**MAINE COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) PROGRAM**

**NOTICE OF PROPOSED C-PACE ASSESSMENT**

Notice Date:

Mortgage Lender name:

Address:

Property Owner/Borrower Name:

Property Location:

Address:

Tax Map/Lot No.

Municipality:

Notice to Financial Institution

You are the holder of a lien, mortgage or security interest on the property identified above. The Property Owner(s) intend to install certain energy savings improvements at the property and wish to participate in the Maine Commercial Property Assessed Clean Energy (C-PACE) Program to finance the improvements. The financing would be secured by a C-PACE assessment lien. As a financial institution holding a lien, mortgage, or security interest in or other collateral encumbrance on the property for which a C-PACE assessment is sought, the Property Owner must receive your consent to participate in the C-PACE Program and allow the placement of a senior C-PACE assessment lien on the subject property.

Background on the Maine C-PACE Program

In 2021, the Maine Legislature passed and the Governor approved “An Act to Allow for the Establishment of Commercial Property Assessed Clean Energy Programs,” commonly known as “C-PACE” (35-A M.R.S. §§10201 *et seq*.). C-PACE is a financing program that allows owners of qualifying commercial property in participating municipalities to access financing for certain energy savings improvements. C-PACE allows qualifying commercial real property owners to repay the investment through an assessment on the property similar to a property tax. Projects financed through C-PACE are secured by a C-PACE assessment lien on the improved real property, which lien is repaid over time. C-PACE is a non-accelerating, senior lien secured by the property. In the event of default, only the payments in arrears come due and the future assessments are not accelerated. The C-PACE assessment lien remains and is not extinguished until the assessment is fully repaid. The repayment obligation transfers automatically to the next owner if the property is sold. This arrangement spreads the cost of energy savings improvements – such as energy efficient heating systems, energy storage systems, electric vehicle supply equipment, photovoltaic systems, solar thermal systems, geothermal systems, high-efficiency wood heating systems, and similar clean energy improvements – over the expected life of the efficiency measure.

Maine’s C-PACE program is designed to address the needs and concerns of the property owners, existing mortgage lenders, and C-PACE finance lenders. In order to be a qualifying property and qualifying project under the C-PACE program, certain criteria must be satisfied:

* The property must be located in a municipality that has adopted a C-PACE ordinance allowing participation in the program;
* The property must be commercial property, may not have a residential mortgage, and may not be owned by a “residential customer” or “small commercial customer” as defined for utility rate class purposes;
* If the property is a commercial building designed for residential use, it must consist of at least 5 rental units;
* The project must include approved energy savings improvements that will result in increased energy efficiency or substantially reduced energy use;
* The estimated cost savings from the energy savings improvements over the useful life of the improvements should achieve for the property owner a savings-to-investment ratio of not less than 1.0;
* The property must have a debt service coverage ratio of not less than 1.0 at the time the C-PACE financing agreement is entered into;
* The property must have a loan-to-value ratio of not more than 1.0 at the time the C-PACE financing agreement is entered into is entered into, calculated by dividing the total amount of debt secured by the property by the property value;
* The property's C-PACE assessment-to-value ratio must be no greater than 0.35.;
* The property must be current on all taxes and utility charges, must not have any recorded notice of default or foreclosure, and must be current on mortgage payments; and
* **The property owner must receive the consent of the current mortgage holder(s) before a C-PACE assessment can be approved.**

An initial determination has been made that the property is eligible and that the proposed project satisfies the underwriting requirements. Your consent is required for the project to proceed.

The C-PACE Assessment

A C-PACE lien secures payment for any unpaid C-PACE assessment and, together with all associated interest and penalties for default and associated attorney's fees and collection costs, takes precedence over all other liens or encumbrances except a lien for real property taxes of the municipality and liens of municipal sewer, sanitary and water districts. From the date of recording, a C-PACE lien is a priority lien over any other lien that existed prior to the C-PACE lien.

The C-PACE assessment, and the lien created thereby, require the written consent of existing lienholders at the time of recording the assessment lien. The financial institution holding the pre-existing lien, mortgage, security interest, or other encumbrance is not required to provide consent to the enrollment of the subject property in the C-PACE program. Consent is voluntary.

The C-PACE statute provides that if a C-PACE assessment is delinquent or in default and the property owner is also delinquent in any tax due to the municipality, foreclosure would occur through the municipality in the same manner as for municipal property taxes by the recording of liens and statutory foreclosure process. If just the C-PACE assessment is delinquent, and not any property tax, the C-PACE lender would take an assignment of the lien from the municipality and have the same rights to enforce the C-PACE lien as any private party or lender holding a lien on real property, including statutory rights of foreclosure. The portion of the assessment that has not yet become due is not eliminated by foreclosure, and the lien may not be accelerated or extinguished until fully repaid.

Why should you provide consent?

1. Measures financed through C-PACE should reduce building operating costs. Under the C-PACE program, a proposed project must have a Savings-to-Investment Ratio (SIR) greater than one, meaning that projected lifetime savings from the energy measures must exceed the total investment, inclusive of financing costs over the full term of the C-PACE assessment, over the useful life of the energy savings measures. For example, if the total eligible project investment cost is $1.5 million and the project’s expected useful life is 15 years, the energy savings must be greater than $100,000 per year, on average. This allows for repayment with savings.
2. C-PACE assessments do not accelerate. In the event the mortgage holder forecloses on the property for any reason, only the amount of the C-PACE surcharge currently due and/or in arrears, a relatively small proportion of the C-PACE assessment, would come due. It is important to note that in the event a C-PACE assessment is in arrears, the assessment, like a tax lien, will have a lien status senior to a private lender’s mortgage. In the event of a property sale, C-PACE surcharges transfer to the new property owner and are not due on sale.
3. Measures financed through PACE improve properties and often reduce maintenance and repair costs. In addition, energy measures improve the efficiency, health, and comfort of a building, making it more attractive to tenants and future owners.

What should you know?

The Property Owner has indicated its intention to apply for C-PACE financing for certain energy savings improvements on the property listed above. The C-PACE assessment is to be levied on the property pursuant to an agreement between the Property Owner, the municipality, and the capital provider for the C-PACE improvements. The related payment terms are proposed to consist of the following:

Estimated total cost of improvements:

Estimated Efficiency Maine rebates/incentives:

Estimated total C-PACE financing requested:

Interest rate not to exceed:

Term of repayment period:

Estimated total annual installment:

Payments per year:

Estimated Benefits of the Energy Savings Improvements:

Based on energy assessment information prepared for this property, the following estimated cost savings are expected to accrue to the property as a result of installation and utilization of the approved energy savings improvements over the term:

Electric and Fuel Bill Savings (Annual)**:**

Other Savings (specify):

TOTAL:

**NOTE: The savings noted above represent estimates based on the energy audit assumptions. Actual results are likely to be different and may be greater or less than estimated.**

Purpose of this Notice

The C-PACE statute requires that existing mortgage lenders be provided notice of the Property Owner’s intent to participate in the C-PACE program, which will result in an assessment on the subject property. The C-PACE statute provides:

“35-A M.R.S. §10205(4). **Mortgage lender notice and consent**. Any financial institution holding a lien, mortgage or security interest in or other collateral encumbrance on the property for which a commercial PACE assessment is sought must be provided written notice of the commercial property owner's intention to participate in the commercial PACE program and must acknowledge in writing to the commercial property owner and municipality that the financial institution has received such notice. A commercial PACE assessment may not be approved until the financial institution holding the lien, mortgage or security interest in or other collateral encumbrance on the property has provided written consent to the commercial property owner and municipality that the borrower may participate and enroll the collateral property in the commercial PACE program. This written consent must be filed in the registry of deeds and must include a written acknowledgement and understanding by the financial institution holding the lien, mortgage or security interest in or other collateral encumbrance on the property:

a. Of the priority status provided to commercial PACE liens pursuant to 35-A M.R.S. §10205(3);

b. Of the foreclosure process applicable to properties subject to commercial PACE liens under 35-A M.R.S. §10205(5); and

c. That the financial institution is not required to but has voluntarily elected to consent to the enrollment of the property in the commercial PACE program.”

Execution and Return of Consent. The Property Owner and municipality would appreciate you executing the attached Lender Consent to Proposed C-PACE Assessment 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): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**MORTGAGE LENDER CONSENT TO C-PACE ASSESSMENT**

**Mortgage Lender Name:**

**Address:**

**Property Owner Name:**

**Property Location:**

**Address:**

**Municipality:**

**Tax Map/Lot No.**

This Mortgage Lender Consent to C-PACE Assessment (“Consent”) is given by the undersigned entity (the “Lender”) with respect to the above-referenced property (the “Property”) and property owner (“Property Owner”).

WHEREAS, Lender made a loan evidenced by a promissory note in the original amount of $\_\_\_\_\_\_ (the “Loan”) to Property Owner, which Loan is secured by a lien, mortgage or security interest in or other collateral encumbrance on the Property identified above, which lien is recorded at Book \_\_\_, Page \_\_\_ of the \_\_\_\_\_\_\_\_ County Registry of Deeds (together with any other document executed by Property Owner in favor of Lender and securing the Loan, the “Loan Documents,” which term includes any and all extensions, consolidations, amendments, modifications and supplements to such documents);

WHEREAS, Lender is in receipt of written notice (the “Notice”) from or on behalf of the Property Owner that Property Owner intends to finance the acquisition installation of certain energy efficiency and/or renewable energy improvements that will be affixed to the Property (the “Energy Savings Improvements”) by participating in the Maine Commercial Property Assessed Clean Energy Program (“C-PACE”) established under 35-A M.R.S. §§10201 et seq. (the “C-PACE Act”);

WHERES, the Municipality in which the Property is located has elected to participate in the C-PACE program and has adopted a C-PACE ordinance;

WHEREAS, Property Owner intends to select a capital provider approved for participation in connection with the C-PACE Program (the “Qualified Capital Provider”), to fund amounts approved for the funding of the Energy Savings Improvements (the “Financing”) under the terms of a C-PACE Assessment and Financing Agreement (the “C-PACE Agreement”) executed by the Municipality, the Property Owner and the Qualified Capital Provider, a notice of which is to be recorded in the Registry of Deeds;

WHEREAS, the C-PACE Financing will be repaid by the Property Owner in periodic installments through an assessment made against the Property by the Municipality identified above, pursuant to the Municipality’s C-PACE ordinance and the C-PACE Act, which payments will be remitted to the Qualified Capital Provider;

WHEREAS, pursuant to Section 10205 of the C-PACE Act, a C-PACE assessment constitutes a lien on the Property until it is paid in full, which lien is a priority lien that takes precedence over all other liens or encumbrances on the Property, except a lien for real property taxes of the municipality and liens of municipal sewer, sanitary and water districts;

WHEREAS, pursuant to Section 10205(4) of the C-PACE Act, a C-PACE assessment may not be approved until the financial institution holding a prior lien, mortgage or security interest in or other collateral encumbrance on the Property has provided written consent to the Property Owner and Municipality that the borrower may participate and enroll the collateral Property in the C-PACE program;

WHEREAS, Section 10205(5) of the C-PACE Act provides that if a C-PACE assessment is delinquent or in default and the Property Owner is also delinquent in any tax due to the Municipality, foreclosure would occur through the Municipality in the same manner as for municipal property taxes by the recording of liens and the statutory property tax lien foreclosure process, and if just the C-PACE assessment is delinquent, but not any property tax, the Qualified Capital Provider would take an assignment of the lien from the Municipality, have the same powers and rights at law as the Municipality and its tax collector with regards to priority of the C-PACE lien, and have the same rights to enforce the C-PACE lien as any private party or lender holding a lien on real property, including statutory rights of foreclosure of real property mortgages;

WHEREAS, pursuant to Section 10205(6) of the C-PACE Act, a C-PACE assessment is not eliminated by foreclosure and cannot be accelerated;

WHEREAS, pursuant to the C-PACE Act, Lender’s consent to allow the collateral Property to be enrolled in the C-PACE program is not required, but rather is voluntary.

NOW, THEREFORE, in reference to the above recitals which are incorporated as a material portion of this document, the Lender hereby consents to the enrollment of the Property in the C-PACE program by the Property Owner and consents to the C-PACE assessment and lien on the Property by the Municipality to secure payment for any unpaid C-PACE assessment as provided under the C-PACE Act, and further acknowledges and confirms its understanding as follow:

1. Lender acknowledges that it has received notice of the Property Owner’s intent to participate in the C-PACE Program and to enroll the Property in the C-PACE Program pursuant to the Municipal ordinance and C-PACE Act;
2. Lender acknowledges that the Loan Documents will be subordinate to the C-PACE assessment and lien and understands the priority status provided to C-PACE liens under Section 10205(3) of the C-PACE Act.
3. Lender acknowledges and understands the foreclosure process applicable to properties subject to a C-PACE lien under Section 10205(5) of the C-PACE Act.
4. Lender acknowledges and understands that it is not required to, but has voluntarily, elected to consent to the enrollment of the Property in the C-PACE Program.
5. Lender agrees that the Property Owner’s execution of a C-PACE Agreement and other documents necessary or appropriate to confirm and implement the Property Owner’s participation in the C-PACE program and the imposition of the C-PACE assessment and lien with respect to the Property will not constitute a default under Lender’s Loan Documents.
6. Lender acknowledges that the Property Owner, Municipality, and Qualified Capital Provider will rely on this consent and the acknowledgements contained herein and that this Consent will be recorded in the Registry of Deeds.

**[LENDER NAME]**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**By:**

**Its:**

**Date:**

STATE OF MAINE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, SS.

Then personally appeared before me this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, the above-named\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of [LENDER] and acknowledged the foregoing instrument to be his /her free act and deed in said capacity and the free act and deed of said entity.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public/Maine Attorney-at-Law

 Print/type name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_