**COMMERCIAL PROPERTY-ASSESSED CAPITAL ENHANCEMENTS (C-PACE) LENDER NOTICE AND CONSENT FORM**

**LENDER NOTICE**

Date of Notice:

LENDER INFORMATION

Lender Name:

Attn:

Lender Address:

PROPERTY / LOAN INFORMATION

Property Owner:

Owner Address:

Loan Number:

Property Address:

Legal Description:

**Why has the financial institution received this notice?**

The property owner wishes to install energy efficiency, water conservation, or renewable energy upgrades to the property using the Commercial Property-Assessed Capital Enhancements (C-PACE) program. C-PACE requires any senior lenders who hold debt on the property to consent to the tax assessment.

**What is C-PACE?**

C-PACE is an alternative financing mechanism for property upgrades that improve energy efficiency, conserve water, and/or utilize renewable energy. C-PACE makes it possible for qualified property owners to obtain low-cost, long-term financing funded by private capital providers. C-PACE is paid back via a special tax assessment on the property.

**Why do lenders consent to C-PACE?**

1. **Financed C-PACE Measures Reduce Building Operating Costs**

C-PACE projects are designed to save the property owner money by improving their energy systems. By making these improvements, the whole of the building is more energy efficient and cost effective.

1. **C-PACE Assessments Cannot be Accelerated**

While the full assessment amount is recorded on the property records, only the annual payment may be collected, even in a default situation. So much like with property taxes, senior lenders are only behind that annual assessment payment and not the full balance of the financing.

1. **Financed C-PACE Measures Improve Properties, Often Reducing Maintenance and Repair Costs**

Energy measures improve the efficiency, health, and comfort of a building making it more attractive to tenants and future owners. It also increases the property’s taxable value. C-PACE projects make good business sense for the property owner because they are improving their assets, and therefore the property’s mortgage lender has improved collateral.

1. **C-PACE Financing Does Not Restrict a Senior Lender’s Foreclosure Rights**

Unlike other debt, C-PACE does not require an inter-creditor agreement. Rather, in the event of a default on the senior lender’s debt, the senior lender can foreclose on its mortgage interest in the property in the same manner as if it were the sole financing on the property. C-PACE does not affect any existing remedies under the loan documents. The C-PACE capital provider may not prevent, restrict, or otherwise impact the senior lender’s foreclosure.

**What else should your financial institution know?**

The property owner has indicated their intention to apply for C-PACE financing for the improvements outlined in Exhibit A. The Assessment is to be levied on the property pursuant to an agreement between the property owner, the capital provider for the C-PACE improvements, and the local unit of government processing the tax assessment.

Upon the recording of the C-PACE assessment, all existing mortgage debt on the property will be subordinate to the C-PACE Assessment. The local unit of government, or its permitted assignee, can foreclose the C-PACE Assessment encumbering the property if the C-PACE assessment is not paid. C-PACE Assessments cannot be accelerated. Senior lenders are only behind the annual assessment payment and not the full balance of the financing.

**Project Estimates**

Total cost of improvements:

Utility rebates/incentives:

Annual energy/water savings:

C-PACE financing requested:

Annual interest rate:

Term of repayment period:

Annual assessment amount:

 Two (2) equal semi-annual payments per year

**Purpose of this Notice**

As required by the C-PACE enabling legislation, MCA Title 90, Chapter 4, Part 13, the property owner is sending this “Lender Notice and Consent” to your financial institution in order to:

* Provide notice of the proposed participation in C-PACE financing
* Request confirmation from you (the current lender) that the assessment of the C-PACE program will not trigger an event of default or the exercise of any remedies under the loan documents
* Provide project estimates of cost and savings
* Declare the property owner’s agreement to pay on a timely basis both the existing obligations secured by the property (including the Loan) and the proposed C-PACE Assessment

**Execution and Return of Consent**

The property owner would appreciate your financing institution executing the attached “Lender Consent” and returning it to the undersigned at your earliest convenience.

Very truly yours,

By: (signature)

Property Owner Name:

Mailing Address:

(if different than Property Address):

NOTICE FORM - EXHIBIT A

DESCRIPTION OF IMPROVEMENTS

**LENDER CONSENT**

Property Owner:

Mailing address:

Lender:

Mailing Address:

Street Address of Property:

Legal Description:

Property: the Real Property described in County, Montana, more fully described in above Legal Description.

**RECITALS**

WHEREAS, Lender has made one or more loans to Property Owner secured by that Deed of Trust or Security Agreement (the “Deed of Trust”) dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ recorded in Book \_\_, Page \_\_, under Instrument No. \_\_\_\_\_\_\_\_ of the Real Property Records of \_\_\_\_\_\_\_\_\_\_ County, Montana securing the indebtedness described therein. The Deed of Trust, promissory note, or the notes creating the debt secured by the Deed of Trust, and all other loan agreements and other documents relating to the debt and Deed of Trust are referred to as the “Loan Documents.”

WHEREAS, Lender is in receipt of written notice (the “Notice”) from the Property Owner that they desire to enter into an agreement (the “PACE Agreement”) with the Local Government to impose an assessment (the “Assessment”) to repay the financing of an Energy Conservation Project that will be permanently fixed to the Property under Section 90-4-1307, Montana Code Annotated (the “PACE Act”).

WHEREAS, the terms of the Assessment are set out in the PACE Agreement between the Local Government and Property Owner. The Assessment will constitute a lien against the Property with the same priority status as taxes collected under Title 15, Chapter 16, Montana Code Annotated.

WHEREAS, the PACE ACT requires that the Lender provide written consent to the Assessment prior to the Property Owner and Local Government executing the PACE Agreement.

WHEREAS, as certified in the Certificate of Authority attached hereto as Exhibit 1 as “Lender Representative” is authorized to execute this Lender Consent to PACE Assessment on behalf of the Lender.

**AGREEMENT**

Section 1. Lender is in receipt of the Notice and hereby consents to the Assessment and the PACE Agreement and agrees, for purposes of § 90-4-1305(b)(i), Montana Code Annotated, that Property Owner shall not be in default under the Loan Documents because it enters into the PACE Agreement or the financing documents referenced therein, or because the Property is subject to the Assessment imposed against the Property pursuant to the PACE Agreement.

Section 2. This Lender consent is granted on the condition that Property Owner agrees that the amount of the Assessment shall not increase above the C-PACE financing amount specified in the Notice without the consent of Lender.

Section 3. Except for the express agreement of the Lender contained in this Consent, Lender is not waiving any other right under the Loan Documents. Nothing contained in this Consent shall be construed to modify or amend any of the provisions of the Loan Documents.

[SIGNATURE LINES AND NOTARY BLOCK FOR LENDER AND PROPERTY OWNER]

EXHIBIT 1

[FORM OF CERTIFICATE OF AUTHORITY]

[Insert Lender’s Letterhead]

Date \_\_\_\_

 Re: Certificate of Authority for Execution of Lender Consent to PACE Assessment.

I, \_\_\_\_\_\_, am the [insert title] at [insert Lender]. I do hereby attest that [insert name of Lender representative who will execute Lender Consent] holds the position of [insert position title] at [insert Lender name] and in her/his capacity as [insert title] is authorized to enter into a Lender Consent to PACE Assessment as required by Section 90-4-1305(3)(b)(i), Montana Code Annotated.

[INSERT SIGNATURE LINE AND NOTARY BLOCK FOR SIGNATORY].