

Notice of Public Hearing

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Pound Ridge will hold a Public Hearing on Thursday, January 10, 2013 at the Town House, 179 Westchester Avenue, Pound Ridge, New York, commencing at 8:00 p.m. to consider a Local Law to establish a Sustainable Energy Loan Program in the Town of Pound Ridge, enter into the Energy Improvement Corporation Municipal Agreement and become a member of the Energy Improvement Corporation.

At this hearing anyone desiring to be heard shall be heard.

**BY ORDER OF THE TOWN BOARD
TOWN OF POUND RIDGE
JOANNE PACE, TOWN CLERK**

**Dated at Pound Ridge, New York
December 28, 2012**

ENERGY IMPROVEMENT CORPORATION
MUNICIPAL AGREEMENT

This Agreement made as of this ___ day of _____, 20__ (the "Agreement"), by and between the _____ (the "Municipality") and the Energy Improvement Corporation ("EIC") (both the 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 Municipality's participation in the Energize New York Benefit Finance Program (the "Program").

WHEREAS, EIC is a local development corporation duly formed under Section 1411 of the Not-For-Profit Corporation Law of the State of New York, for the purpose of promoting, facilitating and financing energy audits and renewable energy system feasibility studies, energy efficiency improvements and alternative or renewable energy generating systems (as such terms are defined in Section 119-ff of the General Municipal Law of the State of New York) (collectively, the "Energy Improvements") on properties within its Participating Municipalities (as defined below), thereby promoting the public good by reducing greenhouse gas emissions, mitigating the effect of global climate change and lessening the burdens of government; and

WHEREAS, Participating Municipalities are those municipalities within the State of New York that have established by local law, pursuant to Article 5-L of the General Municipal Law of the State of New York, a sustainable energy loan program for the issuance of financing to the owners of real property located within the Participating Municipality to finance Energy Improvements, and have authorized EIC to act on behalf of the Participating Municipality to carry out the Program through, among other things, the issuance of financing to property owners within such Participating Municipality, and have met the minimum criteria established by EIC to admit new Participating Municipalities; and

WHEREAS, the Municipality adopted Local Law _____ on _____, 20__, pursuant to Article 5-L of the General Municipal Law of the State of New York, which Local Law also authorized EIC to act on its behalf in carrying out its Program; and

WHEREAS, the Municipality has become a member of EIC.

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

1. Duties of EIC

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

- a) Receive and review applications submitted by property owners within the Municipality for financing of Energy Improvements (“Property Owner(s)”), and approve or disapprove such applications in accordance with underwriting procedures and requirements established by EIC.
- b) Review the applications, energy assessments and scopes of work prepared for and by the Property Owners to establish the amount of financings to be approved pursuant to the requirements of the Program.
- c) Execute finance agreements (the “Finance Agreement”) by and between EIC (on behalf of the Municipality) and the Property Owners for financing of Energy Improvements, which shall set forth the terms and conditions for the disbursement and repayment of financing and the duties and obligations of each Property Owner and EIC with respect to the acquisition, construction and installation of Energy Improvements (upon execution of the Finance Agreement by the Property Owner and EIC, the property that is the subject of the Finance Agreement shall be deemed a “Benefited Property”). Copies of all executed Finance Agreements for all Benefited Properties within the Municipality shall be provided to the Municipality by EIC upon execution.
- d) Receive and review the certificates of completion submitted by the Property Owners of Benefited Properties (or the contractor hired by the owner of a Benefited Property) following installation or construction of Energy Improvements on such Benefited Property, and disburse funds to the Property Owner of the Benefited Property or his/her/its agent upon approval of such certificate in accordance with the terms of the Finance Agreement and the Program.
- e) Deliver to the Municipality an annual report (the “Annual Report”) three months prior to when Municipal Taxes are due which shall contain information related to each Benefited Property within the Municipality through the end of the immediately preceding calendar year, including:
 - i. A list of each newly approved Benefited Property for which the Property Owner or previous Property Owner of the Benefited Property executed a Finance Agreement within the annual time period covered by such report (for which a charge shall be added by the Municipality to its tax rolls in accordance with Paragraph 2b below). All Benefited Properties shall be identified in the Annual Report by address and Tax Map Identification (i.e. section, block and lot);
 - ii. A list of each existing Benefited Property for which the Property Owner or previous Property Owner of such

Benefited Property executed a Finance Agreement. All Benefited Properties shall be identified in the Annual Report by address and Tax Map Identification (i.e. section, block and lot);

- iii. A list of each Benefited Property within the Municipality where all obligations under the Finance Agreement have been satisfied or paid in full during the calendar year including the satisfaction date and a copy of the notice of satisfaction;
 - iv. For each non-satisfied Benefited Property (including each newly approved Benefited Property):
 - a. the date of the Financing Agreement,
 - b. the notional amount of the financing
 - c. the total principal balance and accrued interest outstanding,
 - d. the annual payment due to EIC (which shall include principal and accrued interest) associated with such Benefited Property (including the amount of accrued interest on the initial payment, if different);
 - v. the total annual payment due to EIC from all Benefited Properties in the Participating Municipality (which shall include principal and accrued interest), which shall be paid by the Municipality within thirty (30) days of the date upon which payment is due to the Municipality as part of the municipal tax bill in accordance with Paragraph 2(c) and the balance of any delinquent charge payment reported by the Municipality during the term of the Financing Agreement pursuant to Paragraph 2(d) and;
 - vi. All other information EIC may deem to be relevant to each Benefited Property within the Municipality.
- f) Create an account (the "EIC Trust Account") held by a trustee that will accept payments from the Municipality made in accordance with Paragraph 2(d) below, and create a separate account (the EIC Administrative Fee Account") to receive the transfer of those funds deposited within the EIC Trust Account that constitute payment of EIC administrative fees;
- g) Provide customer service by telephone to the Municipality during the hours of 9:00 a.m. through 5:00 p.m. Monday through Friday, Eastern Standard Time, excluding state and federal holidays;

- h) Upon EIC's receipt of payment in full under a particular Finance Agreement, send a letter of satisfaction by email to the Municipality notifying it that such Property Owner or subsequent owner of the Benefited Property has satisfied his/her/its obligations under the terms of the Financing Agreement;

2. Duties of the Municipality

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

- a) Maintain copies received from EIC of each Finance Agreement for a Benefited Property throughout the term of the Finance Agreement relating to such Benefited Property, which shall be maintained until all obligations of the owner of such Benefited Property that are set forth in the Finance Agreement have been satisfied.
- b) Within thirty (30) days of receipt of the Annual Report, add a charge to its tax rolls for each newly approved Benefited Property listed therein, and include such charge in the next ensuing tax levy so that such charge shall be included on and due in the same manner and at the same time and in the same installments as the municipal taxes on real property are due within the Municipality and shall become delinquent at the same times, shall bear the same penalties and interest after delinquency, and shall be subject to the same provisions for redemption and sale as the general municipal taxes on real property of the Municipality.
- c) Within thirty (30) days of the due date of the municipal taxes, including the charge pursuant to a Finance Agreement, remit payment to the EIC Trust Account in the amount equaling the total annual payments due to EIC from each Benefited Property within the Municipality, regardless of whether the Municipality actually has received such payments from the owner of the Benefited Property. Failure to deliver payments to EIC would be considered an event of default hereunder.
- d) Deliver to EIC an annual delinquency report (the "Delinquency Report") no later than (90) days after the due date for the municipal taxes, including the charge, which shall: (i) list each Benefited Property that is delinquent in charge payments owed for such Benefited Property, (ii) provide the amount owed to the Municipality by the owner of such Benefited Property (including penalties and interest on delinquent charge payments), and (iii) outline the steps taken or to be taken and progress made in recovering delinquent charge payments from the owner of such Benefited Property.

- e) Make all reasonable efforts to assist EIC in carrying out the Program within the Municipality;

3. Non – Payment

- a) Failure of a Participating Municipality to deliver payments to EIC within (30) days of when due shall be considered an event of default and EIC shall be entitled to pursue any one or more of the remedies set forth below.
- b) No Participating Municipality shall be responsible for the deficient payment of another Participating Municipality.

4. Terms of Membership

The Municipality understands and agrees that membership in EIC is at the discretion of the Board of Directors of EIC and is conditional upon satisfying the membership criteria established by the EIC Board, as may be amended from time to time at the sole discretion of the Board, as well as compliance with the terms of the By-Laws of EIC. If a Participating Municipality's bond credit rating drops below "A" as rated by Standard and Poors and/or "A2" as rated by Moodys and/or "A" by Fitch Ratings Service, EIC will no longer provide financings to Properties within such Municipality.

5. EIC Payment Upon Permanent Loss

EIC shall maintain a reserve fund (the "Reserve Fund") to protect and compensate EIC, Participating Municipalities, lenders of funds to EIC, and other third parties approved by EIC against potential losses, including without limitation losses suffered by a Participating Municipality resulting from defaulted charge payments only in the event of a permanent loss with respect to a Benefited Property. A loss shall not be deemed a permanent loss until the Participating Municipality has exhausted all remedies at law in an effort to collect the defaulted charge payments, including but not limited to the redemption and sale of the Benefited Property where the proceeds are not sufficient to recover all amounts paid by the Municipality to EIC. In order to collect from the Reserve Fund in the event of a permanent loss, the Municipality must provide EIC with all documentation as may be reasonably requested by EIC to document such permanent loss and must not be in default to EIC, including having made all payments to EIC when due.

6. Remedies Upon Default

Should the Municipality default in any of its obligations hereunder, including but not limited to failure to make payments to EIC as required 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) If the Municipality fails to make a required payment to EIC and the Municipality collects penalties or interest from the Property Owner for late payment, the Municipality shall pay to EIC all such penalties or interest attributable to the charge collected by the Municipality on behalf of EIC.

b) EIC shall have the right to discontinue providing any new financings to Properties located within the Municipality.

c) EIC may suspend the Municipality's membership in EIC.

7 Formation; Authority

Each Party represents and warrants to the other 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 their respective obligations under this Agreement, and no consent or approval of any third party is required for either Party's execution of this Agreement or the performance of its obligations contained herein. The individual executing this Agreement on behalf of each Party has been and is duly authorized to bind his/her respective Party.

8 No Violation or Litigation

The performance by each Party of its respective obligations contained in this Agreement will not and do not conflict with or result in a breach of or a default under any of the terms or provisions of any other agreement, contract, covenant or security instrument or any law, regulation or ordinance by which the Party is bound. There is no litigation, action, proceeding, investigation or other dispute pending or threatened against either Party which may impair its ability to perform its respective duties and obligations hereunder.

9. 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:
Thomas Bregman
Energy Improvement Corporation
321 Bedford Rd,
Bedford Hills, NY 10536

Attention: Tom Bregman

E-mail: tom@energizeny.org

With a copy to:

James Staudt, Esq.
McCullough, Goldberger & Staudt, LLP
1311 Mamaroneck Avenue, Suite 340
White Plains, N.Y. 10605
E-mail: jstaudt@mgslawyers.com

MUNICIPALITY: _____

With a copy to:

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

10. 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.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first written above. The Parties hereto agree that facsimile signatures shall be as effective as if originals.

Date: _____, 20__

Energy Improvement Corporation

By: _____

LOCAL LAW NO. - 2012

A LOCAL LAW TO ESTABLISH A SUSTAINABLE ENERGY LOAN
PROGRAM IN THE _____

Be it enacted by the _____ of the County of _____ as follows:

Section 1. The Code of the _____ is hereby amended by adding a new Chapter _____, entitled "Energize NY Benefit Financing Program," to read as follows:

ARTICLE I

§1. Legislative findings, intent and purpose, authority.

- A. It is the policy of both the _____ and the State of New York to achieve energy efficiency and renewable energy goals, reduce greenhouse gas emissions, mitigate the effect of global climate change, and advance a clean energy economy. The _____ finds that it can fulfill this policy by providing property assessed clean energy financing to property owners for the installation of renewable energy systems and energy efficiency measures. This chapter establishes a program that will allow the Energy Improvement Corporation ("EIC"), a local development corporation, acting on behalf of the _____, to make funds available to qualified property owners that will be repaid by such property owners through charges on the real properties benefited by such funds, thereby fulfilling the purposes of this chapter and fulfilling an important public purpose.
- B. The _____ is authorized to implement this Energize NY Benefit Financing Program pursuant to Article 5-L of the New York General Municipal Law.
- C. This chapter shall be known and may be cited as the "Energize NY Benefit Financing Program Law of the _____".

§2. Definitions

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

Authority – The New York State Energy Research and Development Authority, as defined by subdivision two of section eighteen hundred fifty-one of the public authorities law, or its successor.

EIC – the Energy Improvement Corporation, a local development corporation, duly organized under section fourteen hundred eleven of the Not-For-Profit Corporation Law, authorized hereby on behalf of the _____ to implement the Energize NY Benefit Financing Program by providing funds to qualified property owners (as defined in this chapter) and providing for repayment of such funds from monies collected by the _____ tax collector as a charge to be levied on the real property and collected in the same manner and same form as the _____ taxes.

Energy Audit – A formal evaluation or “assessment” of the energy consumption of a permanent building or structural improvement to real property, conducted by a contractor certified by the Authority, or certified by a certifying entity approved by the Authority, for the purpose of identifying appropriate energy efficiency improvements that could be made to the property.

Energy Efficiency Improvement – Any renovation or retrofitting of a building to reduce energy consumption, such as window and door replacement, lighting, caulking, weatherstripping, air sealing, insulation, and heating and cooling system upgrades, and similar improvements, determined to be cost-effective pursuant to criteria established by the Authority, not including lighting measures or household appliances that are not permanently fixed to real property.

Qualified Property Owner – An owner of residential or commercial real property located within the boundaries of the _____ that is determined to be eligible to participate in the Energize NY Benefit Financing Program under the procedures for eligibility set forth under this chapter.

Renewable Energy System – An energy generating system for the generation of electric or thermal energy, to be used primarily at such property, by means of solar thermal, solar photovoltaic, wind, geothermal, anaerobic digester gas-to-electricity systems, fuel cell technologies, or other renewable energy technology approved by the Authority not including the combustion or pyrolysis of solid waste.

Renewable Energy System Feasibility Study – A written study, conducted by a contractor certified by the Authority, or certified by a certifying entity approved by the Authority, for the purpose of determining the feasibility of installing a renewable energy system.

§3. Establishment of an Energize NY Benefit Financing Program

A. An Energize NY Benefit Financing Program is hereby established by the _____, whereby EIC acting on its behalf, may provide funds to

Qualified Property Owners in accordance with the procedures set forth under this chapter, to finance the acquisition, construction and installation of Renewable Energy Systems and Energy Efficiency Improvements and the verification of the installation of such systems and improvements.

- B. The funds provided shall not exceed the lesser of ten percent of the appraised value of the real property where the Renewable Energy Systems and/or Energy Efficiency Improvements will be located, or the actual cost of installing the Renewable Energy Systems and/or Energy Efficiency Improvements, including the costs of necessary equipment, materials, and labor and the cost of verification of such systems and improvements.

§4. Procedures for eligibility

- A. Any property owner in the _____ may submit 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 _____ offices.
- B. Every application submitted by a property owner shall be reviewed by EIC acting on behalf of the _____, which shall make a positive or negative determination on such application based upon the criteria for making a financing enumerated in subsection A of section 5 of this chapter. 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 _____, the property owner shall be deemed a Qualified Property Owner and shall be eligible to participate in the Energize NY Benefit Financing Program in accordance with the procedure set forth under section 6 of this chapter; provided that in no case shall a property owner that has received funds from another municipal corporation for the acquisition, construction and installation of Energy Efficiency Improvements and/or Renewable Energy Systems be deemed a Qualified Property Owner.

§5. Application criteria

- A. Upon the submission of an application, EIC acting on behalf of the _____, shall make a positive or negative determination on such application based upon the following criteria for the making of a financing:
 - 1. The proposed Energy Efficiency Improvements and/or Renewable Energy Systems are determined to be cost effective by the Authority;
 - 2. The proposed Energy Efficiency Improvements and/or Renewable Energy Systems will generate an estimated annual cost savings greater than the annual charge payments;

3. Sufficient funds are available to provide to the property owner;
4. The property owner is current in payments on any existing mortgage;
5. The property owner is current in payments on any existing real property taxes and has been current on real property taxes for the previous three years; and
6. Such additional criteria, not inconsistent with the criteria set forth above, as the _____, or EIC acting on its behalf, may set from time to time.

§6. Opt-in, Energize Finance Agreement

- A. A Qualified Property Owner may participate in the Energize NY Benefit Financing Program through the execution of an Energize Finance Agreement made by and between the Qualified Property Owner and EIC acting on its behalf.
- B. Upon execution of the Energize Finance Agreement, the Qualified Property Owner shall be eligible to receive funds from EIC acting on behalf of _____, for the acquisition, construction, and installation of qualifying Renewable Energy Systems and Energy Efficiency Improvements; provided the requirements of section 7 of this chapter have been met.
- C. The Energize Finance Agreement shall include the terms and conditions of repayment set forth under section 8 of this chapter.

§7. Energy audit, renewable energy system feasibility study

- A. No funds shall be made available for Energy Efficiency Improvements unless determined to be appropriate through an Energy Audit as defined in Section 2.
- B. No funds shall be made available for a Renewable Energy System unless determined to be feasible through a Renewable Energy System Feasibility Study as defined in Section 2.
- C. The cost of such Energy Audit and/or Renewable Energy System Feasibility Study shall be borne solely by the property owner but may be included in the financed amount if the work is approved.

§8. Terms and conditions of repayment

The Energize Finance Agreement between the Qualified Property Owner and EIC acting on behalf of the _____, shall set forth the terms and conditions of repayment in accordance with the following:

- A. The principal amount of the funds paid to the Qualified Property Owner hereunder, together with the interest thereon, shall be paid by the property owner as a charge on their _____ tax bill and shall be levied and collected at the same time

and in the same manner as _____ property taxes, provided that such charge shall be separately listed on the tax bill. The _____, shall make payment to EIC or its designee in the amount of all such separately listed charges within 30 days of the _____ tax due date.

- B. The term of such repayment shall be determined at the time the Energize Finance Agreement is executed by the property owner and EIC, provided that in no case shall the term exceed the weighted average of the useful life of the systems and improvements as determined by EIC acting on behalf of the _____.
- C. The rate of interest for the charge shall be fixed by EIC acting on behalf of the _____ at the time the Energize Finance Agreement is executed by the property owner and EIC.
- D. The charge shall constitute a lien upon the real property benefited by the Energize NY Benefit Financing Program and shall run with the land. A transferee of title to the benefited real property shall be required to pay any future installments, including interest thereon.

§9. Verification and report

- A. EIC shall be responsible for verifying and reporting to the _____ on the installation and performance of Renewable Energy Systems and Energy Efficiency Improvements financed by such program.
- B. The _____ shall verify and report on the installation and performance of Renewable Energy Systems and Energy Efficiency Improvements financed by the Energize NY Benefit Financing Program in such form and manner as the Authority may establish.

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



**ADDING AN ENERGY IMPROVEMENT CHARGE TO THE
MUNICIPAL TAX BILL OF A BENEFITED PROPERTY
FINAL - 6/14/2012**

Assumptions:

- 1) Local Law has passed and EIC/Municipal Agreements and Resolutions joining EIC are in place enabling the provision of Energy Improvement financing and formalizing the relationship between EIC and Town.
- 2) Benefited property has cleared EIC financing criteria and has been improved.

Steps:

- a) EIC provides list and other Agreement documentation of newly benefited properties ("Additions") to Municipal Clerk monthly or as needed
 - i. List of newly approved Additions to include:
 - i. PARCEL ID (SECTION, BLOCK LOT)
 - ii. PARCEL ADDRESS
 - iii. SWISS CODE (TOWN IDENTIFYING CODE)
 - iv. Origination date,
 - v. Total notional of financing,
 - vi. Annual payment.
- b) Municipal Clerk provides list to Municipal Board for approval to have an Energy Improvement Charge added to each benefited property's tax bill and add them to the tax roll.
- c) Monthly or as needed, Municipal Board to pass a resolution to add Energy Improvement Charge(s) to the tax rolls.
- d) EIC provides Annual Report to Municipal Assessor, Tax Receiver, Municipal Clerk and Comptroller three months before municipal taxes are due.
 - i. List of newly approved benefited properties ("Additions") to add to Assessment rolls. Data to include:
 - i. PARCEL ID (SECTION, BLOCK LOT)
 - ii. PARCEL ADDRESS
 - iii. SWISS CODE (TOWN IDENTIFYING CODE)
 - ii. List of existing benefited properties with
 - i. PARCEL ID (SECTION, BLOCK LOT)
 - ii. PARCEL ADDRESS
 - iii. SWISS CODE (TOWN IDENTIFYING CODE)
 - iii. List of benefited properties that have satisfied the financing terms ("Satisfactions") and the satisfaction date,
 - iv. Notice of satisfaction,

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- v. Origination date,
 - vi. Total notional of financing,
 - vii. Total outstanding balance,
 - viii. Annual payment,
 - ix. Total annual Municipal collections due to EIC
-
- e) Municipal Board to pass a resolution to add any additional Energy Improvement Charge(s) to the tax rolls from the current year up until three months before municipal taxes are due.
 - f) Approximately two and one half months before municipal taxes are due, Municipal Assessor creates the bucket (special "Move tax" code) and places it on the tax rolls. - NOTE: recommendation for one Code generation method: ("Energy Improvement Charge22" OR "EIC 22" = Charge with satisfaction date of 2022),
 - i. TIP: put \$ amount from EIC as per codes in text file form – inputs into Tax Program System (eg: RPS)
 - g) Assessor/TR verifies deletions and additions (Two months before municipal taxes are due)
 - h) Rolls are Imported into Tax Program System (One and one half months before municipal taxes are due)
 - i) Tax Receiver to run verification report to compare EIC expectations of total revenue to Assessor expectations of revenue. (One and one half months before municipal taxes are due)
 - j) Tax Bills Print and Mail (One month before municipal taxes are due)
 - k) Tax Receiver receives Charge payments (Municipal tax due date)
 - l) EIC receives Charge Payments (Within 30 days of Municipal Tax due date)



EIC MUNICIPAL MEMBERSHIP CRITERIA

FINAL - 7/12/2012

- A NYS Municipality desiring membership (the “Applicant”) shall be a municipality of the State of New York.
- The Applicant must apply to the Corporation in writing through its chief executive officer or chief fiscal officer and must authorize its participation in the financing of a “Project” or “Projects” through the Corporation (as defined in NYS GENERAL MUNICIPAL Law-119-ff).
- The Applicant must currently have a minimum “A” or “A2” Credit Rating from either Moodys, Standard and Poors and/or Fitch ratings service,
- The EIC BOARD must approve the Applicant.

In addition, the Applicant must show completion of and/or indicate intent to complete the following steps:

- 1) Pass the Energize NY Benefit Finance Local Law enabling the provision of Energize NY Benefit Financing to eligible residents of the Municipality,
- 2) Approve the EIC/Municipal Agreement,
- 3) Participate in the Annual Meeting of the Corporation to be held on or around March 31 or each year in order to elect the Board of Directors and discuss other matters of the Corporation.

A written letter from the Corporation’s Board of Directors to the Applicant will confirm membership.