|  |
| --- |
| Tax Parcel No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_Prepared by and return to: ) ) ) )Attn: )[*Note: Above information must be left jusitifed for Kent* *and Sussex County, right justified for New Castle County*] |

Above Space for Recorder’s Use

MORTGAGE HOLDER CONSENT TO D-PACE benefit 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 D-PACE Benefit 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, Delaware (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 Mortgage 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 Mortgage of even date with the Note given by Owner for the benefit of Mortgage Holder (the “Mortgage”), and recorded on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_, in the Office of the Recorder of Deeds in and for the County (the “Recorder’s Office”) at [Instrument No. \_\_\_\_\_\_\_\_\_\_] [Book \_\_\_\_\_, Page \_\_\_\_\_\_\_\_] (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 Delaware Voluntary Clean Energy Financing Program Based on Property Assessments (the “Program”), which is administered by Sustainable Energy Utility, Inc., d/b/a Energize Delaware, pursuant to Title 29, Chapter 80, Subchapter II, of the Delaware Code (the “Act”).

C. The County, pursuant to § 8061 (c)(12) of the Act, is a “Participating County” 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 Energize Delaware, the Owner and the Qualified Capital Provider, to be recorded in the Recorder’s Office against the Property. The Financing shall not exceed the principal sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ dollars ($\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_).

E. Mortgage Holder understands that, as a result of the Financing Agreement, a resulting benefit assessment (the “D-PACE Benefit Assessment”) described in the Financing Agreement and identified in the Notice will be levied on the Property, and that the D-PACE Benefit 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 that 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 Mortgage 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 D-PACE Benefit Assessment against the Property. The D-PACE Benefit 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 D-PACE Benefit 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 D-PACE Benefit Assessment on an annual basis as set forth in the Financing Agreement until the D-PACE Benefit 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 D-PACE Benefit Assessment) to the same extent as Mortgage Holder has a right to cure nonpayment of real property taxes before any lien for real property taxes is foreclosed by the County.

4. The Mortgage Holder hereby acknowledges that Owner, the Qualified Capital Provider, Energize Delaware and the County will rely on this Consent in accepting the Property into the D-PACE Program. Mortgage Holder hereby represents that it is authorized to execute and deliver this Consent and abide by the terms and conditions set forth herein. This Consent shall be recorded in the Recorder’s Office.

Dated this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_.

MORTGAGE HOLDER:

By (SEAL)

Name

Title

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

 ) ss.

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Witness my hand and official seal.

Notary Public

Print name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My commission expires:

**EXHIBIT A**

PROPERTY LEGAL DESCRIPTION