

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 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](http://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](http://www.EnergizeNY.org) or call (914) 302-7300 x8105

**LOCAL LAW NO. 2 – 2019**

**A LOCAL LAW TO ESTABLISH A SUSTAINABLE ENERGY LOAN  
PROGRAM (OPEN C-PACE) IN THE VILLAGE/TOWN OF MOUNT KISCO**

Be it enacted by the Village/Town of Mount Kisco (the “Municipality”) of the County of Westchester as follows:

**Section 1.** Chapter 61 of the Code of the Village/Town of Mount Kisco is hereby repealed in its entirety and replaced with this local law shall be known as the “Energize NY Open C-PACE Financing Program” and shall read as follows:

Additions are reflected with Underlining,  
Deletions are reflected within ~~Strikethrough~~

**ARTICLE I**

**§61-1. Legislative findings, intent and purpose, authority.**

- A. 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”).
- B. 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.
- C. 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”.

**§61-2. Definitions.**

- A. Capitalized terms used but not defined herein have the meanings assigned in the Enabling Act.
- B. 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 Village/Town of Mount Kisco, 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.

### **§61-3. Establishment of an Energize NY Open C-PACE Financing Program.**

- A. 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.

- B. 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.

#### **§61-4. Procedures for eligibility.**

- A. 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.
- B. 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.
- C. 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.

#### **§61-5. 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:

- A. The property owner may not be in bankruptcy and the property may not constitute property subject to any pending bankruptcy proceeding;
- B. 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;
- C. Sufficient funds are available from Financing Parties to provide financing to the property owner;
- D. The property owner is current in payments on any existing mortgage on the Qualified Property;

- E. The property owner is current in payments on any real property taxes on the Qualified Property; and
- F. 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.

**§61-6. Energize NY Finance Agreement.**

- A. 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”).
- B. 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.
- C. The Finance Agreement shall include the terms and conditions of repayment of the Secured Amount and the Annual Installment Amounts.
- D. 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.

**§61-7. Terms and conditions of repayment.**

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

- A. 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.
- B. 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.

- C. 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.

**§61-8. Levy of Annual Installment Amount and Creation of Annual Installment Lien.**

- A. 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.
- B. 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.
- C. 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.

- D. 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.
- E. 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.
- F. 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.

#### **§61-9. 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.

#### **§61-8. 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.

**Section 2.** This local law shall take effect upon filing with the Secretary of State.

**MUNICIPAL AGREEMENT**

**BETWEEN**

**ENERGY IMPROVEMENT CORPORATION**

**AND**

**VILLAGE/TOWN OF MOUNT KISCO**

**RELATING TO**

**ENERGIZE NY OPEN C-PACE FINANCING PROGRAM**

**DATED AS OF JULY 9, 2019**

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

This Agreement made as of this 9<sup>th</sup> day of July, 2019 (the “*Agreement*”), by and between Village/Town of Mount Kisco, 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:

**1. 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. 2 - 2019 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.

## **2. Representation and Warranties of the Parties.**

(a) EIC.

- (i) 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.

- (ii) 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.

(b) Participating Municipality.

- (i) *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.
- (ii) *Adoption of Local Law.* The Participating Municipality has on July 8, 2019 adopted the Local Law authorizing the provision of financing through Open C-PACE to Qualified Properties for Qualified Projects.
- (iii) *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.
- (iv) *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.
- (v) *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.

- (vi) *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.
- (vii) *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.

### **3. Obligations of EIC.**

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

- (a) Program Requirements.
  - (i) 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.

- (ii) 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.
- (iii) Prepare and deliver to the Participating Municipality by February 15<sup>th</sup> of each calendar year an annual report (the "*Annual Report*") which Annual Report may be filed by the Participating Municipality on the land records and shall contain information related to each Benefited Property within the Participating Municipality through December 31<sup>st</sup> 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. 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);
  - B. 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;
  - C. The total Annual Installment Amount paid to each Financing Party for each Benefited Property in the Participating Municipality during the prior calendar year;
  - D. 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
  - E. All other information EIC may deem to be relevant to each Benefited Property within the Participating Municipality.

(b) Qualified Project Requirements.

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

- (i) 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;
  - (ii) Impose requirements and criteria to ensure that the proposed Energy Efficiency Improvements or Renewable Energy Systems are consistent with the purpose of the Program;
  - (iii) 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;
  - (iv) 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
  - (v) Verify and report to the Participating Municipality on the installation and performance of Renewable Energy Systems and Energy Efficiency Improvements financed by the Program.
- (c) 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.”

(d) Levy and Recording of Benefit Assessment Lien.

- (i) 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.
- (ii) 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.

(e) Annual Installment Liens.

- (i) 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.

- (ii) 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.
  - (iii) 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.
- (f) 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 Satisfaction and Release of Benefit Assessment Lien (the “Release”) substantially in the form attached hereto as Exhibit D, and record the Release on the land records for the Participating Municipality. There shall be no charge, mortgage recording tax or other fee for recording the Release on the land records for the Participating Municipality in the same manner as if recorded by the Participating Municipality.
- (g) Billing and Collection of Annual Installment Amounts.
  - (i) 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.
  - (ii) 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:

- A. 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
- B. 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.

- (iii) 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.

(h) Collection of Delinquent Payments.

- (i) 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.
- (ii) 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.

**4. Obligations of the Participating Municipality.**

- (a) 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 the Release 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.

(b) Assignment of Benefit Assessment Lien.

- (i) 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. Any such assignment shall be in a form acceptable to EIC, and shall be filed by the Financing Party or, at its request and upon indemnification, by EIC, on the land records for the Participating Municipality. 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 EIC 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. There shall be no charge, mortgage recording tax or other fee for recording of any assignment on the land records for the Participating Municipality if filed by EIC, in the same manner as if recorded by the Participating Municipality.

(c) Notices.

- (i) 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.
- (ii) 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.

(d) Promotion of Program; Assistance to EIC; Modification of Program.

- (i) 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.
- (ii) The Participating Municipality shall use good faith efforts to assist in gathering and providing information for EIC to administer the Program.
- (iii) 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.

**5. 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.

**6. 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.

**7. 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.

**8. 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:

- (a) EIC may sue the Participating Municipality for specific enforcement of this Agreement;



- (b) EIC shall have the right to discontinue providing any new financings to Qualified Properties located within the Participating Municipality.
- (c) EIC may suspend the Participating Municipality's membership in EIC.
- (d) EIC shall have all other rights and remedies provided by law.

**9. Miscellaneous.**

(a) 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.

(b) 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.

(c) 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.

(d) 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](mailto:susanm@energizeny.org)

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

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

Village/Town of Mount Kisco:

Edward W. Brancati  
Village Manager  
Village/Town of Mount Kisco  
104 Main Street  
Mount Kisco, NY 10549

Robert Wheeling  
Village Treasurer  
Village/Town of Mount Kisco  
104 Main Street  
Mount Kisco, NY 10549

With a copy to:

Whitney Singleton  
Singleton, Davis & Singleton  
120 Main Street  
Mount Kisco, NY 10549

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.

(e) 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.

(f) 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.

(g) 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: \_\_\_\_\_, 2019

ENERGY IMPROVEMENT CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 2019

VILLAGE/TOWN OF MOUNT KISCO

By: \_\_\_\_\_  
Name: Edward W. Brancati  
Title: Village Manager

## **EXHIBIT A**

### **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 the Village/Town of Mount Kisco (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 July 9, 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 Benefitted 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

SS.: \_\_\_\_\_

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SS.: \_\_\_\_\_

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Received for Record: \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ A.M./P.M.

Recorded in the \_\_\_\_\_ land records at Volume \_\_\_\_\_, Page \_\_\_\_\_.

\_\_\_\_\_  
Clerk of the Village/Town of Mount Kisco

## **EXHIBIT B**

### **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 the Village/Town of Mount Kisco, 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 July 9, 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 EIC 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 Village/Town of Mount Kisco 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]

SS.: \_\_\_\_\_

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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 the Village/Town of Mount Kisco

## **EXHIBIT C**

### **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 Assessment shall create an Annual Installment Lien, and if such annual installment is not paid when due, each Annual Installment Lien shall constitute a statutory lien on the Property that is superior to the lien of the Loan.

C. Mortgage Holder acknowledges that the Benefit Assessment constitutes a statutory lien on the Property that is superior to the lien of the Loan.

D. This Consent shall not prohibit Mortgage Holder from pursuing any and all rights and remedies available to collect from Property Owner all amounts due to it under the Loan documents. Mortgage Holder shall have the right to cure any nonpayment by Property Owner of real property taxes and assessments (including the Benefit Assessment) to the same extent as Mortgage Holder has a right to cure nonpayment of real property taxes.

E. Mortgage Holder agrees that the levy of the Benefit Assessment will not constitute an event of default or trigger the exercise of any remedies under the Loan documents.

Mortgage Holder hereby acknowledges that the Property Owner and the Municipality will rely on the representation and consent of Mortgage Holder set forth in this Consent.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2019

MORTGAGE HOLDER

By: \_\_\_\_\_  
Name:  
Title:



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 [Mortgage Holder].

**EXHIBIT D**

**SATISFACTION AND RELEASE OF BENEFIT ASSESSMENT LIEN**

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 (the "Enabling Act") 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 July 9, 2019, having filed a Certificate of Levy and Lien of Benefit Assessment against the property of [Property Owner], on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ in the land records of \_\_\_\_\_, Book \_\_\_\_\_ page \_\_\_\_\_ on the following described real property in \_\_\_\_\_, New York in the amount of \$\_\_\_\_\_:

[Property description]

NOW, THEREFORE, the undersigned does hereby acknowledge satisfaction of the Lien of Benefit Assessment and does direct the Clerk of the Village/Town of Mount Kisco to release, cancel and discharge the Benefit Assessment Lien in accordance with the Enabling Act and the Local Law.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Energy Improvement Corporation

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and Agreed:

this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
[Capital Provider]

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 Village/Town of  
Mount Kisco.

\_\_\_\_\_

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].

\_\_\_\_\_

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 Village/Town of Mount Kisco