

MORTGAGE HOLDER CONSENT TO COPACE ASSESSMENT

Date: _____

Mortgage Holder Address:

BANK NAME
BANK ADDRESS
BANK CITY, STATE, ZIP

Property/Loan Information:

PROPERTY ADDRESS
PROPERTY CITY, STATE, ZIP

Loan Number(s): (_____)

Property Owner:

OWNER NAME

This Mortgage Holder Consent to a CoPACE Assessment (this “Consent”) is given by the undersigned entity (the “Mortgage Holder”) with respect to the Loan defined below which is secured by the real property located in _____ County, Colorado (the “County”) more specifically described on *Exhibit A* hereto (the “Property”), together with all improvements located thereon and certain personal property located on the Property as the same is more specifically described in the Deed of Trust defined below (collectively, the “Collateral”).

RECITALS:

A. Mortgage Holder made a loan evidenced by a promissory note (the “Note”) dated _____, _____ in the original principal amount of \$_____ (the “Loan”) to (OWNER NAME, a _____ (IDENTIFY TYPE OF ENTITY), which Loan is secured, in part, by a Deed of Trust (the “Deed of Trust”), of even date with the Note given by Owner for the benefit of Mortgage Holder, and recorded on _____, _____, at Reception No. _____ in the real property records (the “Records”) of the County (together with any other document executed by Owner in favor of Mortgage Holder and securing the Loan, the “Loan Documents,” which term includes any and all extensions, consolidations, amendments, modifications and supplements to such documents).

B. Mortgage Holder is in receipt of written notice (the “Notice”) from the Owner that Owner intends to finance installation on the Property certain energy efficiency and/or renewable energy improvements that will be permanently fixed to the Property (the “Authorized Improvements”) by participating in the Colorado Commercial Property Assessed Clean Energy financing program (the “Program”), which is administered by the Colorado New Energy Improvement District (the “District”), an independent body corporate and politic of the State of Colorado created pursuant to C.R.S. § 32-20-104(1).

C. The County has elected to participate in the Program pursuant to C.R.S. § 32-20-105(3) and the Owner has applied for participation in the Program.

D. The Owner, upon receipt of this Consent, intends to select a capital provider approved for participation in connection with the Program (the “Qualified Capital Provider”), to fund amounts approved for the funding of the Authorized Improvements (the “Financing”) under the terms of an Assessment and Financing Agreement (the “Financing Agreement”) executed by the County, the Owner and the Qualified Capital Provider to be recorded with the Recorder against the Property. The Financing shall not exceed the principal sum of [REDACTED] dollars (\$ [REDACTED]).

E. Mortgage Holder understands that, as a result of the Financing Agreement, a resulting benefit assessment (the “CoPACE Assessment”) described in the Financing Agreement and identified in the Notice will be levied on the Property, and that the CoPACE Assessment will be reflected on the Property tax bill and collected in installments (along with the property taxes due for the Property) for repayment to the Qualified Capital Provider which has provided the Financing in the same manner as and subject to the same penalties, remedies and lien priorities as real property taxes.

MORTGAGE HOLDER CONSENT:

NOW, THEREFORE, IN REFERENCE TO THE ABOVE RECITALS (WHICH ARE INCORPORATED AS A MATERIAL PORTION OF THE AGREEMENTS HEREIN) AND FOR VALUABLE CONSIDERATION INCLUDING THE PROMISES AND COVENANTS CONTAINED HEREIN, THE UNDERSIGNED MORTGAGE HOLDER HEREBY CONFIRMS AND AGREES AS FOLLOWS:

1. Notwithstanding anything to the contrary contained in any of the Mortgage Holder Loan Documents, and subject to all of the terms, covenants and conditions set forth herein, Mortgage Holder hereby consents and subordinates the lien of its Deed of Trust to the Financing, not to exceed the principal sum set forth in Recital D above, and to Owner’s recording the Financing Agreement against the Property and to the placement of the CoPACE Assessment against the Property. The CoPACE Assessment and the Owner entering into the Financing Agreement shall not constitute a default under the Loan Documents.

2. The Loan Documents and the liens created thereunder shall be and the same are hereby made and shall continue to be subject to the CoPACE Assessment and the obligations created by the Financing Agreement and the terms, covenants and conditions contained therein.

3. This Consent shall not prohibit Mortgage Holder from pursuing any and all rights and remedies available at law or in equity to collect from Owner all amounts due to it under the Mortgage Loan Documents; on the condition, however, that such enforcement shall be subject to the payment of the CoPACE Assessment on an annual basis as set forth in the Financing Agreement until the CoPACE Assessment and all obligations under the Financing Agreement are paid in full through the collection thereof together with real property taxes due in connection with the ownership of the Property. Accordingly, Mortgage Holder shall have the right under the Program to cure any nonpayment by Owner of real property taxes and assessments (including the CoPACE Assessment) to the same extent as Mortgage Holder has a right to cure nonpayment of real property taxes before any lien therefor is foreclosed by the County treasurer.

