

**CONSTRUCTION FUNDING AND
DISBURSEMENT AGREEMENT
(COLORADO COPACE PROGRAM)**

THIS CONSTRUCTION FUNDING AND DISBURSEMENT AGREEMENT (this “**Agreement**”) is made as of [INSERT DATE], between [INSERT NAME], a [] organized under the laws of the State of [] [IF FOREIGN ENTITY ADD: and authorized to do business in the State of Colorado], whose address is [INSERT ADDRESS] (the “**Property Owner**”) and [NAME OF CAPITAL PROVIDER], a [corporation/limited liability company/state chartered bank or federal bank etc.] organized under the laws of the [ORGANIZATIONAL STATE] (together with its assigns, nominees and/or designees, the “**Capital Provider**”) whose address is [INSERT ADDRESS FOR CAPITAL PROVIDER]. Each of the Property Owner, the Capital Provider and the District is referred to herein as a “**Party**” and, collectively, as the “**Parties**.”

RECITALS:

A. The Capital Provider has made a clean energy improvement loan to the Property Owner under the commercial property assessed clean energy program (the “**CoPACE Program**”) established under Colorado Revised Statutes 32-20-101 et seq. (the “**CoPACE Act**”) and pursuant to which the COLORADO NEW ENERGY IMPROVEMENT DISTRICT (the “**District**”), an independent body corporate and politic of the State of Colorado established under the CoPACE Act, has been formed for the limited and specific purposes set forth therein; and

B. The Property Owner has applied for and has been approved for inclusion in the District with respect to that certain property located at [INSERT ADDRESS OF PROPERTY], [COUNTY], Colorado as more fully described on Exhibit A to this Agreement (the “**Property**”) and to obtain CoPACE financing for the New Energy Improvements (as defined below) in an amount up to that detailed on Exhibit B, which financing is evidenced by that certain CoPACE Assessment and Financing Agreement of even date herewith (the “**Financing Agreement**”), the proceeds of which will be used to finance such New Energy Improvements and which is secured by, among other things, a special CoPACE Assessment (the “**CoPACE Assessment**”) and accompanying lien (the “**CoPACE Lien**”) on the Property pursuant to the terms of the CoPACE Act and the Financing Agreement.

C. In accordance with the requirements of the CoPACE Program, the Property Owner has contracted to [renovate or retrofit the Property to reduce energy and/or water consumption and/or install renewable energy systems at or for the Property][construct a new building that meets the District’s energy efficiency requirements for eligibility for the CoPACE Program] as more fully described in the executed construction contract by and among the Property Owner and [NAME OF CONTRACTOR] (the “**Contractor**”) dated [], [] (the “**Construction Contract**”) for completion of the energy efficiency, water efficiency, and/or renewable energy improvements described therein (the “**New Energy Improvements**”).

D. The Capital Provider has agreed to provide financing for the New Energy Improvements (the “**CoPACE Loan**”) to be implemented on the Property on the terms and

subject to the terms and conditions contained in the Financing Agreement, this Agreement and the documents and instruments contemplated thereby.

NOW, THEREFORE, in consideration of the foregoing and covenants contained herein and for Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

AGREEMENT

Section 1. Definitions. All capitalized terms listed in the recitals shall have the meanings assigned to them therein, and all capitalized terms not otherwise expressly defined herein shall have the meanings assigned to them in the Financing Agreement. In addition, the following terms shall have the following meanings in this Agreement.

“*Agreement*” has the meaning given such term in the introductory paragraph hereof.

“*Architect*” means [REDACTED], a [REDACTED], State of Colorado Architect No. [REDACTED].

“*Architect’s Certificate*” means a certificate in substantially the form of Exhibit [REDACTED] attached hereto or such other form as the Capital Provider may approve, to be executed by the Architect in favor of the Capital Provider and the Capital Provider.

“*Budget*” means a full Project development budget (including the division construction line item schedule of values) of the Project Costs to be incurred by the Property Owner in connection with the Project and to be approved by the Capital Provider, as such initial Budget is set forth in Exhibit [REDACTED] hereto.

“*Budget Line Items*” has the meaning given such term in Section 5 hereof.

“*Business Day*” means any day other than a Saturday, Sunday, or state or federal holiday during which Capital Provider is not open for business in Denver, Colorado.

“*Capital Provider*” has the meaning given such term in the introductory paragraph hereof.

“*Capital Provider’s Construction Consultant*” means an independent consulting architect, inspector, and/or engineer designated by the Capital Provider in the Capital Provider’s sole discretion, with authority to review all construction matters hereunder on the Capital Provider’s behalf, including review of the work and applications for Disbursements.

“*Change Order*” means any request for changes in the Plans and Specifications (other than minor field changes involving no extra cost) or changes in the Construction Schedule processed in the manner set forth in Section 4.

“*Change Order Approval Period*” means the period of approval of a Disbursement Request by the Capital Provider in accordance with Section 4 of this Agreement.

“*Closing Date*” shall mean the date of this Agreement.

“*Collateral*” shall mean all of the Property Owner’s right, title and interest in all interests, property or rights of the Property Owner pledged under the Collateral Documents used to secure the CoPACE Loan.

“*Collateral Documents*” shall mean, collectively, all guaranties and all security agreements, account control agreements, financing agreements, assignments of contracts and related documents required to be executed by the Property Owner creating and perfecting security interests, liens or encumbrances in the assets of the Property Owner in favor of the Capital Provider to secure the CoPACE Loan.

“*Completion*” or “*Completion of Construction*” has the meaning given such term in Section 11 hereof.

“*Completion Date*” means the date of Completion of Construction.

“*Completion Guaranty*” means a guaranty of payment, performance and completion, executed by the Guarantor and pursuant to which the Guarantor guarantees the lien-free and timely Completion of Construction of the Project in accordance with all provisions of this Agreement and the Property Owner’s obligation to, among other things, keep the CoPACE Loan “In Balance” and to pay for all Project cost overruns.

“*Construction Commencement Date*” means the date that the Property Owner commences Construction, which date shall not be later than [REDACTED].

“*Construction Contract*” has the meaning given such term in Recital C hereof.

“*Construction Schedule*” means a schedule satisfactory to the Capital Provider and the Capital Provider’s Construction Consultant, establishing a timetable for Completion of Construction, showing, on a monthly basis, the anticipated progress of the construction and also showing that the New Energy Improvements can be completed on or before the Completion Date.

“*Contingency Amount*” means a Budget Line Item which shall represent an amount necessary to provide reasonable assurances to the Capital Provider that the CoPACE Loan funds are available to be used if additional costs and expenses are incurred or additional interest accrues on the CoPACE Loan, or unanticipated events or problems occur, in the amount as set forth in Section 6.

“*Contractor*” means [INSERT NAME OF APPROVED CONTRACTOR], a [REDACTED] [company/limited liability company] authorized to do business in the State of Colorado and which entity has been approved by the District for the construction of the New Energy Improvements.

“*CoPACE Act*” has the meaning given such term in Recital A hereof.

“*CoPACE Assessment*” has the meaning given such term in Recital B hereof.

“*CoPACE Lien*” has the meaning given such term in Recital B hereof.

“*CoPACE Loan*” has the meaning given such term in Recital D hereof.

“*CoPACE Program*” has the meaning given such term in Recital A hereof.

“*CoPACE Transaction Documents*” shall mean this Agreement, the Financing Agreement, the Completion Guaranty and all other instruments and documents, now existing or hereafter existing, executed by the Property Owner in connection with the CoPACE Loan, as amended or restated from time-to-time.

“*Default Interest*” has the meaning set forth in Section ___ hereof.

“*Deficiency Deposit*” has the meaning given such term in Section 9 hereof.

“*Disbursement*” or “*disbursement*” means a disbursement of the CoPACE Loan proceeds made under the terms and conditions of this Agreement.

“*Disbursement Account*” means an account established with the Capital Provider in the name of the Property Owner into which the disbursement of the CoPACE Loan proceeds are made under the terms and conditions as contemplated by Section 2 of this Agreement.

“*Disbursement Approval Period*” means the period of approval of a Disbursement Request by the Capital Provider in accordance with Section 10(f) of this Agreement.

“*Disbursement Request*” means written request for Disbursement by the Property Owner in accordance with Section 10(c) of this Agreement.

“*District*” has the meaning given such term in the introductory paragraph hereof.

“*Financing Agreement*” has the meaning given such term in Recital B hereof.

“*Governmental Authority*” shall mean any governmental or quasi-governmental (including health and environmental) office, officer or official whose consent or approval is required as a prerequisite to the commencement of the construction of the Project, to the operation and occupancy of the Project, to the performance of any act or obligation, or the observance of any agreement, provision or condition of whatsoever nature herein contained.

“*Guaranteed Maximum Price*” means [\$_____].

“*Indemnitees*” has the meaning given such term in Section 18 hereof.

“*Land*” means the real property legally described in Exhibit A hereto, together with all appurtenances thereto.

“*New Energy Improvements*” has the meaning given such term in Recital C hereof.

“*Outside Completion Date*” means [_____] as the date by which the Project must reach Completion of Construction.

“Party” or “Parties” has the meaning given such term in the introductory paragraph hereof.

“Payment Account” has the meaning given such term in Section 10(a) hereof.

“Plans and Specifications” shall mean the plans and specifications for the Project as reviewed and approved by the Capital Provider, as amended from time-to-time with the consent of the Capital Provider.

“Project” means the collective reference to the Land, together with all buildings, structures and improvements located or to be located thereon, including the New Energy Improvements.

“Property” has the meaning given such term in Recital B hereof.

“Property Owner” has the meaning given such term in the introductory paragraph hereof.

“Required Permits” means each building permit, environmental permit, utility permit, land use permit, wetland permit and any other permits, approvals or licenses to be issued from time to time as construction of the Project progresses by any Governmental authority which are then required in connection with the construction or operation of the Project.

“Requirement of Law” shall mean as to any person, the certificate of incorporation and bylaws or other organizational or governing documents of such person, and any law, treaty, rule, regulation, ordinance, determination of an arbitrator, order of a court and determination, advisory opinion, order, guideline, finding or requirement of any other Governmental Authority, in each case applicable to and binding upon such person or any of its properties or to which such person or any of its properties is subject, either individually or jointly with another person or persons.

“Requirements” shall mean all applicable existing and future laws, building codes, restrictions and requirements of, and all agreements with and commitments to, all governmental, judicial or legal authorities having jurisdiction over any part of the Project, including those pertaining to the construction, leasing or financing of the Project, and with all recorded covenants and restrictions affecting the Project and the Land.

“Subcontracts” or “subcontracts” means subcontracts for labor or materials to be furnished to the Project including subcontracts between the Contractor and any other subcontractors and material suppliers.

“Title Company” means [REDACTED] or such other title insurance company licensed in the State as may be approved in writing by the Capital Provider.

“Title Commitment” means a Title Insurance Commitment issued by the Title Company evidencing the liens against the Property and evidencing that, upon recordation of the Financing Agreement, the lien of the Financing Agreement and statutory lien under the CoPACE Act as a valid first, prior and paramount lien upon the Project and subject to no other exceptions other than the Permitted Exceptions set forth in the Financing Agreement and otherwise satisfying the endorsement requirements of this Agreement.

“*Unavoidable Delay*” means any delay in the construction of the Project, caused by natural disaster, fire, earthquake, floods, explosion, extraordinary adverse weather conditions, inability to procure or a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market, failure of transportation, strikes or lockouts, acts of terrorism or war, for which the Property Owner has notified the Capital Provider in writing and which delay the Capital Provider’s Construction Consultant has confirmed to have occurred to the Capital Provider’s reasonable satisfaction.

Section 2. Disbursing and Monitoring Responsibilities; Required Construction Documents. Pursuant to the terms of the Financing Agreement, the Capital Provider shall act as the disbursing agent under the Financing Agreement and, if required by the Capital Provider, shall hire (at the cost and expense of the Property Owner) and oversee the Construction Consultant’s construction monitoring activities with respect to construction of the Project. In connection therewith, the Property Owner shall cause to be furnished to the Capital Provider and Disbursement Agent’s Construction Consultant, if applicable, the following, in form and substance satisfactory to the Capital Provider and the Capital Provider’s Construction Consultant, if applicable, in all respects, for the Capital Provider’s approval in its reasonable discretion prior to the first disbursement of the CoPACE Loan proceeds from the Disbursement Account:

- (a) fully executed copies of the following, each satisfactory to the Capital Provider and the Capital Provider’s Construction Consultant, if applicable, in all respects:
 - (i) a [fixed or Guaranteed Maximum Price Design Build Contract] with the Contractor,
 - (ii) all Subcontracts and material suppliers which provide for an aggregate contract price equal to or greater than [\$];
 - (iii) all contracts with Architects and engineers; and
 - (iv) the final Budget.
- (b) a list of all Subcontractors and vendors whose contracts or purchase orders provide for an aggregate contract price in excess of \$ as of such date;
- (c) an initial sworn statement of the Contractor in a form reasonably acceptable to the Capital Provider and the Capital Provider’s Construction Consultant, if applicable, covering all work completed, together with lien waivers covering all work and materials for which payments have been made by the Property Owner prior to the date of this Agreement evidencing all sums expended by the Property Owner with respect to the Project;
- (d) copies of each of the then Required Permits, as construction progresses, except for those Required Permits which cannot be issued until Completion of Construction, in which event such Required Permits will be obtained by the Property Owner on a timely basis in accordance with all recorded maps and conditions, and applicable building, land use, zoning and environmental codes, statutes and regulations and will be delivered to the Capital Provider at the earliest possible date;
- (e) full and complete detailed Plans and Specifications for the New Energy Improvements;

(f) the Construction Schedule;

(g) the Capital Provider shall have obtained from the Property Owner the following and together with a report from the Capital Provider's Construction Consultant, if applicable, which contains an analysis of the Plans and Specifications, the Budget, the Construction Schedule, the Construction Contract, all Subcontracts then existing and [any environmental reports, energy audits or reports, and any soils report]. Such report shall be solely for the benefit of the Capital Provider and contain (i) an analysis satisfactory to the Capital Provider demonstrating the adequacy of the Budget to complete the Project, and (ii) a confirmation that the Construction Schedule is realistic. The Capital Provider's Construction Consultant shall monitor construction of the Project and shall visit the Project at least one time each month, and shall certify the percentage of work completed with the then requested fundings. If no Construction Consultant is appointed, then this subsection shall apply as to the Capital Provider acting on its own behalf;

(h) a Disbursers' Notice or other notice of construction commencement complying with applicable state or local law; and

(i) the Completion Guaranty [and any Environmental Indemnity executed by the Property Owner].

Section 3. Budget. Disbursements of the CoPACE Loan shall be governed by the [] () division line item Budget for the Project. The Budget shall specify the amount and breakdown of cash equity invested in the Project, and all costs and expenses to be incurred by the Property Owner in connection with the Project. The Budget shall include Budget Line Items for the Contingency Amount, soft costs and other reserves acceptable to the Capital Provider. The initial Budget is attached as Exhibit C hereto. Once the Budget is approved by the Capital Provider all changes to the Budget (except for change orders authorized hereby) shall in all respects be subject to the prior written approval of the Capital Provider.

Section 4. Change Orders. Changes in the scope of Construction work, the Construction Schedule or to any construction related contract must be documented with a Change Order processed on the AIA Form G 701 or equivalent form. No material changes will be made in the Plans and Specifications without the prior written approval of the Capital Provider (or the Capital Provider's Construction Consultant, if applicable) and, if required pursuant to the CoPACE Act, the District; provided, however, that the Property Owner may make changes to the Plans and Specifications if (i) the Property Owner notifies the Capital Provider (or the Capital Provider's Construction Consultant, if applicable) in writing of such change within seven days thereafter; (ii) the Property Owner obtains the approval of all parties whose approval is required, including the District and/or any Governmental Authority to the extent approval from such parties is required; (iii) the structural integrity of the New Energy Improvements is not impaired; (iv) no material change in the anticipated energy savings is effected; (v) the performance of the mechanical, electrical, and utility systems of the New Energy Improvements is not detrimentally affected; and (vi) the cost of or reduction resulting from any one such change does not exceed [] or when added to (or subtracted from) other changes not requiring the Capital Provider's approval, the resulting aggregate net cost increase does not exceed []. The Property Owner acknowledges and agrees

that each Change Order in excess of [\$] is subject in all respects to approval by the Capital Provider and, if required pursuant to the CoPACE Act, the District. The Capital Provider agrees that, immediately upon receipt of (i) the Change Order request and (ii) the report of the Capital Provider's Construction Consultant relating thereto, if applicable, the Capital Provider shall process the Change Order Request for approval, but which approval period shall not extend beyond [] Business Days following the receipt of items (i) and (ii) above (the "**Change Order Approval Period**"). Such approval shall be given in writing by the Capital Provider prior to the expiration of the Change Order Approval Period. Failure by the Capital Provider to deliver its required approval within the Change Order Approval Period shall be deemed to be approval by it.

Section 5. Budget Line Items. The Budget shall include as line items ("**Budget Line Items**"), to the extent determined to be applicable by the Capital Provider in its reasonable discretion, the cost of all labor, materials, equipment, fixtures and furnishings needed for the Completion of the construction, and all other costs, fees and expenses relating in any way whatsoever to the construction of the New Energy Improvements, real estate taxes, and all other sums due in connection with construction and operation of the Project through the Outside Completion Date. The Property Owner agrees that all the CoPACE Loan proceeds disbursed by the Capital Provider shall be used only for the Budget Line Items for which such proceeds were disbursed. The Property Owner shall have the right to request that the Property Owner have the right to reallocate demonstrable cost savings affected by a Change Order or other appropriate final documentation, upon one hundred percent (100%) completion of all work related to a specific line item to other Budget Line Items deemed by the Property Owner to be insufficient, provided, however, that any such reallocation shall be subject to the Capital Provider's prior written consent, which consent shall not be unreasonably denied so long as the same has been reviewed and approved by the Capital Provider's Construction Consultant. The Capital Provider shall not be obligated to disburse any amount for any category of costs set forth as a Budget Line Item which is greater than the amount set forth for such category in the applicable Budget Line Item. [The Property Owner shall pay (as the same shall become due) all amounts set forth in the Budget with respect to costs identified to be paid for directly by the Property Owner from the Property Owner's required equity contribution.]

Section 6. Contingency Line Item. The Budget shall contain a Budget Line Item designated for the Contingency Amount in the minimum amount of [\$]. The Property Owner may from time to time request that the Contingency Amount Budget Line Item be reallocated to pay needed costs of the Project. Such requests shall be subject to documentation reasonably satisfactory to the Capital Provider. The Property Owner agrees that the decision with respect to utilizing portions of the Contingency Amount in order to keep the CoPACE Loan In Balance shall be made by the Capital Provider in its reasonable discretion.

Section 7. Payment of Interest; Default Interest. Interest shall accrue and be added to principal on the CoPACE Loan as set forth in the Financing Agreement. Until Completion of Construction, no interest shall be due or payable thereon. Notwithstanding the foregoing, any additional amounts due hereunder and not paid within ten (10) Business Days following demand from the Capital Provider shall accrue interest at the default rate of [] percent (%)], all of which shall be secured by the Completion Guaranty.

Section 8. In-Balance Requirements. Anything contained in this Agreement to the contrary notwithstanding, it is expressly understood and agreed that the CoPACE Loan shall at all times through the Completion of Construction be “In Balance,” on a Budget Line Item and an aggregate basis. The CoPACE Loan shall be deemed to be “In Balance” in the aggregate only when the total of the undisbursed portion of the CoPACE Loan less the Contingency Amount (subject to the Property Owner’s reallocation rights under Section 4), equals or exceeds the aggregate of (a) the costs required to complete the construction of the Project and Completion in accordance with the Plans and Specifications and the Budget; (b) the amounts to be paid as retainages to persons who have supplied labor or materials to the Project; and (c) all other hard and soft costs not yet paid for in connection with the Project, as such costs and amounts described in clauses (a), (b) and (c) may be estimated and/or approved in writing by the Capital Provider from time to time.

Section 9. Obligation for Loan “In Balance” Deficiency Deposit; Use Prior to Further Disbursements. The Property Owner agrees that if for any reason, in the Capital Provider’s reasonable discretion, the amount of such undistributed CoPACE Loan proceeds shall at any time be or become insufficient for Completion of Construction of the New Energy Improvements in accordance with the Budget, regardless of how such condition may be caused, the Property Owner will, within 10 Business Days after written request by the Capital Provider, deposit the deficiency with the Capital Provider (“**Deficiency Deposit**”). The Deficiency Deposit shall then be used to fund construction and shall be exhausted before any further disbursement of the CoPACE Loan proceeds shall be made. The Capital Provider shall not be obligated to make any CoPACE Loan disbursements if and for as long as the CoPACE Loan is not “In Balance”.

Section 10. Construction Disbursement Requirements. The provisions contained in this Section 10 shall apply to all disbursements of the CoPACE Loan proceeds during construction. Disbursements shall be made within [five (5) Business Days] after receipt by the Capital Provider of all information required hereunder.

(a) *Disbursement Account and Payment Account; Pledge to Secure CoPACE Loan.* On the Closing Date, the Capital Provider will advance all of the proceeds of the CoPACE Loan into an account in the Property Owner’s name established at the Capital Provider’s institution designated as the “**Disbursement Account**”, such proceeds to be disbursed only in accordance with this Agreement. Upon deposit by the Capital Provider of the loan proceeds into the Disbursement Account, the Property Owner shall be deemed to be the owner of the proceeds for Federal income tax purposes. The Property Owner shall have established a second deposit account with the Capital Provider, acting as depository and custodian of such account, called the Project Payment Account (the “**Payment Account**”), which shall be held, invested and disbursed in accordance with the terms of this Agreement and which, together with the earnings shall be maintained separate and apart from other funds of the Property Owner or relating to the Project that may be maintained by the Capital Provider. The Disbursement Account and the Payment Account are hereby pledged by the Property Owner to the Capital Provider to secure the obligations of the Property Owner hereunder. The Payment Account shall be the account into which the Disbursements, once approved to be funded in accordance with a Disbursement Request, shall be funded for payment by the Property Owner to the

Contractor and any Subcontractors to be paid under the Disbursement Request. The Property Owner acknowledges that all the CoPACE Loan proceeds are deemed to be disbursed to the Property Owner from the date of deposit thereof into the Disbursement Account and interest shall accrue on those proceeds from that date. As a condition precedent to any Disbursement, no Event of Default or event that with the passage of time will become an Event of Default under any of the CoPACE Transaction Documents shall have occurred or be continuing.

(b) *Monthly Disbursements.* Disbursements shall be made during Construction from time to time as the Construction progresses, but no more frequently than once in each calendar month. Disbursements shall be made by the Capital Provider from the Disbursement Account into the Payment Account and subsequently disbursed by the Property Owner.

(c) *Documents To Be Furnished for Each Disbursement.* As a condition precedent to each disbursement of the CoPACE Loan proceeds (including any initial disbursements at the closing of the CoPACE Loan), the Property Owner shall furnish or cause to be furnished to the Capital Provider and the Capital Provider's Construction Consultant the following documents covering each disbursement, in form and substance reasonably satisfactory to the Capital Provider (each a "**Disbursement Request**"):

(i) a completed the Property Owner's Disbursement Certificate in the form of Exhibit B attached hereto and made a part hereof executed by the Authorized Representative of the Property Owner;

(ii) a completed standard AIA Form G702 and Form G703 signed by the Contractor, and if requested by the Capital Provider, the Property Owner, together with (i) Contractor's sworn statements, (ii) conditional waivers of liens for the present disbursements, (iii) all Contractors, material Subcontract Contractors', and material suppliers' unconditional waivers of lien covering all work previously paid for with the proceeds of the prior draw requests through the date of the prior Disbursement Request, and (iv) together with such invoices, contracts or other supporting data as the Capital Provider or the Capital Provider's Construction Consultant may require to evidence that all costs for which disbursement is sought have been incurred; provided, however, that the Property Owner and/or the Contractor shall be entitled to submit any required lien waivers (conditional or unconditional) with respect to each draw request subsequent to submission of such draw request to the Capital Provider but prior to disbursement of such draw request by the Capital Provider;

(iii) invoices or other evidence satisfactory to the Capital Provider with respect to fixtures and equipment, provided to the Project with respect to the present disbursement, together with copies of and evidence of payment of invoices for any fixtures and equipment paid for with proceeds of any prior draw requests;

(iv) invoices with respect to all requested disbursement for “soft” or indirect costs with respect to the present disbursement, together with evidence of payment of invoices for “soft” and indirect costs paid for with proceeds of any prior draw requests and, if any such cost items are lienable, together with an unconditional lien waiver with respect thereto;

(v) a “date-down” or other form of an endorsement to the Title policy issued pursuant to the Title Commitment insuring Assessment Lien for the benefit of the Capital Provider covering the date of disbursement and showing that nothing has intervened to affect the validity or priority of the liens granted pursuant to the Financing Agreement; provided that the parties acknowledge that such endorsements shall not include a requirement for affirmative coverage over mechanics’ liens;

(vi) copies of any executed change orders which have not been previously furnished to the Capital Provider;

(vii) copies of all construction contracts (including material Subcontracts for a value in excess of [\$]) which have been executed since the last disbursement;

(viii) all Required Permits issued since the Opening of the CoPACE Loan and not previously provided;

(ix) satisfactory evidence that all then required Government Approvals have been obtained for development of the Project; and

(x) such other instruments, documents, certificates, endorsements, invoices and opinions as the Capital Provider or the Capital Provider’s Construction Consultant may reasonably require.

(d) *Retainages.* At the time of each disbursement of the CoPACE Loan proceeds, 10% of the total amount then due the Contractor and the various Subcontract Contractors and material suppliers for “hard” or direct costs of the Construction shall be withheld from the amount disbursed until the Project is 50%complete (as evidenced by the Line Item Budget), whereupon further retainage requirements shall be waived. The retained CoPACE Loan amounts for the Construction costs will be disbursed only at the time of the final disbursement of the CoPACE Loan proceeds under Section 11 below; provided, however, upon the satisfactory completion of 100% of the work with respect to any trade line item or the delivery of all materials pursuant to a purchase order in accordance with the Plans and Specifications as certified by the Contractor and the Capital Provider’s Construction Consultant, the Capital Provider may decide on a case by case basis (but shall not be obligated) to permit retainages with respect to such trade or supplier, as the case may be, to be disbursed to the Property Owner upon the Capital Provider’s Construction Consultant’s prior written approval of all work and materials and the Capital Provider’s receipt of a final waiver of lien with respect to such completed work or delivered materials.

(e) *Disbursements for Materials Stored On-Site.* Any requests for disbursements which in whole or in part relate to material or equipment which the Property Owner owns and which are not incorporated into the New Energy Improvements as of the date of the request for disbursement, but are to be temporarily stored at the Project, must be accompanied by evidence satisfactory to the Capital Provider or the Capital Provider's Construction Consultant that (a) such stored materials are included within the coverages of insurance policies carried by the Property Owner; (b) the ownership of such materials is vested in the Property Owner free of any liens and claims of third parties, except as may be evidenced by conditional lien waivers of the supplier(s) relating to such draw request and unconditional lien waivers for all prior paid-for materials; (c) such materials are properly insured and protected against theft or damage; (d) the Capital Provider's Construction Consultant has viewed and inspected the stored materials; and (e) in the opinion of the Capital Provider's Construction Consultant the stored materials are physically secured and can be incorporated into the Project within 45 days. The Capital Provider may require separate postings and/or Uniform Commercial Code financing statements to cover any such stored materials.

(f) *Approvals by the District; Partial Funding.* The Property Owner acknowledges and agrees that, with respect to any portion of a Disbursement Request that requires approval of the District pursuant to the CoPACE Act, such Disbursement shall be subject in all respects to approval by the District. In the event that either the Capital Provider or the District shall have any objection to or conditions for disbursement as to any particular amount or line item, such objection or condition shall be specified in writing to the Property Owner (and a copy thereof shall be delivered by the Contractor, specifying the amount of the Disbursement Request in question, whereupon the balance of the Disbursement Request shall be deemed approved and the Capital Provider shall be deemed authorized to Disburse the unquestioned amount of such Disbursement Request. The balance of any questioned amount shall be disbursed upon full satisfaction of the questions posed by the Capital Provider or the District.

(g) *Further Conditions for Disbursement Advances.* Disbursements for Construction costs shall be made only to the extent that the work is actually completed in accordance with the Plans and Specifications, including materials actually incorporated in the Project or stored on site, but excluding materials stored elsewhere. The Capital Provider shall not fund any Disbursement Request for line items in excess of any Budgeted Line Item, subject to Section 5 of this Agreement allowing for reallocation of budget line items under the conditions thereof.

(h) *Covenants of the Property Owner.* The Property Owner hereby reaffirms the covenants set forth in the Financing Agreement. Without limiting the foregoing, the Property Owner hereby covenants, represents and warrants as follows:

(i) Construction of New Energy Improvements; Completion. The New Energy Improvements shall be constructed and fully equipped by the Property Owner in a good and workmanlike manner with materials of high quality, substantially in accordance with the Plans and Specifications (or in accordance with any changes therein that may be approved in writing in

accordance with this Agreement.) The Construction shall be commenced on or before the Construction Commencement Date and prosecuted with due diligence and continuity in accordance with the Construction Schedule and fully completed not later than the Outside Completion Date. The Outside Completion Date may be extended in writing by the Capital Provider by the number of days resulting from any Unavoidable Delay in the construction of the Project; provided that the Capital Provider shall not be obligated to grant any such extension unless (a) the Property Owner gives notice of such delay to the Capital Provider within 10 days of learning of the event resulting in such delay; and (b) after giving effect to the consequences of such delay, the CoPACE Loan shall remain "In Balance".

(ii) Inspection by the Capital Provider's Construction Consultant. The Property Owner will cooperate with the Capital Provider in arranging for inspections by the Capital Provider's Construction Consultant and representatives of the Capital Provider of the progress of the construction from time to time including an examination of (i) the New Energy Improvements; (ii) all materials to be used in the construction; (iii) all plans and shop drawings which are or may be kept at the construction site; (iv) any contracts, bills of sale, statements, receipts or vouchers in connection with the New Energy Improvements; (v) all work done, labor performed, materials furnished in and about the New Energy Improvements; (vi) all books, contracts, reports and records with respect to the New Energy Improvements; and (vii) any other documents relating to the New Energy Improvements or the Construction. The Property Owner shall cooperate with the Capital Provider's Construction Consultant to enable him to perform his functions hereunder and will promptly comply with the requirements of the Financing Agreement and this Agreement and remove any dissatisfaction regarding the construction of the New Energy Improvements or the progress thereof.

(iii) [Foundation Survey. Not later than 30 days after completion of the foundation with respect to the New Energy Improvements, the Property Owner shall furnish to the Capital Provider a survey of the Land with the foundation of the New Energy Improvements located thereon, and also satisfying the requirements set forth in the Financing Agreement and any requirements of the Title Company.]

(iv) Correction of Defects. Within five days after the Property Owner acquires knowledge of or receives notice of a defect in the New Energy Improvements or any departure from the Plans and Specifications, or any other requirement of this Agreement, the Property Owner will proceed with diligence to correct all such defects and departures.

(v) Hold Disbursements in Trust. The Property Owner shall receive and hold in trust for the sole benefit of the Capital Provider (and not for the benefit of any other person, including, but not limited to, contractors or any subcontractors) all advances made hereunder directly to the Property Owner, for the purpose of paying costs of the construction in accordance with the Budget.

The Property Owner shall use the proceeds of the CoPACE Loan solely for the payment of costs as specified in the Budget. The Property Owner will pay all other costs, expenses and fees relating to the acquisition, equipping, use and operation of the Project.

(vi) Construction Contracts. The Property Owner shall not enter into, modify, amend, terminate or cancel any contracts for the Construction, without the prior written approval of the Capital Provider. The Property Owner will furnish the Capital Provider promptly after execution thereof executed copies of all contracts between the Property Owner, architects, engineers and contractors and all subcontracts between the Contractor or the Subcontractors and all of their subcontractors and suppliers, which contracts and subcontracts may not have been furnished to the Capital Provider as of the date of this Agreement.

(vii) Furnishing Notices. The Property Owner shall provide the Capital Provider with copies of all material notices pertaining to and which may have a negative effect on the construction of the Project received by the Property Owner or the Contractor from any Governmental Authority or any insurance company within seven days after such notice is received.

(viii) Furnishing Reports. The Property Owner shall provide the Capital Provider's Construction Consultant with copies of all inspections, reports, test results and other information received by any the Property Owner, which in any way relate to the construction of the Project or any part thereof.

(ix) Sign and Publicity. Upon the Capital Provider's request, the Capital Provider shall, at the Capital Provider's sole expense, have the right to erect a sign in a conspicuous location on the Project during the construction indicating that the financing for the Project is provided through the Capital Provider. The Capital Provider reserves the right to publicize its participation in the funding and disbursing of the CoPACE Loan.

Section 11. Final Disbursement for Construction. The Capital Provider will advance to the Property Owner the final disbursement for the cost of the Construction (including retainages) when the following conditions have been complied with; provided that all other conditions in this Agreement for disbursements have been complied with in form and substance reasonably satisfactory to the Capital Provider (such compliance, "Completion of Construction"):

(a) the New Energy Improvements have been fully completed and equipped in accordance with the Plans and Specifications free and clear of mechanics' liens and security interests and are in Service or are ready for being placed into Service, being subject only to punch list items, the cost of which shall not exceed [\$] in aggregate value, one hundred and twenty-five percent (125%) of which amount may be withheld from final disbursement by the Capital Provider until such punch list items have been fully completed;

(b) the Property Owner shall have furnished to the Capital Provider for the benefit of the Capital Provider “all risks” casualty insurance in form and amount and with companies satisfactory to the Capital Provider in accordance with the requirements contained herein;

(c) the Property Owner shall have furnished to the Capital Provider copies of all licenses and permits required by any Governmental Authority having jurisdiction for the occupancy of the New Energy Improvements and the operation thereof, including a temporary certificate of occupancy from the municipality in which the Project is located, being subject only to punch list items not exceeding [\$] in aggregate value;

(d) [the Property Owner shall have furnished an as-built survey covering the completed New Energy Improvements in compliance with the requirements of the Financing Agreement and the Title Company;]

(e) all fixtures, furnishings, furniture, equipment and other property required for the operation of the Project shall have been installed free and clear of all liens and security interests, except in favor of the Capital Provider;

(f) the Property Owner shall furnish to the Capital Provider (i) copies of all final and conditional waivers of lien and sworn statements from the Contractor, Subcontractors and material suppliers and an affidavit from the Contractor in accordance with the mechanic’s lien law of the State or as otherwise established by the Capital Provider evidencing and confirming that there are no lien rights available to any party on or against the Project; and (ii) upon delivery of such payment, then the Property Owner shall have furnished to the Capital Provider unconditional lien waivers from such parties;

(g) the Property Owner and the Contractor shall have furnished to the Capital Provider a certificate or other evidence satisfactory to the Capital Provider dated at or about the Completion Date stating that (i) the New Energy Improvements have been completed in accordance with the Plans and Specifications, and (ii) the New Energy Improvements as so completed comply with all applicable Laws, subject only to punch list items not exceeding [\$] in aggregate value; and

(h) the Capital Provider shall have received a certificate from the Capital Provider’s Construction Consultant for the benefit of the Capital Provider and the Capital Provider that the New Energy Improvements have been satisfactorily completed in accordance with the Plans and Specifications and placed in use on the Property.

If the Property Owner fails to comply with and satisfy any of the final disbursement conditions contained in this Section 11 within 45 days after the Completion Date, such failure shall constitute an Event of Default under the Financing Agreement.

Section 12. Filed Liens. The Property Owner will not suffer or permit any mechanics’ lien claims to be filed or otherwise asserted against the Project or against any funds due to the Contractor or Subcontractors, and will promptly discharge the same in case of the filing of any claims for lien or proceedings for the enforcement thereof; provided, however, that the Property

Owner shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim; provided that, in the event that any party has received any notice by a lien claimant, pursuant to Colorado Revised Statutes Section 38-22-126, the Property Owner shall deposit with the Title Company an amount equal to one and one-half times the sums claimed in such notices immediately upon receipt of a request from the Capital Provider. Such funds shall be held until such time as (i) the Capital Provider, the Property Owner and lien claimant, by written notice to the Capital Provider, have stipulated the amount which may be acceptable for payment to the lien claimant, (ii) the amount of such claims have been finally determined in a court of competent jurisdiction, or (iii) all statutory time periods for mechanic's liens, including enforcement of mechanic's liens, have expired and the Title Company has agreed to insure over such liens.

Section 13. Miscellaneous.

(a) *Nonliability of the Capital Provider, the District and Other Parties.* The Property Owner acknowledges and agrees that:

(i) the Capital Provider does not undertake or assume any responsibility to select, review, inspect, supervise, pass judgment upon or inform the Property Owner of any matter in connection with the Project, including matters relating to the adequacy or legal sufficiency of any of the documents, agreements or arrangements pertaining to the construction of the Project or the CoPACE Loan or the rights or obligations of any Person in connection therewith; and the Property Owner shall rely entirely on its own judgment with respect to such matters and acknowledges that any review, inspection, supervision, exercise of judgment or information supplied to the Property Owner by the Capital Provider or the Capital Provider's Construction Consultant in connection with such matters is solely for the protection of the Capital Provider, and that neither the Property Owner nor any third party is entitled to rely on it;

(ii) the Capital Provider shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any Person or property resulting from any construction on, or occupancy or use of, the Land or Project, whether arising from:

(A) any defect in any building, grading, landscaping or other onsite or offsite improvement;

(B) any act or omission of the Property Owner, or any of the Property Owner's agents, employees, Subcontractors, licensees or invitees;

(C) any accident on the Project or any fire, flood or other casualty or hazard thereon;

(D) the failure of the Property Owner or any of its licensees, employees, invitees, agents or any Subcontractors or other representatives to maintain the or Project in a safe condition; and

(E) any nuisance made or suffered on the Project; and

(iii) neither Title Company, the District nor the Capital Provider shall be responsible or liable to the Property Owner for the validity, sufficiency or genuineness of documents (except as to their respective signatures thereon), or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged.

Section 14. No Representations by the Capital Provider or District. Solely by accepting or approving anything required to be performed or given to the Capital Provider or the District under the CoPACE Transaction Documents, including any certificate, financial statement, survey, appraisal or insurance policy, neither the Capital Provider nor the District shall be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by the Capital Provider or the District to anyone. The Capital Provider or the District may accept documents in connection with the CoPACE Transaction Documents and Disbursement Requests which appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

Section 15. Title Policy and Endorsements. The Property Owner shall deliver or cause the Title Company to deliver to the Capital Provider the mortgagee's policy of title insurance insuring the Capital Provider in the amount of the CoPACE Loan, and shall thereafter deliver to the Capital Provider all endorsements thereto for all Disbursements in accordance with the requirements for each Disbursement Request. All title insurance and escrow charges shall be charged to the Property Owner.

Section 16. Indemnity. The Property Owner hereby indemnifies and holds harmless the Capital Provider and the District, and each of their respective directors, officers, agents and employees (collectively, "**Indemnitees**") from and against, and agrees to defend Indemnitees, by counsel satisfactory to Indemnitees, against:

(a) all costs and expenses incurred in connection with the performance by Indemnitees of their obligations under this Agreement;

(b) all claims, demands and causes of action asserted against any Indemnitee by any Person if the claim, demand or cause of action directly or indirectly relates to (i) a claim, demand or cause of action that the Person has or asserts against the Property Owner in connection with the construction, development, operation or financing of the Project; (ii) any act or omission by the Property Owner, any Subcontractor or material supplier, engineer, architect or other Person with respect to the Project; and (iii) the ownership, occupancy or use of the Project; and

(c) all liabilities, losses and other costs (including court costs and attorneys' fees) incurred by any Indemnitee as a result of any claim, demand or cause of action described in Section 16(b) hereof.

An Indemnitee's rights of indemnity shall not be directly or indirectly limited, prejudiced, impaired or eliminated in any way by any finding or allegation that an Indemnitee's conduct is

active, passive or subject to any other classification or that such Indemnitee is directly or indirectly responsible under any theory of any kind for any act or omission by the Property Owner or any other Person other than the Indemnitee or their respective agents, servants or employees. Notwithstanding the foregoing, the Property Owner shall not be obligated to indemnify the Capital Provider or the District with respect to any act of willful misconduct or gross negligence which the Capital Provider or the District, respectively, which is conclusively determined to exist by the judgment of a court of competent jurisdiction (after exhaustion of all appeals.)

Section 17. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing; (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service; or (d) if by facsimile or email transmission on the day of transmission so long as confirmation of delivery is received. The addresses for the Parties are as set forth below:

to the Capital Provider: _____

Attention: _____
Telephone: _____
Facsimile: _____
email: _____

with a copy to: _____

Attention: _____
Telephone: _____
Facsimile: _____
email: _____

to the Property Owner: [REDACTED]

Attention: _____

with a copy to: _____

Attention: _____
Facsimile: _____

to the District: Colorado New Energy Improvement District

Attention: _____
Telephone: _____
Facsimile: _____
email: _____

with a copy to:

Attention: _____
Telephone: _____
Facsimile: _____
email: _____

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Notice copies delivered to counsel identified above shall not be effective to provide the notice intended to be delivered to the Property Owner or the Capital Provider, respectively.

Section 18. Governing Law. This Agreement shall be governed by, and construed in accordance with, the substantive laws of the State of Colorado without regard to principles of conflicts of laws.

Section 19. Headings. The headings used herein are for convenience only and do not limit or alter the terms of this Agreement or in any way affect the meaning or interpretation of this Agreement.

Section 20. Successors and Assigns; District as Third-Party Beneficiary. All rights of each party shall inure to the benefit of its successors and assigns, and all obligations, liabilities and duties of each party shall bind its successors and assigns. The District, while not a signatory to this Agreement, is an express third party beneficiary hereof.

Section 21. Entire Agreement; Amendment and Modification. This Agreement constitutes the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, supersedes all prior agreements and understandings, both written and oral, between the parties in respect of the subject matter hereof and no changes, amendments or alterations hereto shall be effective unless pursuant to written instrument executed by the Property Owner, the Capital Provider, the Servicer, the Bank and Title Company.

Section 22. No Waiver of Strict Compliance. No waiver or failure of a party to insist upon strict compliance with any obligation, covenant, agreement, representation, warranty or condition shall operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply with such obligation, covenant, agreement, representation, warranty or condition, or with any other obligation, covenant, agreement, representation, warranty or condition contained

herein. Failure to exercise any right, power or remedy shall not constitute a waiver of any obligations under this Agreement or constitute a modification of this Agreement. The making of this Agreement shall not waive or impair any other security a party may have or hereafter acquire for the payment of obligations under this Agreement, and the taking of any additional security it may have in the order it may deem proper.

Section 23. Validity. The invalidity or unenforceability of any terms or provisions of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect, and, if any such unenforceable provision hereof is enforceable in any part or to any lesser extent, such provision shall be enforceable in all such parts and to the greatest extent permissible under applicable law.

Section 24. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument.

[End of Construction Monitoring and Disbursement Agreement]

IN WITNESS WHEREOF, each party has executed this Agreement on the date first hereinabove written.

PROPERTY OWNER:

[_____] a [_____
_____]

By: _____

Name: _____

Title: _____

CAPITAL PROVIDER:

[NAME OF CAPITAL PROVIDER]

By _____

Name: _____

Title: _____

[Signature Page to the Construction Funding and Disbursement Agreement]

EXHIBIT A

DESCRIPTION OF REAL ESTATE ON WHICH THE PROJECT IS LOCATED

EXHIBIT B

**FORM OF REQUEST FOR DISBURSEMENT AND THE PROPERTY OWNER
CERTIFICATION**

Re: Disbursement Request No. [REDACTED] dated as of [REDACTED] [REDACTED], 20[REDACTED] under Construction Loan Agreement (as amended, modified, supplemented, restated or renewed, from time to time, the “**Financing Agreement**”), between [REDACTED] (the “**Property Owner**”) and [NAME OF CAPITAL PROVIDER] (the “**Capital Provider**”) pursuant to that certain Construction Funding and Disbursement Agreement (the “**Disbursement Agreement**”).

The Property Owner hereby submits this Disbursement Request pursuant to the terms of the Financing Agreement and the Disbursement Agreement:

(a) Amount of Requested Disbursement: \$ _____

(b) Amount of Disbursements for hard costs under Contract: _____

(c) Amount of soft costs Requested to be Funded: _____

Reference is made to the Financing Agreement and the Disbursement Agreement. Capitalized terms used in this Certificate (including schedules and other attachments hereto, this “**Certificate**”) without definition have the meanings specified in the Financing Agreement.

Pursuant to applicable provisions of the Agreement, the undersigned, being the Authorized Representative of the Property Owner, hereby certifies to the Capital Provider and the District that the information furnished in the attached schedules, including, without limitation, each of the calculations listed below are true, correct and complete in all material respects as of the last day of the fiscal periods subject to the financial statements and associated covenants being delivered to the Capital Provider pursuant to the Agreement together with this Certificate (such statements the “**Financial Statements**” and the periods covered thereby the “reporting period”) and for such reporting periods.

The undersigned hereby further certifies to the Capital Provider that:

1. **Review of Conditions.** The undersigned has reviewed the terms of the Financing Agreement, including, but not limited to, the representations and warranties of the Property Owner set forth in the Financing Agreement and the covenants of the Property Owner set forth in the Financing Agreement, and has made, or caused to be made under his or her supervision, a review in reasonable detail of the transactions and condition of the Property Owner and Guarantor through the reporting periods.

2. **Representations and Warranties.** To the undersigned’s actual knowledge, the representations and warranties of the Property Owner and Guarantor contained in the CoPACE Transaction Documents, including those contained in the Financing Agreement, are true and

accurate in all material respects as of the date hereof and were true and accurate in all material respects at all times during the reporting period except as expressly noted on *Schedule A* hereto.

3. **Covenants.** To the undersigned's actual knowledge, during the reporting period, the Property Owner observed and performed all of the respective covenants and other agreements under the Financing Agreement and the CoPACE Transaction Documents, and satisfied each of the conditions contained therein to be observed, performed or satisfied by the Property Owner, except as expressly noted on Schedule A hereto.

4. **No Event of Default.** To the undersigned's actual knowledge, no Event of Default exists as of the date hereof or existed at any time during the reporting period, except as expressly noted on Schedule A hereto.

5. **Disbursement Agreement.** The Property Owner hereby certifies the following under the Disbursement Agreement:

(a) as of the date hereof, the Project is [REDACTED] % complete, and the progress of construction of the Project is such that it can be completed on or before the required Outside Completion Date, for the cost originally represented to the Capital Provider and the Capital Provider, except for the following: [REDACTED];

(b) the CoPACE Loan, as of the date hereof, is in balance, and the undisbursed proceeds of the CoPACE Loan plus other financing commitments, including the advance requested herein, are adequate and sufficient to pay for all labor, materials, equipment, work, services and supplies necessary for the completion of the Project, including the installation of all fixtures and equipment required for the operation of the Project, except for the following Project cost increases: [REDACTED];

(c) the labor, materials, equipment, work, services and supplies described herein have been performed upon or furnished to the Project in full accordance with the Plans and Specifications, which have not been amended except as expressly permitted by the Capital Provider and the Capital Provider;

(d) there have been no changes in the costs of the Project from those set forth in the Budget, as amended by any amendment thereto heretofore delivered by the Property Owner to the Capital Provider, the Capital Provider and the Servicer, except for the following: [REDACTED].

(e) all bills for labor, materials, equipment, work, services and supplies furnished in connection with the Project, which could give rise to a mechanics' lien if unpaid, have been paid or will be paid out of the requested advance;

(f) all claims for mechanics' liens which shall have arisen or could arise for labor, materials, equipment, work, services or supplies furnished in connection with the Project through the last day of the period covered by the requested advance have been effectively waived in writing, or will be effectively waived in writing when payment is made, and such written waivers shall be delivered to the Capital Provider;

(g) all funds advanced under the Disbursement Agreement to date have been utilized as specified in the Disbursement Request pursuant to which the same were advanced, exclusively to pay costs incurred for or in connection with acquiring and constructing and developing the Project, and the Property Owner represents that no part of the CoPACE Loan proceeds have been paid for labor, materials, equipment, work, services or supplies incorporated into or employed in connection with any project other than the Project. The Property Owner further represents that all funds covered by this Disbursement Request are for payment for labor, materials, equipment, work, services or supplies furnished solely in connection with said Project as itemized on Exhibit A hereto; and

(h) all items and documents required under the Disbursement Agreement have been provided or are attached hereto.

The Property Owner authorizes and requests the Capital Provider to fund the amount requested under this Disbursement Request from the Property Owner's Disbursement Account to the Property Owner's Payment Account, subject to the requirements of and to be further disbursed in accordance with the procedures provided in the Disbursement Agreement. The advance made pursuant to this Disbursement Request is acknowledged to be an accommodation to the Property Owner and is not a waiver by the Capital Provider of any defaults or events of default under the CoPACE Transaction Documents or any other claims of the Capital Provider against the Property Owner or the Contractor.

IN WITNESS WHEREOF, this Certificate is executed by the undersigned this ____ day of _____, 20__.

_____, _____ a
_____]

By _____
Name _____
Title _____

EXHIBIT C
BUDGET