease (as defined in the Master Lender Agreement)).

(e) In the event that (i) Borrower fails to make a given PACE Charge payment when due and notice thereof is given by the City pursuant to Section 4(a) above; and (ii) such PACE Charge payment has not yet become subject to the terms of the Master Transfer and Remittance Agreement (if applicable), then the City shall remit to Paying Agent all funds collected by the City to satisfy such delinquent PACE Charge payment prior to the transfer or sale of the related PACE Charge Lien by Lender pursuant to the terms of the Master Transfer and Remittance Agreement (if applicable). After a given PACE Charge Lien has been transferred or sold by Lender pursuant to the Master Transfer and Remittance Agreement, such PACE Charge Lien and all funds collected in respect thereof (if any) shall be disbursed in accordance with the Master Transfer and Remittance Agreement

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

#### **Section 5. Amendment of PACE Charge.**

(a) Lender may from time to time submit to Administrator an amended PACE Charge Payment Schedule with respect to amounts due under the Program Financing Agreement (an “Amendment of PACE Charge Payment Schedule”) to Administrator in accordance with the Master Lender Agreement. Lender shall submit each such Amendment of PACE Charge Payment Schedule to Administrator no later than thirty (30) Days prior to the next PACE Charge Submission Date. Upon confirming to its satisfaction that each such Amendment of PACE Charge Payment Schedule meets all applicable requirements, Administrator (its successors, or its permitted assignees) shall forward each such Amendment of PACE Charge Payment Schedule to the City and when receipt of the same is confirmed by the City, Administrator will promptly notify Lender in accordance with the provisions set forth in the Master Lender Agreement for the giving of notice. Notwithstanding the provisions of Section 9 hereof, effective immediately upon delivery of such notice by Administrator, each Amendment of PACE Charge Payment Schedule shall automatically (and without the need for any further written instrument or notice) constitute the then current PACE Charge Payment Schedule hereunder and the prior PACE Charge Payment Schedule shall be replaced thereby in all respects; provided, however, that interest on a PACE Charge that accrued pursuant to §11-3004(a) of the Administrative Code, and any other applicable law, prior to such amendment shall not be subject to amendment or diminution and shall continue

to constitute a due and payable PACE Charge Lien against the affected Property; and provided further, that each such Amendment of PACE Charge Payment Schedule must otherwise be consistent with all applicable Program Requirements. Simultaneous with the submission of each Amendment of PACE Charge Payment Schedule, Borrower and Lender shall, pursuant to a certificate duly signed by Borrower and Lender and delivered to Administrator, represent and warrant to the City, to Administrator and to Paying Agent that the Amendment of PACE Charge Payment Schedule submitted to Administrator hereunder is a true and accurate statement, as of the date of such certificate, of all Loan payments to be made by Borrower pursuant to the Program Financing Agreement over the remainder of the Loan Term, and includes all payments of the Servicing Fee to be paid to Administrator in accordance with applicable Program Requirements and the Master Lender Agreement.

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

(c) With respect to each Amendment of PACE Charge Payment Schedule submitted to Administrator pursuant to Section 5(a) above, Borrower and Lender hereby represent and warrant to the City, Administrator and Paying Agent that, as of the date of such submission, such Amendment of PACE Charge Payment Schedule is a true and accurate statement of all Loan payments to be made by Borrower pursuant to the Program Financing Agreement over the Loan Term, and includes all payments of the Servicing Fee to be paid to Administrator in accordance with applicable Program Requirements and the Master Lender Agreement.

#### **Section 6. Filing.**

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

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

#### **Section 7. Liability; Indemnification.**

(a) Borrower and Lender hereby acknowledge and agree that none of the City, Administrator or Paying Agent has any responsibility or liability for any indebtedness and obligations of Borrower to Lender under the Program Financing Agreement or for any costs associated with the collection of amounts due under the Program Financing Agreement. In entering into this Agreement, the Parties acknowledge and agree that Administrator and Paying Agent shall each be entitled to each of the rights, protections and indemnities of Administrator and of Paying Agent as set forth in the Master Lender Agreement, mutatis mutandis.

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

(c) In addition, it is expressly understood and agreed by the Parties that this Agreement is executed and delivered by NYCEEC (acting in the capacities of Administrator and of Paying Agent) at the direction of the City, solely in connection with NYCEEC's Program administration duties performed in such capacities and nothing contained herein shall be construed as creating any liability on Administrator, Paying Agent, or their respective Representatives, individually or personally, to perform any covenant other than what is expressly set forth herein, and all such liability, if any, is expressly waived by the Parties.

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

(e) To the fullest extent permitted by applicable law, Lender agrees to indemnify,

defend and hold harmless Administrator, Paying Agent and the City, and their respective Representatives (each, a “Program Administrator Indemnatee”) 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 Agreement, (ii) the Loan or the related PACE Financing Documents, (iii) the Project, or (iv) any action taken or omitted by any Program Administrator Indemnatee in the performance of its obligations under and the transactions contemplated in this Agreement; provided, that, Lender shall not be liable to a Program Administrator Indemnatee for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements to the extent caused by the gross negligence or intentional tortious acts of such Program Administrator Indemnatee as determined in a final non-appealable order of a court of competent jurisdiction.

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

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

(h) If Administrator notifies Lender under this Agreement, or any other Person who has received funds on behalf of Lender, (such Lender or other applicable recipient, a “Payment Recipient”) that Administrator has determined, in its discretion, that any funds received by such Payment Recipient from Administrator or Paying Agent were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to Lender, or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “Erroneous Payment”) and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times be deemed to be the property of Administrator or Paying Agent (as the case may be) and shall be segregated by the Payment Recipient and held in trust for the benefit of Administrator or Paying Agent (as the case may be), and Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter, return to Administrator or Paying Agent (as the case may be) the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same

day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to Administrator or Paying Agent (as the case may be) in same day funds at the greater of the Overnight Rate/Federal Funds Rate and a rate determined by Administrator in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of Administrator or Paying Agent to any Payment Recipient under this Section 7(h) shall be conclusive, absent manifest error.

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

(j) For so long as an Erroneous Payment (or portion thereof) has not been returned by any Payment Recipient who received such Erroneous Payment (or portion thereof) (such unrecovered amount, an “Erroneous Payment Return Deficiency”) to Administrator or Paying Agent after demand therefor in accordance with Section 7(h), (i) Administrator or Paying Agent (as the case may be) may elect, in its discretion on written notice to Lender, that all rights and claims of Lender with respect to the Loan owed to such Person up to the amount of the corresponding Erroneous Payment Return Deficiency in respect of such Erroneous Payment (the “Corresponding Loan Amount”) shall immediately vest in Administrator or Paying Agent (as the case may be) upon such election; and after such election, Administrator or Paying Agent (as the case may be) (x) shall be deemed to have an ownership interest in the Loan in a principal amount equal to the Corresponding Loan Amount, and (y) upon five (5) Business Days’ prior notice to Lender, may sell such Loan (or portion thereof) in respect of the Corresponding Loan Amount to any Person selected by Administrator or Paying Agent (as the case may be), and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by Lender shall be reduced by the net proceeds of such sale, and Administrator or Paying Agent (as the case may be), shall retain all other rights, remedies and claims against Lender, (and/or against any Payment Recipient that receives funds on its behalf); and (ii) each Party agrees that, except to the extent that Administrator or Paying Agent (as the case may be), has sold such Loan (or portion thereof) and irrespective of whether Administrator or Paying Agent (as the case may be) may be equitably subrogated, Administrator or Paying Agent (as the case may be) shall be contractually subrogated to all the rights and interests of Lender, with respect to the Erroneous Payment Return Deficiency. For the avoidance of doubt, no vesting or sale pursuant to the foregoing Section 7(i) will reduce the commitments of Lender and such commitments shall remain available in accordance with the terms of this Agreement and all other applicable PACE Financing Documents.

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

(l) No Payment Recipient shall assert any right or claim to an Erroneous Payment, and



hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Administrator or Paying Agent for the return of any Erroneous Payment received, including waiver of any defense based on “discharge for value” or any similar doctrine.

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

(n) Paying Agent shall benefit from the exculpatory and other provisions set forth in Section 4.3 of the Master Lender Agreement as though such provisions were fully set forth herein.

### **Section 8. Project Construction and Energy Data.**

(a) Construction Obligations. [In reliance on the representations and warranties made in Section 9(a), it is understood by the Parties that the Project is not a Retroactive Project and as such, Borrower shall cause Construction Completion to be achieved by the Required Completion Date.]<sup>7</sup>

(b) Certifications Related to Completion. [Within thirty (30) days following the date on which Construction Completion for the Project was achieved, Lender shall deliver to Administrator (i) the Certificate of Completion for the Project, duly executed by authorized Representatives of Lender, Borrower and the primary Project contractor(s); and (ii) the Technical Certificate of Completion for the Project, duly executed by an authorized Representative of the same Person that originally executed the Technical Certification, or such other Person as may be acceptable to Administrator and the City. Borrower shall execute and deliver such Certificate of Completion in a timely manner and shall cause the primary Project contractor(s) to do the same. The Certificate of Completion must certify that the Project conforms in all material respects with the Project as described in the application materials, including those required for the Technical Certification, and as determined in Administrator’s discretion.]<sup>8</sup> [It is understood by the Parties that the Project is a Retroactive Project and accordingly, Lender has caused to be delivered to Administrator on or prior to the date hereof (i) the Certificate of Completion for the Project, duly executed by authorized Representatives of Lender, Borrower and the primary Project contractor(s); and (ii) the Technical Certificate of Completion (as required under the Master Lender Agreement) for the Project.]<sup>9</sup> Administrator, Paying Agent and the City shall be entitled to rely on the Lender Certification, the Technical Certification, the TIPLA executed by Borrower, the Certificate of Completion (when delivered), the Technical Certificate of Completion for the Project (when

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<sup>7</sup> NOTE TO FORM: Include this language if the Project is not a Retroactive Project (i.e. it has not yet been completed at the time this Agreement is to be executed).

<sup>8</sup> NOTE TO FORM: Include this language if the Project is not a Retroactive Project (i.e. it has not yet been completed at the time this Agreement is to be executed).

<sup>9</sup> NOTE TO FORM: Include this language if the Project is a Retroactive Project.

delivered), and the statements made in such documents, without independent investigation or verification.

(c) Energy Data. Borrower agrees (i) to share with Administrator, and the City, Energy Data on the Project and the Property, including such data as required in the “Measurement and Verification” section of the Program Guidelines; and (ii) that Administrator and the City each have the right to monitor, verify, and assess such Energy Data, and the right to report such Energy Data as contemplated herein, and to other third parties on a portfolio and anonymized basis.

(d) Acknowledgment of Project Risks and Release. Borrower represents and warrants to Administrator, Paying Agent and the City that appropriate Representatives of Borrower have received from Lender a draft of the TIPLA prior to its execution and, having reviewed such draft and having had the opportunity to discuss it with Lender, such Representatives understand the matters described therein and Borrower has caused the TIPLA to be executed and delivered to Administrator and the City by a duly authorized Representative of Borrower. Without reducing or otherwise modifying the waivers given under Section 9(m), to the maximum extent permitted by applicable law Borrower hereby irrevocably and unconditionally (a) remises, releases and discharges (and shall be deemed to have forever remised, released and discharged) each Program Administrator Indemnitee, from any and all direct or indirect losses, claims, damages, costs or expenses which Borrower may suffer or otherwise become liable at any time which arise from or in connection with any of the risks or other matters described in the TIPLA; and (b) waives any right Borrower may have to make claims or otherwise pursue remedies of any kind against any Program Administrator Indemnitee in connection with any such losses, claims, damages, costs or expenses.

## **Section 9. Miscellaneous.**

(a) Certain Additional Representations and Warranties. Lender and Borrower each represent and warrant to Administrator, Paying Agent and the City that they have each independently and without reliance upon Administrator, Paying Agent, or any Representative of Administrator or Paying Agent, conducted their own investigations to determine that: (i) Borrower meets all Borrower Eligibility Requirements; (ii) neither Lender nor Borrower are Affiliates of one another; (iii) [Borrower owns the Property and meets the definition of “Property Owner” as defined in the Master Lender Agreement]OR[Borrower is not the Property Owner and accordingly Borrower’s rights in and to the Property are granted under the Lease Agreement, and pursuant to the Lease Agreement, Borrower has a valid, enforceable and recordable leasehold interest in the Property, and the Lease Agreement is an Eligible Lease (as defined in the Master Lender Agreement)];<sup>10</sup> (iv) the Project [is]OR[is not] a Retroactive Project;<sup>11</sup> (v) the Project [does not constitute New Construction or a Major Renovation (as each such term is defined in the Master Lender Agreement)]OR[does constitute New Construction (as defined in the Master Lender Agreement)]OR[does constitute a Major Renovation (as defined in the Master Lender Agreement)];<sup>12</sup> and (vii) the building that is the subject of the Project [is expected to be a Low

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<sup>10</sup> NOTE TO FORM: include/exclude bracketed clauses in (iii) as appropriate depending on Project specifics.

<sup>11</sup> NOTE TO FORM: include/exclude bracketed clauses in (iv) as appropriate depending on Project specifics.

<sup>12</sup> NOTE TO FORM: include/exclude bracketed clauses in (v) as appropriate depending on Project specifics.

Carbon Building (as defined in the Master Lender Agreement)]OR [as constructed, is an Low Carbon Building (as defined in the Master Lender Agreement)]<sup>13</sup>.

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

(c) Assignment.

i. The City of New York may not assign or transfer its rights or obligations under this Agreement except in accordance with applicable law.

ii. If NYCEEC is removed or replaced by the City as Administrator, with prior notice to Lender and Borrower and without consent of Lender or Borrower, NYCEEC (in its capacity as Administrator) may, with the prior written consent of the City, assign or transfer all of its rights or obligations hereunder to any other Person that is acceptable to the City, and in the absence of any such assignment or transfer, upon the effectiveness of any such removal or replacement, the City itself shall assume the obligations of Administrator. Except as provided in the foregoing sentence, NYCEEC (in its capacity as Administrator) shall have no other right to assign or transfer its rights or obligations hereunder without the prior written consent of the City and Lender. In accordance with the Master Lender Agreement, NYCEEC (in its capacity as Paying Agent) may assign or delegate all or any portion of its rights or obligations hereunder to any Person; provided, that all applicable requirements set forth in the Master Lender Agreement are satisfied.

iii. Pursuant to the Master Lender Agreement, Lender may assign all of its rights arising under this Agreement without the consent of any other party hereto; provided, that (i) such assignment is undertaken in connection with the sale and/or transfer of all of Lender's right, title and interest in and to the Loan; (ii) such assignment is made to a Qualified Transferee in accordance with the applicable requirements set forth in the Master Lender Agreement; and (iii) all other conditions to such sale and/or transfer as specified in the Master Lender Agreement are satisfied.

iv. Without the prior consent of any other Party, Borrower shall have the right to assign all of its rights and obligations hereunder to any Person to whom Borrower transfers all of its right, title and interest in and to the Property; provided, that (1) Borrower has given notice to the other Parties at least thirty (30) Days prior to the date on which such Property transfer is to occur; (2) Borrower has notified the Property transferee in writing of the existence of the Loan and the obligations such transferee will be assuming hereunder upon the consummation of the Property transfer, and Borrower has provided a copy of such written notice to the other Parties at the time the notice under (1) above is given to such other Parties; (3) commencing on the date upon which the Property transfer becomes effective, the Property transferee meets all Borrower Eligibility

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<sup>13</sup> NOTE TO FORM: include/exclude bracketed clauses in (vi) as appropriate depending on Project specifics.

Requirements; and (4) within five (5) Business Days following the effective date of such transfer, the other Parties hereto receive from Borrower a true, complete and correct copy of a fully executed assignment and assumption agreement between Borrower and the Property transferee (in form and substance acceptable to Administrator and the City) pertaining to this Agreement and all other applicable PACE Financing Documents. Except as provided in the foregoing sentence, Borrower shall have no other right to assign or transfer its rights or obligations hereunder without the prior written consent of the other Parties.

Any purported or attempted assignment or other transfer of this Agreement that violates this Section 9(c) shall be null and void.

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

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

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

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

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

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

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

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

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

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

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

(o) Term and Survival. The term of this Agreement shall run from the date of the last signature affixed hereto and remain in effect until the earlier of (i) the date all payment obligations under the PACE Financing Documents are satisfied in full; and (ii) the maturity date of the Loan, as such date may be extended or otherwise modified in accordance with the PACE Financing Documents (the “Term”). The City shall have, in its discretion, the option to extend the Term of this Agreement for a period up to an additional six (6) years. All provisions herein for indemnity of Administrator, Paying Agent and the City (and any other provisions herein specified to survive) shall survive payment in full, satisfaction or discharge of the obligations, fees and expenses and any release or termination of the Agreement or any other PACE Financing Documents. Any provision of this Agreement that by its nature would survive termination of this Agreement shall remain in effect after the Term has ended.

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

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

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

If to the City:


If to Administrator:


If to Lender:


If to Borrower:


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

(s) Counterparts. This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

(t) Investigations. The Parties agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

*[Remainder of page intentionally left blank; signature page follows.]*



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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Acting Corporation Counsel



STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ before me personally came \_\_\_\_\_, to me known and known to me to be acting as the \_\_\_\_\_ of the Department of Finance (DOF) of the City of New York, the person described in and which executed, the foregoing agreement, and s/he duly acknowledged to me that s/he executed the same on behalf of the City of New York and DOF for the purpose herein mentioned.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**NEW YORK CITY ENERGY EFFICIENCY CORPORATION** acting as Paying Agent

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF .....)

ss:

COUNTY OF .....)

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came \_\_\_\_\_ who being by me duly sworn, did depose and say that (s)he resides in \_\_\_\_\_; that (s)he is the \_\_\_\_\_ of the New York City Energy Efficiency Corporation, the corporation described in and which executed the foregoing instrument; [that (s)he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation;] and that (s)he signed his/her name thereto by like order for the purposes therein mentioned.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

STATE OF .....)

ss:

COUNTY OF .....)

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came \_\_\_\_\_ who being by me duly sworn, did depose and say that (s)he resides in \_\_\_\_\_; that (s)he is the \_\_\_\_\_ of the New York City Energy Efficiency Corporation, the corporation described in and which executed the foregoing instrument; [that (s)he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation;] and that (s)he signed his/her name thereto by like order for the purposes therein mentioned.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

**[BORROWER]  
AUTHORIZED REPRESENTATIVE**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF .....)

ss:

COUNTY OF .....)

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came \_\_\_\_\_ who being by me duly sworn, did depose and say that (s)he resides in \_\_\_\_\_; that (s)he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; [that (s)he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation;] and that (s)he signed his/her name thereto by like order for the purposes therein mentioned.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

**[LENDER]  
AUTHORIZED REPRESENTATIVE**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF .....)

ss:

COUNTY OF .....)

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came \_\_\_\_\_ who being by me duly sworn, did depose and say that (s)he resides in \_\_\_\_\_; that (s)he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; [that (s)he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation;] and that (s)he signed his/her name thereto by like order for the purposes therein mentioned.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

**EXHIBIT A**  
**to Collection Agreement**

**PROPERTY DESCRIPTION**

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



**EXHIBIT B**  
**to Collection Agreement**

**PROGRAM FINANCING AGREEMENT**

**EXHIBIT C**  
**to Collection Agreement**

**NOTICE TO COMMENCE LEVY AND COLLECTION OF PACE CHARGE**

**EXHIBIT D**  
**to Collection Agreement**

**FORM OF PACE LOAN NOTICE**

**SCHEDULE I**  
**to Collection Agreement**

**MASTER LENDER AGREEMENT**



**SCHEDULE II**  
**to Collection Agreement**

**PACE CHARGE PAYMENT SCHEDULE**

