



**TOWN OF LEWISBORO
TOWN BOARD MEETING
AGENDA
LEWISBORO LIBRARY
MONDAY, APRIL 22, 2019
7:30 P.M.**

- I. PUBLIC HEARING Regarding Gasoline Service Station Local Law Enactment**
- II. PUBLIC COMMENT**
- III. COMMUNICATION**
 - Town Wins ECO Award for Recycling**
- IV. CONSENT AGENDA - Approval of Minutes of April 8, 2019**
- V. OLD BUSINESS**
 - a. Discussion of HART Bus**
- VI. NEW BUSINESS**
 - a. Resolution Granting Approval for Boy Scout Michael Kistner's Eagle Scout Project Proposing to Connect Brownell Blue Trail to Falcon Ridge Trail**
 - b. Discussion of Resolution to Encourage Composting**
 - c. Resolution Acknowledging 2018 Court Audit Conducted**
 - d. Discussion Regarding Effect of Connecticut Tolls on Lewisboro Traffic**
 - e. Resolution Waiving Fees Associated with Building Permit Fees for Ability Beyond Disability**
 - f. Discussion and Setting of Public Hearing on Local Law on "Energize NY Open C-Pace Financing Program"**
- VII. APPROVAL OF CLAIMS**
- VIII. POLLING OF THE BOARD**
- IX. ANNOUNCEMENTS**

**Town Board Meeting Monday, May 6, 2019 at 7:30 p.m. at the Lewisboro Library,
15 Main Street, South Salem**

MOTION TO GO INTO EXECUTIVE SESSION

Town Board Meetings Accessibility: The Town of Lewisboro is committed to providing equal access to all its facilities, services and activities to the fullest extent possible. The Town House, Cyrus Russell Community House, Onatru Farmhouse, and the Bouton Road Town Offices are accessible to persons with physical handicaps. If anyone who wishes to attend any meeting of the Town Board has special needs, please contact the Supervisor's Office (763-3151) at least one week before any scheduled meeting, and we will try to accommodate whenever possible.

TOWN OF LEWISBORO

LOCAL LAW NUMBER __-2019 OF THE TOWN OF LEWISBORO

AMENDMENT TO CHAPTER 220, SECTION 220-43.6
OF THE LEWISBORO TOWN CODE

BE IT ENACTED by the Town Board of the Town of Lewisboro, Westchester County, New York, as follows:

Section 1. Chapter 220, Section 220-43.6 entitled “Gasoline Service Station” is hereby enacted to read as follows:

§ 220-43.6. Gasoline service station.

Gasoline service station, as defined in this chapter, shall be a special use as follows:

- A. Location. The special use listed in this section may be permitted in the RB (Retail Business) and GB (General Business) districts only in locations fronting on or having direct access to major roads as determined by the Planning Board.
- B. Minimum Lot Area. The minimum lot area required for the establishment of a gasoline service station shall be one (1) acre.
- C. Setbacks. The minimum setbacks for a gasoline service station use shall be as set forth in the district within which the use is located.
- D. Buffer area. A landscaped buffer area, meeting at least the minimum requirements of §220-15 of this chapter, shall be required along all lot lines adjoining other properties, except where determined by the approving agency that a lesser width or no buffer will meet the purpose of this requirement.
- E. Distance from other similar use. A gasoline service station use shall not be permitted within a distance of two hundred (200) feet of another existing gasoline service station use. The distance shall be measured in a straight line between the property lines of the subject properties.
- F. Other requirements. Such use shall comply with any other requirements of this

chapter and any special requirements deemed appropriate by the approving agency in accordance with the requirements of §220-32 herein.

Section 2. If any provision of this Local Law is declared illegal, unconstitutional or unenforceable by a court of competent jurisdiction, the remainder of this Local Law shall be declared to have been separately adopted and shall remain in full force and effect.

Section 3. This local law shall take effect immediately upon filing in the Office of the Secretary of State of the State of New York.

Dated:

BY THE ORDER OF THE TOWN BOARD OF
THE TOWN OF LEWISBORO

JANET DONOHUE, TOWN CLERK

Mary Hafter

From: Dana Mayclim <DMayclim@lewisborogov.com>
Sent: Tuesday, April 09, 2019 12:42 PM
To: 'Peter Parsons'; 'Leo Masterson'
Cc: 'Mary Hafter'; 'Michael Kistner'; 'mike surdej'
Subject: Town Board on 22nd agenda

Hello All

I was hoping that you could please add this young man to the next Town Board agenda on April 22nd – he is a candidate for an eagle scout – he is looking for Town Board approval to connect the Brownell Blue Trail to the Falcon Ridge Trail in Goldens Bridge. Mike Surdej will be assisting on the town's behalf. He already has OSPAC's blessing which he got last night. See below.

If you have any questions before hand please let me know

Thanks

Dana

Dana Mayclim

Superintendent of Parks and Recreation
Town of Lewisboro
99 Elmwood Road
South Salem, NY 10590
(914)232-6162
Fax – (914) 232-6165
www.lewisborogov.com

From: Michael Kistner [mailto:michael.kistner@gmail.com]
Sent: Monday, April 08, 2019 7:52 PM
To: mike surdej <oscarmong@optonline.net>; Dana Mayclim <dmayclim@lewisborogov.com>; gmonteone@kiscollaw.com
Cc: Effie Michailidis <effie.kistner@gmail.com>; David Kistner <DKistner@greenapplecleaners.com>; Richard Perlman <richard@montclairelectronics.com>
Subject: OSPAC Meeting

Good evening all,

Just sending this to say thank you for having me at tonight's OSPAC meeting, and thank you for all the suggestions and feedback. I look forward to the Town Board meeting and hope to start my project soon.

Best Regards
Michael Kistner

Town of Lewisboro, New York

Town Justice Court

Statement of Cash Receipts, Cash Disbursements
and Cash Balances

Year Ended December 31, 2018

Independent Auditors' Report

**The Honorable Town Supervisor
and Members of the Town Board
of the Town of Lewisboro, New York**

Report on the Financial Statements

We have audited the accompanying statement of cash receipts, cash disbursements and cash balances of the Town Justice Court of the Town of Lewisboro, New York, as of and for the year ended December 31, 2018, and the related note to the financial statement.

Management's Responsibility for the Financial Statement

Management is responsible for the preparation and fair presentation of this financial statement in accordance with the basis of accounting described in Note 1; this includes determining that the cash basis of accounting is an acceptable basis for the preparation of the financial statements in the circumstances. Management is also responsible for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on this financial statement based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statement. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statement, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statement in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statement.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statement referred to in the first paragraph presents fairly, in all material respects, the cash receipts, cash disbursements and the cash balances of the Town Justice Court of the Town of Lewisboro, New York as of December 31, 2018 and for the year then ended, in accordance with the basis of accounting as described in Note 1.

Basis of Accounting

We draw attention to Note 1 to the financial statement, which describes the basis of accounting. The financial statement was prepared on the cash basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

Restriction on Use

This report is intended solely for the information and use of the Board of Trustees, the Office of Court Administration and management and is not intended to be and should not be used by anyone other than these specified parties.

PKF O'Connor Davies, LLP

PKF O'Connor Davies, LLP

Harrison, New York

March 20, 2019

Town of Lewisboro, New York

Town Justice Court

Statement of Cash Receipts, Cash Disbursements and Cash Balances

Year Ended December 31, 2018

	Joint Bail	Fines and Parking	
		Justice Seedorf	Justice Simon
CASH RECEIPTS			
Bail	\$ 7,100	\$ -	\$ -
Fines, fees and other	-	191,661	175,537
Total Cash Receipts	7,100	191,661	175,537
CASH DISBURSEMENTS			
Remittances to Town	-	200,645	168,307
Bail refunded and applied to fines and forfeitures	21,850	-	-
Total Cash Disbursements	21,850	200,645	168,307
Excess (Deficiency) of Cash Receipts Over Cash Disbursements	(14,750)	(8,984)	7,230
CASH BALANCES			
Beginning of Year	19,865	23,867	8,535
End of Year	\$ 5,115	\$ 14,883	\$ 15,765
CASH BALANCES REPRESENTED BY			
Amount due to Town	\$ -	\$ 14,883	\$ 15,765
Undisposed cases	5,115	-	-
	\$ 5,115	\$ 14,883	\$ 15,765

The accompanying note is an integral part of the financial statement.

Note 1 - Summary of Significant Accounting Policies

A. Basis of Accounting

This financial statement was prepared on the basis of cash receipts and cash disbursements in conformity with the accounting principles prescribed in the New York State Handbook for Town and Village Justices, which is a comprehensive basis of accounting other than generally accepted accounting principles. Under this basis of accounting, revenues are recognized when cash is received and expenditures are recognized when cash is disbursed.

B. Cash and Equivalents, Investments and Risk Disclosure

Cash and Equivalents - Cash and equivalents consist of funds deposited in demand deposit accounts, time deposit accounts and short-term investments with original maturities of less than three months from the date of acquisition.

The Town Justice Court's deposits and investment policies follow the Town of Lewisboro, New York's ("Town") policies. The Town's investment policies are governed by state statutes. The Town has adopted its own written investment policy which provides for the deposit of funds in FDIC insured commercial banks or trust companies located within the state. The Town is authorized to use demand deposit accounts, time deposit accounts and certificates of deposit.

Collateral is required for demand deposit accounts, time deposit accounts and certificates of deposit at 100% of all deposits not covered by Federal deposit insurance. The Town has entered into custodial agreements with the various banks which hold their deposits. These agreements authorize the obligations that may be pledged as collateral. Such obligations include, among other instruments, obligations of the United States and its agencies and obligations of the State and its municipal and school district subdivisions.

Investments - Permissible investments include obligations of the U.S. Treasury, U.S. Agencies and obligations of New York State or its political divisions.

The Town follows the provisions of GASB Statement No. 72, "*Fair Value Measurements and Application*", which defines fair value and establishes a fair value hierarchy organized into three levels based upon the input assumptions used in pricing assets. Level 1 inputs have the highest reliability and are related to assets with unadjusted quoted prices in active markets. Level 2 inputs relate to assets with other than quoted prices in active markets which may include quoted prices for similar assets or liabilities or other inputs which can be corroborated by observable market data. Level 3 inputs are unobservable inputs and are used to the extent that observable inputs do not exist.

Risk Disclosure

Interest Rate Risk - Interest rate risk is the risk that the government will incur losses in fair value caused by changing interest rates. The Town does not have a formal investment policy that limits investment maturities as a means of managing its exposure to fair value losses arising from changing interest rates. Generally, the Town does not invest in any long-term investment obligations.

Town of Lewisboro, New York

Town Justice Court

Note to Financial Statement (Concluded)

December 31, 2018

Note 1 - Summary of Significant Accounting Policies (Continued)

Custodial Credit Risk - Custodial credit risk is the risk that in the event of a bank failure, the Town's deposits may not be returned to it. Governmental Accounting Standards Board Statement No. 40 directs that deposits be disclosed as exposed to custodial credit risk if they are not covered by depository insurance and the deposits are either uncollateralized, collateralized by securities held by the pledging financial institution or collateralized by securities held by the pledging financial institution's trust department but not in the Town's name. The Town's aggregate bank balances that were not covered by depository insurance were not exposed to custodial credit risk at December 31, 2018.

Credit Risk - Credit risk is the risk that an issuer or other counterparty will not fulfill its specific obligation even without the entity's complete failure. The Town does not have a formal credit risk policy other than restrictions to obligations allowable under General Municipal Law of the State of New York.

Concentration of Credit Risk - Concentration of credit risk is the risk attributed to the magnitude of a government's investments in a single issuer. The Town's investment policy limits the amount of deposit at each of its banking institutions.

April 16, 2019

Memo to EIC Members: *Energize NY Open C-PACE*

As discussed at the EIC Annual Meeting last month, we are pleased to launch our new PACE product, *Open C-PACE*, which removes all municipal obligations from the provision of the public benefit of PACE. Open C-PACE differs from our previous product in the following ways:

- EIC will bill the property owner directly and administer collection of the payment; the municipality will not add a charge to the property's tax bill.
- The municipality is no longer responsible for guaranteeing the loan payment.
- Funds are provided through EIC-approved capital providers, listed on EIC's website. Property owners will contact the providers directly, who will determine if and how much financing is provided.
- Financing is secured through a Benefit Assessment Lien which EIC will record on the land records of the benefited property. The Benefit Assessment Lien is subordinate to municipal taxes and senior to all other liens (consent from existing mortgage holders is required).
- The capital provider enforces delinquent PACE liens by following the same timeline of foreclosure governing delinquent municipal taxes and only after paying any taxes owed by the property owner to the municipality.

Commercial, multifamily, and nonprofit property owners will benefit from lower fees, more competitive interest rates, financing terms as long as 30 years and transferability if the property is sold.

Enclosed you will find the Local Law and Municipal Agreement Templates that are required to enable Open C-PACE. These may not be modified as EIC's other program documents reference the local law and must be consistent across all municipalities.

We are excited by the potential of Open C-PACE to bring an infusion of capital for improvements to the building stock and to drive larger and more impactful projects in your communities. Given the interest we are seeing from property owners, we are hopeful for rapid adoption of Open C-PACE. Please let us know when you will advance the legislation.

Sincerely,

Mark Thielking
Co-Executive Director

Sarah Smiley
Director of Member Services

()ENERGIZE NY

Energize NY Open C-PACE channels private capital to commercial and non-profit building owners to make energy upgrades to their buildings, enabling them to improve their properties, lower operating expenses and positively impact their communities.

Property Assessed Clean Energy (PACE) financing is a public benefit authorized by state and local law, with repayment secured through a benefit assessment lien on the improved property.

The Energy Improvement Corporation (EIC), a non-profit, statewide local development corporation, administers Energize NY Open C-PACE on behalf of its member municipalities.

Energize NY Open C-PACE differs from traditional bank loans:

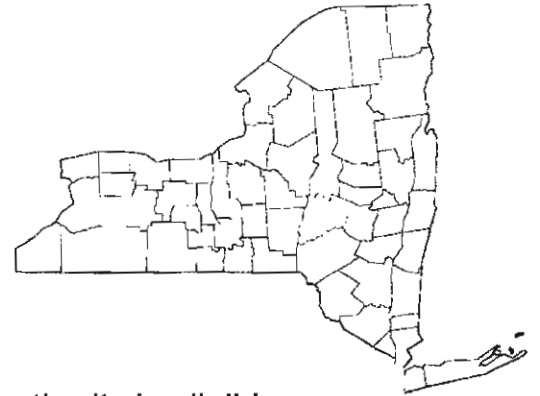
- Financing is available for up to 100% of the project cost, or can be combined with other financing
- Competitive private financing from EIC-approved capital providers
- Customizable loan terms up to the expected life of the improvement(s) (generally 20-30 years)
- Benefit assessment lien is subordinate to municipal taxes and senior to other liens (consent from mortgage holder is required)
- Automatically transfers to new owner upon sale of property
- Available for energy efficiency and renewable energy measures (Projects are qualified according to NYSERDA's C-PACE Guidelines)

Open C-PACE paves the way for higher levels of energy efficiency or renewable energy to be included as part of a building's redevelopment or rehabilitation – and might be the pivotal element needed to move the project forward.

Visit www.EnergizeNY.org or Call (914) 302-7300 x8105

Enabling Open C-PACE in your community

- Municipalities must pass a local law and sign an EIC municipal agreement to offer Energize NY Open C-PACE. EIC provides template documents.
- Any New York State municipality with tax lien authority is eligible.
- Open C-PACE is available to all local municipalities within a member county except for cities (and towns in Westchester County) that have tax lien authority, which must join separately.



Benefits to member municipalities:

- No fees to join
- No responsibility for program administration
- No financial exposure for the municipality

Once Open C-PACE is enabled, the member municipality provides the public benefit of PACE and EIC administers the program.

- EIC records the lien on the land record.
- EIC bills the property owner directly and administers collection of the payment.
- The capital provider enforces the PACE lien only *after* paying any delinquent municipal taxes owed by the property owner to the municipality.

Questions? Visit www.EnergizeNY.org or call (914) 302-7300 x8105

LOCAL LAW NO. – 20

**A LOCAL LAW TO ESTABLISH A SUSTAINABLE ENERGY LOAN
PROGRAM (OPEN C-PACE) IN THE**

Be it enacted by the [County/City/Town/Village] of _____ (the “Municipality”) as follows:

- This local law shall be known as the “Energize NY Open C-PACE Financing Program” and shall read as follows:

•

- **Legislative findings, intent and purpose, authority.**
- It is the policy of both the Municipality and the State of New York (the “State”) to achieve energy efficiency and renewable energy improvements, reduce greenhouse gas emissions, mitigate the effect of global climate change, and advance a clean energy economy. The Municipality finds that it can fulfill this policy by providing property assessed clean energy financing to Qualified Property Owners (as defined below) for the installation of renewable energy systems and energy efficiency measures. This local law establishes a program that will allow the Energy Improvement Corporation (as defined below, “EIC”), a local development corporation, acting on behalf of the Municipality pursuant to the municipal agreement (the “Municipal Agreement”) to be entered into between the Municipality and EIC, to make funds available to Qualified Property Owners that will be repaid through charges on the real properties benefited by such funds, thereby fulfilling the purposes of this local law and accomplishing an important public purpose. This local law provides a method of implementing the public policies expressed by, and exercising the authority provided by, Article 5-L of the General Municipal Law (as defined below, the “Enabling Act”).
- The Municipality is authorized to execute, deliver and perform the Municipal Agreement and otherwise to implement this Energize NY Open C-PACE Financing Program pursuant to the Constitution and laws of New York, including particularly Article IX of the Constitution, Section 10 of the Municipal Home Rule Law, the Enabling Act and this local law.
- This local law, which is adopted pursuant to Section 10 of the Municipal Home Rule Law and the Enabling Act shall be known and may be cited as the “Energize NY Open C-PACE Local Law”.
- **Definitions**
- Capitalized terms used but not defined herein have the meanings assigned in the Enabling Act.

- For purposes of this local law, and unless otherwise expressly stated or unless the context requires, the following terms shall have the meanings indicated:

Annual Installment Amount – shall have the meaning assigned in Section 8, paragraph B.

Annual Installment Lien – shall have the meaning assigned in Section 8 paragraph B.

Authority – the New York State Energy Research and Development Authority.

Benefit Assessment Lien – shall have the meaning assigned in Section 3, paragraph A.

Benefited Property – Qualified Property for which the Qualified Property Owner has entered into a Finance Agreement for a Qualified Project.

Benefited Property Owner – the owner of record of a Benefited Property.

EIC – the Energy Improvement Corporation, a local development corporation, duly organized under section 1411 of the Not-For-Profit Corporation Law of the State, authorized hereby on behalf of the Municipality to implement the Program by providing funds to Qualified Property Owners and providing for repayment of such funds from money collected by or on behalf of the Municipality as a charge to be levied on the real property.

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

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

Finance Agreement – the finance agreement described in Section 6A of this local law.

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

Financing Parties – Third party capital providers approved by EIC to provide financing to Qualified Property Owners or other financial support to the Program which have entered into separate agreements with EIC to administer the Program in the Municipality.

Municipality – the _____ of _____, a municipality of the State constituting a tax district as defined in Section 1102 of the RPTL of the State.

Municipal Lien – a lien on Qualified Property which secures the obligation to pay real property taxes, municipal charges, or governmentally imposed assessments in respect of services or

benefits to a Qualified Property.

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

Program – the Energize NY Open C-PACE Financing Program authorized hereby.

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

Qualified Property – Any real property other than a residential building containing less than three dwelling units, which is within the boundaries of the Municipality that has been determined to be eligible to participate in the Program under the procedures for eligibility set forth under this local law and the Enabling Act and has become the site of a Qualified Project.

Qualified Property Owner – the owner of record of Qualified Property which has been determined by EIC to meet the requirements for participation in the Program as an owner, and any transferee owner of such Qualified Property.

RPTL – the Real Property Tax Law of the State, as amended from time to time.

Secured Amount – as of any date, the aggregate amount of principal loaned to the Qualified Property Owner for a Qualified Project, together with Eligible Costs and Financing Charges, as provided herein or in the Finance Agreement, as reduced pursuant to Section 8, paragraph C.

State – the State of New York.

- **Establishment of an Energize NY Open C-PACE Financing Program**
- An Energize NY Open C-PACE Financing Program is hereby established by the Municipality, whereby EIC acting on its behalf pursuant to the Municipal Agreement, may arrange for the provision of funds by Financing Parties to Qualified Property Owners in accordance with the Enabling Act and the procedures set forth under this local law, to finance the acquisition, construction, reconstruction, and installation of Qualified Projects and Eligible Costs and Financing Charges approved by EIC and by the Financing Party under the Finance Agreement. EIC, on behalf of the Municipality, and with the consent of the Benefited Property Owner, will record a Benefit Assessment Lien on the Benefited Property in the Secured Amount (the “Benefit Assessment Lien”) on the land records for the Municipality. Such recording shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the Municipality.
- Before a Qualified Property Owner and a Financing Party enter into a Finance Agreement

which results in a loan to finance a Qualified Project, repayment of which is secured by a Benefit Assessment Lien, a written consent from each existing mortgage holder of the Qualified Property shall be obtained, permitting the Benefit Assessment Lien and each Annual Installment Lien to take priority over all existing mortgages.

- **Procedures for eligibility**

- Any property owner in the Municipality may submit an application to EIC on such forms as have been prepared by EIC and made available to property owners on the website of EIC and at the Municipality's offices.
- Every application submitted by a property owner shall be reviewed by EIC, acting on behalf of the Municipality, which shall make a positive or negative determination on such application based upon the criteria enumerated in the Enabling Act and § 5 of this local law. EIC may also request further information from the property owner where necessary to aid in its determination.
- If a positive determination on an application is made by EIC, acting on behalf of the Municipality, the property owner shall be deemed a Qualified Property Owner and shall be eligible to participate in the Program in accordance with § 6 of this local law.

- **Application criteria**

Upon the submission of an application, EIC, acting on behalf of the Municipality, shall make a positive or negative determination on such application based upon the following criteria for the making of a financing:

- The property owner may not be in bankruptcy and the property may not constitute property subject to any pending bankruptcy proceeding;
- The amount financed under the Program shall be repaid over a term not to exceed the weighted average of the useful life of Renewable Energy Systems and Energy Efficiency Improvements to be installed on the property as determined by EIC;
- Sufficient funds are available from Financing Parties to provide financing to the property owner;
- The property owner is current in payments on any existing mortgage on the Qualified Property;
- The property owner is current in payments on any real property taxes on the Qualified Property; and
- Such additional criteria, not inconsistent with the criteria set forth above, as the State, the Municipality, or EIC acting on its behalf, or other Financing Parties may set from time to time.

- **Energize NY Finance Agreement**

- A Qualified Property Owner may participate in the Program through the execution of a finance agreement made by and between the Qualified Property Owner and a Financing Party, to which EIC, on behalf of the Municipality, shall be a third-party beneficiary (the "Finance Agreement"). Upon execution and delivery of the Finance Agreement, the property that is the subject of the Finance Agreement shall be deemed a "Benefited Property").
- Upon execution and delivery of the Finance Agreement, the Benefited Property Owner shall be eligible to receive funds from the Financing Party for the acquisition, construction, and installation of a Qualified Project, together with Eligible Costs and Financing Charges approved by EIC and by the Financing Party, provided the requirements of the Enabling Act, the Municipal Agreement and this local law have been met.
- The Finance Agreement shall include the terms and conditions of repayment of the Secured Amount and the Annual Installment Amounts.
- EIC may charge fees to offset the costs of administering the Program and such fees, if not paid by the Financing Party, shall be added to the Secured Amount.

- **Terms and conditions of repayment**

The Finance Agreement shall set forth the terms and conditions of repayment in accordance with the following:

- The principal amount of the funds loaned to the Benefited Property Owner for the Qualified Project, together with Eligible Costs and Financing Charges approved by EIC and by the Financing Party, shall be specially assessed against the Benefited Property and will be evidenced by a Benefit Assessment Lien recorded against the Benefited Property on the land records on which liens are recorded for properties within the Municipality. The special benefit assessment shall constitute a "charge" within the meaning of the Enabling Act and shall be collected in annual installments in the amounts certified by the Financing Party in a schedule provided at closing and made part of the Benefit Assessment Lien. Said amount shall be annually levied, billed and collected by EIC, on behalf of the Municipality, and shall be paid to the Financing Party as provided in the Finance Agreement.
- The term of such repayment shall be determined at the time the Finance Agreement is executed by the Benefited Property Owner and the Financing Party, not to exceed the weighted average of the useful life of the systems and improvements as determined by EIC, acting on behalf of the Municipality.
- The rate of interest for the Secured Amount shall be fixed by the Financing Party in conjunction with EIC, acting on behalf of the Municipality, as provided in the Finance

Agreement.

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- **Levy of Annual Installment Amount and Creation of Annual Installment Lien**
- Upon the making of the loan pursuant to the Finance Agreement, the Secured Amount shall become a special Benefit Assessment Lien on the Benefited Property in favor of the Municipality. The amount of the Benefit Assessment Lien shall be the Secured Amount. Evidence of the Benefit Assessment Lien shall be recorded by EIC, on behalf of the Municipality, in the land records for properties in the Municipality. Such recording shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the Municipality. The Benefit Assessment Lien shall not be foreclosed upon by or otherwise enforced by the Municipality.
- The Finance Agreement shall provide for the repayment of the Secured Amount in installments made at least annually, as provided in a schedule attached to the Benefit Assessment Lien (the "Annual Installment Amount"). The Annual Installment Amount shall be levied by EIC, on behalf of the Municipality, on the Benefited Property in the same manner as levies for municipal charges, shall become a lien on the Benefited Property as of the first day of January of the fiscal year for which levied (the "Annual Installment Lien") and shall remain a lien until paid. The creation or any recording of the Annual Installment Lien shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the Municipality. Payment to the Financing Party shall be considered payment for this purpose. Such payment shall partly or wholly discharge the Annual Installment Lien. Delinquent Annual Installment Amounts may accrue Financing Charges as may be provided in the Finance Agreement. Any additional Financing Charges imposed by the Financing Party pursuant to the Finance Agreement shall increase the Annual Installment Amount and the Annual Installment Lien for the year in which such overdue payments were first due.
- The Benefit Assessment Lien shall be reduced annually by the amount of each Annual Installment Lien when each Annual Installment Lien becomes a lien. Each Annual Installment Lien shall be subordinate to all Municipal Liens, whether created by Section 902 of the RPTL or by any other State or local law. No portion of a Secured Amount shall be recovered by the Municipality, EIC, or an assignee upon foreclosure, sale or other disposition of the Benefited Property unless and until all Municipal Liens are fully discharged. Each Annual Installment Lien, however, shall have priority over all Non-Municipal Liens, irrespective of when created, except as otherwise required by law.
- Neither the Benefit Assessment Lien nor any Annual Installment Lien shall be extinguished or accelerated in the event of a default or bankruptcy of the Benefited Property Owner. Each Annual Installment Amount shall be considered a charge upon the Benefited Property and shall be collected by EIC, on behalf of the Municipality, at the same time and in the same manner as real property taxes or municipal charges.

Each Annual Installment Lien shall remain a lien until paid. Amounts collected in respect of an Annual Installment Lien shall be remitted to EIC, on behalf of the Municipality, or the Financing Party, as may be provided in the Finance Agreement.

- EIC shall act as the Municipality's agent in collection of the Annual Installment Amounts. If any Benefited Property Owner fails to pay an Annual Installment Amount, the Financing Party may redeem the Benefited Property by paying the amount of all unpaid Municipal Liens thereon, and thereafter shall have the right to collect any amounts in respect of an Annual Installment Lien by foreclosure or any other remedy available at law. Any foreclosure shall not affect any subsequent Annual Installment Liens.
- EIC, on behalf of the Municipality, may sell or assign for consideration any and all Benefit Assessment Liens and Annual Installment Liens to Financing Parties that provide financing to Qualified Properties pursuant to Finance Agreements. The Financing Parties may sell or assign for consideration any and all Benefit Assessment Liens and Annual Installment Liens received from EIC, on behalf of the Municipality, subject to certain conditions provided in the administration agreement between EIC and the Financing Party. The assignee or assignees of such Benefit Assessment Liens and Annual Installment Liens shall have and possess the same powers and rights at law or in equity as the Municipality would have had if the Benefit Assessment Lien and the Annual Installment Liens had not been assigned with regard to the precedence and priority of such lien, the accrual of interest and the fees and expenses of collection.
- **Verification and report**
 - EIC, on behalf of the Municipality, shall verify and report on the installation and performance of Renewable Energy Systems and Energy Efficiency Improvements financed by the Program in such form and manner as the Authority may establish.
 - Separability. If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof involved in the controversy in which such judgment shall have been rendered.
- This local law shall take effect upon filing with the Secretary of State.

MUNICIPAL AGREEMENT

BETWEEN

ENERGY IMPROVEMENT CORPORATION

AND

[PARTICIPATING MUNICIPALITY]

RELATING TO

ENERGIZE NY OPEN C-PACE FINANCING PROGRAM

DATED AS OF _____, 2019

**ENERGY IMPROVEMENT CORPORATION
MUNICIPAL AGREEMENT (OPEN C-PACE)**

This Agreement made as of this ____ day of _____, 2019 (the “*Agreement*”), by and between [County/City/Town/Village], a municipal corporation organized and existing under the laws of the State of New York (the “*Participating Municipality*”) and the Energy Improvement Corporation, a local development corporation formed under the laws of the State of New York (“*EIC*”) (both the Participating Municipality and EIC may hereinafter be referred to individually as a “*Party*” and collectively as the “*Parties*”), sets forth the duties and obligations of each Party in connection with the Participating Municipality’s participation in the Energize NY Open C-PACE Financing Program (“*Open C-PACE*” or the “*Program*”), as more fully described herein. Capitalized terms used herein, unless otherwise defined herein, have the meanings assigned to them in Section 1 herein.

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

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

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

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

- **Definitions.**

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

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

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

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

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

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

“Business Day” means any day on which EIC is open for business and banks are not required by law to close in New York, New York.

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

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

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

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

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

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

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

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

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

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

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

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

this Agreement.

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

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

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

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

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

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

“State” means the State of New York.

- **Representation and Warranties of the Parties.**

- EIC.

- EIC hereby represents that it is a local development corporation, duly organized under section 1411 of the Not-For-Profit Corporation Law of the State, authorized to implement the Program by arranging Loans to Qualified Property Owners and providing for repayment of the Loans from monies collected by or on behalf of the Participating Municipality as a Benefit Assessment.
 - EIC represents and warrants that it has complied with all laws and regulations concerning its organization, its existence and the transaction of its business and that all necessary steps have been taken to authorize it to execute, deliver and perform its respective obligations under this Agreement, and no consent or approval of any third-party is required for EIC’s execution of this Agreement or the performance of its obligations contained herein. The individual executing this Agreement on behalf of EIC has been and is duly authorized to bind EIC.

- Participating Municipality.

- *Authority.* The Participating Municipality is a municipal corporation, constituting a tax district as defined in Section 1102 of the RPTL of the State, duly organized and existing under the laws of the State and has full legal right, power and authority to (i) adopt the Local Law, (ii) assess, collect, remit and assign Benefit Assessments for Benefited Properties located within its geographical boundaries, (iii) levy Benefit Assessment Liens against Benefited Properties located within its geographical boundaries, (iv) conduct its business and own its properties, (v) enter into this Agreement and to comply with its terms, and (vi) carry out and consummate, by contract or otherwise, all other transactions contemplated by its participation in Open C-PACE.
- *Adoption of Local Law.* The Participating Municipality has on _____ adopted the Local Law authorizing the provision of financing through Open C-PACE to Qualified Properties for Qualified Projects.
- *Approvals and Consents.* The Participating Municipality has duly approved the execution and delivery of this Agreement and approved implementation of Open C-PACE by EIC and has authorized EIC to act on its behalf in effectuating Open C-PACE; and any and all consents, authorizations and approvals of any third-party required with respect thereto have been obtained.
- *Capacity.* The Participating Municipality has the legal, institutional, managerial, technical, contractual and financial capability to (a) ensure adequate and timely assessment and collection of property taxes in the Participating Municipality, (b) levy and record Benefit Assessment Liens on Benefited Properties within its geographical boundaries, and (c) assign or authorize EIC, on its behalf, to assign the Benefit Assessment Liens to third-party capital providers in connection with the financing of Qualified Projects.
- *Binding Obligation.* This Agreement has been duly authorized, executed and delivered by the Participating Municipality and constitutes a legal, valid and binding obligation of the Participating Municipality except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and the application of general principles of equity by a court of competent jurisdiction (whether in an action of law or a proceeding in equity); the defense of sovereign immunity is not available to the Participating Municipality in any proceedings by EIC to enforce any of the obligations of the Participating Municipality under this Agreement.
- *No Action.* There is no claim, action, suit, litigation, proceeding, arbitration,

inquiry or investigation of any kind, at law or in equity, before or by any court, public board or body, pending or known to be threatened against the Participating Municipality, nor is there any basis therefore, (i) affecting the creation, organization or existence of the Participating Municipality or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin or in any way contest the execution of this Agreement, the Finance Agreement or any other agreement entered into in connection with the Participating Municipality's participation in the Program, or (iii) seeking to prohibit, restrain, enjoin or in any way contesting or affecting the validity or enforceability of the Local Law, this Agreement or any agreement or instrument relating to any of the foregoing or used or contemplated for use in the consummation of the transactions contemplated by any of the foregoing.

- *No Material Default.* The Participating Municipality is not in material default under any finance agreement, note, bond, mortgage or other instrument evidencing or securing indebtedness of the Participating Municipality. The execution and delivery of this Agreement, and the adoption of the Local Law and compliance with the respective provisions hereof and thereof, will not conflict with or constitute a breach of or material default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any agreement or other instrument to which the Participating Municipality is a party or by which it or any of its property is bound.

- **Obligations of EIC.**

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

- Program Requirements.
 - The establishment and administration of Open C-PACE to provide financing to Qualified Properties within the Participating Municipality in order to promote, facilitate and finance Qualified Projects in accordance with the terms of the Local Law and this Agreement.
 - Receive and review (or provide for the review of) applications submitted by Qualified Property Owners within the Participating Municipality for the financing of Qualified Projects, and the approval or disapproval of such applications in accordance with the Authority's guidelines, any restrictions imposed by the Participating Municipality, and the policies and procedures adopted by EIC with respect to Open C-PACE (the "*Policies and Procedures*"). The governing Board of EIC reserves the right to reject an application for financing for any reason.
 - Prepare and deliver to the Participating Municipality by February 15th of each

calendar year an annual report (the “*Annual Report*”) which shall contain information related to each Benefited Property within the Participating Municipality through December 31st of the immediately preceding calendar year, identified in the Annual Report by address and Tax Map Identification (i.e. section, block and lot) including:

- A list of each Benefited Property for which a Qualified Property Owner executed a Finance Agreement during the prior calendar year (for which a Benefit Assessment Lien was added by EIC, on behalf of the Participating Municipality, to its land records in accordance with Section 3(d) below);
 - A list of each Benefited Property within the Participating Municipality where the Benefit Assessment and all obligations under the related Finance Agreement have been satisfied or paid in full during the prior calendar year, including the satisfaction date and a copy of the notice of satisfaction;
 - The total Annual Installment Amount paid to each Financing Party for each Benefited Property in the Participating Municipality during the prior calendar year;
 - For each Benefited Property with an outstanding Benefit Assessment, (i) the Annual Installment Amount collected in the current year, (ii) any amount of the Annual Installment Amount due and remaining uncollected in the current year, including any Financing Charges, and (iii) the Annual Installment Amount due to be collected in the following calendar year; and
 - All other information EIC may deem to be relevant to each Benefited Property within the Participating Municipality.
- Qualified Project Requirements.

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

- Require performance of an Energy Audit or Renewable Energy System Feasibility Analysis on the Qualified Property that assesses the expected energy cost savings of the Energy Efficiency Improvements or Renewable Energy Systems over the useful life of such Energy Efficiency Improvements and/or Renewable Energy Systems before approving such financing;
- Impose requirements and criteria to ensure that the proposed Energy Efficiency Improvements or Renewable Energy Systems are consistent with the purpose of the Program;

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

Levy and Recording of Benefit Assessment Lien.

- Upon execution of a Finance Agreement, EIC, on behalf of the Participating Municipality, shall promptly record the Benefit Assessment Lien against the Benefited Property in the land records for properties in the Participating Municipality. The Benefit Assessment Lien shall be substantially in the form of Exhibit A to this Agreement and include a legal description of the Benefited Property and a schedule of the Annual Installment Amounts due in each year of the Loan. There shall be no charge, mortgage recording tax or other fee for recording the Benefit Assessment Lien on the land records for the Participating Municipality in the same manner as if recorded by the Participating Municipality. As provided in the Enabling Act and the Local Law, the Benefit Assessment levied pursuant to this Agreement and the interest, fees and any penalties

thereon shall constitute a lien against the Benefited Property on which they are made until they are paid. The Benefit Assessment shall be payable by the Benefited Property Owner in Annual Installment Amounts as provided in the Finance Agreement. Only delinquent Annual Installment Amounts that are due and owing may be subject to enforcement.

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

Annual Installment Liens.

- As provided in the Local Law, each Annual Installment Amount shall be considered a charge upon the Benefited Property and shall become a lien on the Benefited Property as of the first day of January of the fiscal year for which levied (the "Annual Installment Lien") and shall remain a lien until paid. Payment to the Financing Party shall be considered payment for this purpose. Delinquent Annual Installment Amounts may accrue Financing Charges as may be provided in the Finance Agreement. Any additional Financing Charges imposed by the Financing Party pursuant to the Finance Agreement shall increase the Annual Installment Amount and the Annual Installment Lien for the year in which such overdue payments were first due.
- The Benefit Assessment Lien shall be automatically reduced annually by the amount of each Annual Installment Lien when each Annual Installment Lien becomes a lien. Each Annual Installment Lien shall be subordinate to all Municipal Liens, whether created by Section 902 of the RPTL or any other State or Local Law. No Annual Installment Amount shall be recovered by the Participating Municipality, EIC, or any assignee upon foreclosure, sale or other disposition of the Benefited Property unless and until all Municipal Liens are fully discharged. Each Annual Installment Lien, however, shall have priority over all Non-Municipal Liens, irrespective of when created, except as otherwise required by law.
- Neither the Benefit Assessment Lien nor any Annual Installment Lien shall be

extinguished or accelerated in the event of a default or bankruptcy of the Benefited Property Owner. Each Annual Installment Amount shall be considered a charge upon the Benefited Property and shall be collected by EIC, on behalf of the Participating Municipality, at the same time and in the same manner as real property taxes or municipal charges. Each Annual Installment Lien shall remain a lien until paid. Amounts collected in respect of an Annual Installment Lien shall be remitted to EIC or the Financing Party, as may be provided in the Finance Agreement.

Final Payment and Release. Upon notice from the Financing Party that the Benefit Assessment has been satisfied and paid in full, together with all Eligible Costs and Financing Charges provided under the Finance Agreement, EIC, on behalf of the Participating Municipality, will execute a release of the Benefit Assessment Lien and record such Release on the land records for the Participating Municipality. There shall be no charge, mortgage recording tax or other fee for recording the Release of the Benefit Assessment Lien on the land records for the Participating Municipality in the same manner as if recorded by the Participating Municipality.

- Billing and Collection of Annual Installment Amounts.
 - The Finance Agreement shall provide for the repayment of the Benefit Assessment in Annual Installment Amounts. EIC will act as the Participating Municipality's agent in the billing and collection of the Benefit Assessment for each Benefited Property listed in the Annual Report in accordance with the related Finance Agreement.
 - In the event of a default in payment of any Annual Installment Amount for a Benefited Property, EIC agrees to take at least the following steps to collect the delinquent Annual Installment Amount on behalf of the Participating Municipality:
 - Mail a written notice of delinquency and demand for payment to the Benefited Property Owner by both certified mail, return receipt requested, and first class mail; and
 - Mail a second notice of delinquency to the Benefited Property Owner by both certified mail, return receipt requested, and first class mail at least 30 days after the date of the first notice if the delinquency is continuing.
 - If the Benefited Property Owner fails to cure the delinquency within 30 days after the mailing of the second notice of delinquency, then the Financing Party may redeem the Benefited Property and pursue collection of the delinquent Annual Installment Amounts as provided in paragraph (h) of this Section 3.

- Collection of Delinquent Payments.

- If any Benefited Property Owner fails to pay an Annual Installment Amount, the Financing Party may redeem the Benefited Property by paying the amount of all unpaid Municipal Liens thereon, and thereafter have the right to collect any amounts in respect of an Annual Installment Lien by foreclosure pursuant to the RPTL or any other remedy available at law.
- EIC shall provide written notice to the Participating Municipality of the institution of a judicial foreclosure or other proceeding against any Benefited Property located within the Participating Municipality for payment of delinquent Annual Installment Amounts.

- Obligations of the Participating Municipality.

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

- Assignment of Benefit Assessment Lien.

- The Participating Municipality authorizes EIC, on its behalf, to sell or assign any and all Benefit Assessment Liens and Annual Installment Liens to a Financing Party that provides financing to a Qualified Property pursuant to a Finance Agreement. The Assignment of Benefit Assessment Lien shall be in substantially the form attached hereto as Exhibit B, and shall be filed by EIC, on behalf of the Participating Municipality, in the land records for the Participating Municipality at the same time as the Benefit Assessment Lien.
- The Financing Party may sell or assign for consideration any and all Benefit Assessment Lien and Annual Installment Liens received from EIC, on behalf of the Participating Municipality, subject to certain conditions provided in the administration agreement between EIC and the Financing Party. The assignee or assignees of such Benefit Assessment Liens and Annual Installment Liens shall have and possess the same powers and rights at law or in equity as the Participating Municipality would have had if the Benefit Assessment Lien and Annual Installments Liens had not been assigned with regard to the precedence and priority of such lien, the accrual of interest and the fees and expenses of collection.

- Notices.

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

- Promotion of Program; Assistance to EIC; Modification of Program.

- The Participating Municipality shall use good faith efforts to assist EIC in local marketing efforts and outreach to the local business community to encourage participation in the Program such as including Program information on the Participating Municipality's website.
- The Participating Municipality shall use good faith efforts to assist in gathering and providing information for EIC to administer the Program.
- Except with respect to Qualified Properties for which an application has previously been submitted, the Participating Municipality may at any time modify Open C-PACE by changing the types of properties that may receive financing for Qualified Projects. The Participating Municipality shall provide written notice to EIC of such proposed modification. The proposed modification shall only become effective upon written approval from EIC provided to the Participating Municipality, which shall not be unreasonably withheld. Such approval shall have no effect on the duties and obligations owed by each Party hereto in connection with this Agreement and any Benefited Property for which a Finance Agreement was executed prior thereto.

- Indemnification

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

- Term.

The term of this Agreement shall commence upon the date first written above. This Agreement shall be in full force and effect until all of the Benefit Assessments for

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

- **Default.**

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

- **Remedies Upon Default.**

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

- EIC may sue the Participating Municipality for specific enforcement of this Agreement;
- EIC shall have the right to discontinue providing any new financings to Qualified Properties located within the Participating Municipality.
- EIC may suspend the Participating Municipality's membership in EIC.
- EIC shall have all other rights and remedies provided by law.

- **Miscellaneous.**

- Assignment or Transfer.

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

- Severability.

If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any

of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

- Counterparts.

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

- Notices.

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

EIC:

Susan Morth
Co-Executive Director
Energy Improvement Corporation
2051 Baldwin Road
Yorktown Heights, NY 10598
E-mail: susanm@energizeny.org

Mark Thielking
Co-Executive Director
Energy Improvement Corporation
2051 Baldwin Road
Yorktown Heights, NY 10598
E-mail: mark@energizeny.org

Alain Pierroz
Co-Executive Director
Energy Improvement Corporation
2051 Baldwin Road
Yorktown Heights, NY 10598
E-mail: alainp@energizeny.org

With a copy to:

Anna Lee, Esq.
Partner
Norton Rose Fulbright US LLP
1301 Avenue of the Americas
New York, New York 10019

PARTICIPATING MUNICIPALITY: _____

With a copy to:

[Participating Municipality's counsel]

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

- Amendment and Waivers.

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

- Governing Law.

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

- Entire Agreement.

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

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

Date: _____, 20__

ENERGY IMPROVEMENT CORPORATION

By: _____

Name:

Title:

Date: _____, 20__

PARTICIPATING MUNICIPALITY NAME:

By: _____

Name:

Title:

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CERTIFICATE OF LEVY AND LIEN OF BENEFIT ASSESSMENT

Energy Improvement Corporation, a local development corporation formed under the laws of the State of New York ("EIC"), acting on behalf of [County/City/Town/Village] (the "Participating Municipality") pursuant to Article 5-L of the General Municipal Law of the State of New York and the Local Law adopted by the Participating Municipality establishing the Energize NY Open C-PACE Financing Program in the Participating Municipality, and the Municipal Agreement between the Participating Municipality and EIC dated _____, 2019, HEREBY LEVIES A BENEFIT ASSESSMENT AGAINST AND LIEN UPON certain real property commonly referred to as _____ and described more particularly in the attached **Exhibit A** (the "Benefited Property"), situated in the Participating Municipality and owned on the date hereof in whole or in part by _____ (the "Benefited Property Owner"), said levy and lien shall secure the repayment of financing for energy improvements or other improvements from time to time authorized by the Enabling Act made or to be made to the Benefited Property pursuant to that certain Finance Agreement, by and between the Benefited Property Owner and [Capital Provider] dated _____, 2019, as may be amended (the "Finance Agreement"). The amount and repayment of said levy and lien, as determined by EIC, on behalf of the Participating Municipality, are as follows: an installment payment schedule set forth in the attached **Exhibit B** is in effect for payment of the Benefit Assessment, and is based on the principal amount of the Benefit Assessment of \$ _____, with interest thereon at a fixed rate equal to _____% per annum, with [#] annual installments of principal and interest (the "Annual Installment Amount") due and payable pursuant to the Finance Agreement. The Annual Installment Amount may be adjusted to reflect any permitted prepayments received or additional interest or charges due to late payments or defaults, as provided in the Finance Agreement.

Each Annual Installment Amount shall be considered a charge upon the Benefited Property and shall become a lien on the Benefited Property as of the first day of January of the fiscal year for which levied (the "Annual Installment Lien") and shall remain a lien until paid. In the event that any Annual Installment Amount shall remain unpaid for thirty days after the same shall become due and payable, interest and other charges shall be charged upon the unpaid Annual Installment Amount at the rate of _____% per annum, as provided in the Finance Agreement. All existing holders of any mortgage on the Benefited Property have consented to the levy and assessment of the Benefit Assessment Lien by the Participating Municipality against the Benefited Property, and copies of such consents have been provided to EIC.

At such time as the principal and interest payments of the Benefit Assessment have been satisfied and paid in full, a release of this Certificate shall be filed by EIC, on behalf of the Participating Municipality, in the land records for the Participating Municipality evidencing such release.

This Certificate constitutes a certificate of lien and is filed pursuant to the provisions of the Local Law to evidence a lien for the Benefit Assessment levied upon the Benefited Property for the special benefits conferred upon said Benefited Property by the energy improvements related thereto. Pursuant to the Act, this lien shall take precedence over all other liens or encumbrances except a lien for taxes of the Participating Municipality on real property, municipal charges, or governmentally imposed assessments in respect of services or benefits to the Property, which liens shall have priority over this lien.

The portion of this Certificate which constitutes a levy of Benefit Assessment and notice of installment payment of Benefit Assessment is filed pursuant to the provisions of the Local Law and the General Municipal Law of the State of New York, as amended.

Dated at _____, New York this ____ day of _____ 20 ____.

By: _____
Energy Improvement Corporation
Name:
Title:

Acknowledged and Agreed:

this ____ day of _____, 20 ____

Property Owner

STATE OF NEW YORK)
)
COUNTY OF _____)

ss.: _____

On this the ____ day of _____ 20 ____, before me _____,
the undersigned officer, personally appeared _____, known to me
(or satisfactorily proven) to be the person whose name is subscribed to the within instrument and
acknowledged that he/she executed the same for the purposes therein contained and that he/she
acknowledged the same to be his/her free act and deed, before me, in his/her capacity as an
authorized officer of the Energy Improvement Corporation, acting on behalf of
[County/City/Town/Village].

STATE OF NEW YORK)
)
COUNTY OF _____)

ss.: _____

On this the ____ day of _____, 20____, before me _____,
the undersigned officer, personally appeared _____, known to me
(or satisfactorily proven) to be the person whose name is subscribed to the within instrument and
acknowledged that he/she executed the same for the purposes therein contained and that he/she
acknowledged the same to be his/her free act and deed, before me, in his/her capacity as an
authorized officer of the [Property Owner].

Received for Record: _____, 20____ at _____ A.M./P.M.

Recorded in the _____ land records at Volume _____, Page _____.

Clerk of [County/City/Town/Village]

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ASSIGNMENT OF BENEFIT ASSESSMENT LIEN

KNOW ALL PERSONS BY THESE PRESENTS, that Energy Improvement Corporation, a local development corporation formed under the laws of the State of New York (hereinafter referred to as "EIC" or the "Assignor"), acting on behalf of [County/City/Town/Village], a New York municipal corporation (the "Municipality"), pursuant to Article 5-L of the General Municipal Law of the State of New York and the Local Law adopted by the Municipality establishing the Energize NY Open C-PACE Financing Program in the Municipality, and the Municipal Agreement between the Municipality and EIC dated _____, 2019 (the "Municipal Agreement"), in consideration of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, hereby quit-claims, grants, bargains, sells, conveys, assigns, transfers and sets over unto [Capital Provider] (the "Assignee") under that certain Finance Agreement, by and between the Benefited Property Owner and [Capital Provider] dated _____, 2019, as may be amended (the "Finance Agreement"), without warranty and without recourse, all of its right, title and interest in and to that certain Benefit Assessment Lien and each Annual Installment Lien and the debts secured thereby together with such interest, fees, and expenses of collection as may be provided

by law, filed by EIC, on behalf of the Municipality, on the land records, on property owned on the date hereof in whole or in part by _____ and as described on **Exhibit A** and also commonly referred to as _____, attached hereto and made a part hereof (the "Benefit Assessment Lien"), to have and to hold the same unto the said Assignee, its successor and assigns forever.

This Assignment is made, given and executed pursuant to the authority granted to Assignor as agent of the Municipality pursuant to Article 5-L of the General Municipal Law of the State of New York, the Local Law and the Municipal Agreement.

By execution of this Assignment, the Assignor assigns to Assignee, and the Assignee assumes, all of the rights at law or in equity, obligations, powers and duties as the Assignor or the Municipality would have with respect to the Benefit Assessment Lien, if the Benefit Assessment Lien had not been assigned with regard to precedence and priority of such Benefit Assessment Lien, the accrual of interest, charges, fees and expenses of collection, pursuant to the Local Law.

This Assignment by the Assignor is absolute and irrevocable and the [County/City/Town/Village] shall retain no interest, reversionary or otherwise, in the Benefit Assessment Lien.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this ____ day of _____, 20__.

Assignor

By: _____
Energy Improvement Corporation
Name:
Title:

Acknowledged and Agreed:

this ____ day of _____, 20__

[Capital Provider]

STATE OF NEW YORK)
)
COUNTY OF _____)

SS.: _____

On this the ____ day of _____, 20____, before me _____,
the undersigned officer, personally appeared _____, known to me
(or satisfactorily proven) to be the person whose name is subscribed to the within instrument and
acknowledged that he/she executed the same for the purposes therein contained and that he/she
acknowledged the same to be his/her free act and deed, before me, in his/her capacity as an
authorized officer of the Energy Improvement Corporation, acting on behalf of
[County/City/Town/Village].

STATE OF NEW YORK)
)
COUNTY OF _____)

SS.: _____

On this the ____ day of _____, 20____, before me _____,
the undersigned officer, personally appeared _____, known to me
(or satisfactorily proven) to be the person whose name is subscribed to the within instrument and
acknowledged that he/she executed the same for the purposes therein contained and that he/she
acknowledged the same to be his/her free act and deed, before me, in his/her capacity as an
authorized officer of the [Capital Provider].

Received for Record: _____, 20____ at _____ A.M./P.M.

Recorded in the _____ land records at Volume _____, Page _____.

Clerk of [County/City/Town/Village]

FORM OF CONSENT OF MORTGAGE HOLDERS

Date: _____
Property/Loan Information: _____
Address: _____
Owner: _____
Municipality: _____
APN: _____
Loan Number: _____

This Mortgage Holder Consent to Benefit Assessment (this "Consent") is given by the undersigned entity, which is a mortgage holder ("Mortgage Holder") on the above-referenced property (the "Property") with respect to the above-referenced loan (the "Loan").

RECITALS

Mortgage Holder is in receipt of written notice (the "Notice") from the above-referenced owner of the Property (the "Property Owner") that it intends to finance installation on the Property of certain energy efficiency and/or renewable energy improvements that will be permanently fixed to the Property (the "Authorized Improvements") by participating in the Energize NY Open C-PACE Financing Program (the "Program"), sponsored by the Municipality.

Mortgage Holder understands that, as a result of an agreement between Energy Improvement Corporation ("EIC"), on behalf of the Municipality, and the Property Owner, the Benefit Assessment described in the Notice will be levied on the Property, and that the Benefit Assessment will be collected in annual installments as provided in the financing agreement for the Authorized Improvements (the "Finance Agreement"), in the same manner as and subject to the same penalties, remedies and lien priorities as real property taxes or municipal charges.

CONSENT

The undersigned hereby represents that it is authorized to execute this Consent on behalf of Mortgage Holder. Mortgage Holder hereby confirms:

A. Mortgage Holder is in receipt of written notice (the "Notice") from the above-referenced owner of the Property (the "Property Owner") that it intends to finance installation on the Property of certain energy efficiency and/or renewable energy improvements that will be permanently fixed to the Property by participating in the Program sponsored by the Municipality.

B. Mortgage Holder understands that, as a result of an agreement between EIC, on behalf of the Municipality, and the Property Owner, the Benefit Assessment described in the Notice will be levied on the Property, and that the Benefit Assessment will be collected by EIC, on behalf of the Municipality, in annual installments as provided in the Finance Agreement in the same manner as and subject to the same penalties, remedies and lien priorities as real property taxes or municipal charges. Mortgage Holder acknowledges that each annual installment in respect of the Benefit

On this the ____ day of _____, 20____, before me _____, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained and that he/she acknowledged the same to be his/her free act and deed, before me, in his/her capacity as an authorized officer of the [Mortgage Holder].