

DECHERT DRAFT AUGUST 22, 2024

**NOTICE OF PROPOSED ASSESSMENT AND ASSESSMENT LIEN AND
REQUEST FOR CONSENT OF ASSESSMENT AND ASSESSMENT LIEN BY LENDER**

Notice Date: [____], 2024

Lender: ACORE Capital Mortgage, LP, as administrative agent for various lender parties (the "Lender")

Lender Address: 1177 Avenue of the Americas, Suite 0200, New York, NY 10036

Property Address: [3000 South Rancho Drive, Las Vegas, NV 89102] (the "Property")

Property Owner(s): FBLV District 2 LLC, a Delaware limited liability company ("Property Owner")

Loan Number: [_____]

Recorded Document No.: [_____]

Why Lender Has Received this Notice

The Property Owner owns the Property. Lender is a "lender" (as defined in NRS 271.6315(5)) with respect to the Property as of the date hereof.

Property Owner or its lessee wishes to install one or more Qualified Improvement Projects at the Property pursuant to the City of Las Vegas, Nevada's (the "Jurisdiction") Commercial Property Assessed Clean Energy ("C-PACE") financing program (the "Program"), adopted pursuant to Resolution Nos. R-61-2018 and R-13-2022, adopted by the governing body of the City of Las Vegas on October 22, 2018 and March 16, 2022, respectively (the "Resolution"). The Property Owner requests Lender's consent for the Property to participate in the Program, specifically Lender's consent to the Recordation of the Notice of Assessment and Assessment Lien against the Property to secure the repayment of the financing or refinancing of such Qualified Improvement Project(s) pursuant to Section 271.6315(2)(e) of the Nevada Revised Statutes (as may be amended from time-to-time, "NRS"). Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the Resolution.

Background on the Program

Assessments created under NRS Chapter 271 have long been used by Municipalities to pay for improvements to Real Property that meet public policy objectives, such as sidewalks, parks, lighting districts, and water and sewer projects. Legislation enacted in 2021 to amend NRS Chapter 271 authorizes Municipalities in the State of Nevada to establish C-PACE financing programs within their jurisdictional boundaries. Financing through such programs helps stimulate local economies by allowing owners of Qualifying Commercial or Industrial Real Property obtain private low-cost, long-term financing for Qualified Improvement Projects. The Jurisdiction pursuant to the Resolution has established such a program.

Through the Program, the financing of Qualified Improvement Projects is provided by a private Qualified Capital Provider, and the principal amount of such financing is secured by the Assessment and Assessment Lien initially benefitting the Jurisdiction but immediately assigned to the Qualified

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Capital Provider. The payments relating to the Assessment and Assessment Lien are made to, and collected by, the Qualified Capital Provider, which has the responsibility of billing, collection and enforcement of the Assessment and Assessment Lien.

Any "Lender" holding a lien on Property as of the date of creation of the Assessment and Assessment Lien must consent in writing to the creation of the Assessment and Assessment Lien to secure the financing or refinancing of the proposed Qualified Improvement Project, notice of which must be Recorded pursuant to NRS 271.6315(2)(e). Once Recorded, the Assessment and Assessment Lien shall (a) run with the land until paid in full and released of record, (b) not be subject to acceleration or extinguishment by the sale of any of the Real Property constituting the applicable Tract on account of the non-payment of general taxes, and (c) be prior and superior to all liens, claims, encumbrances and titles other than the liens of assessments and general taxes attached to the Property pursuant to the provisions of NRS 361.450. Each amendment to the Assessment and Assessment Lien must also be Recorded, and once Recorded is binding upon the signatories and any other person who holds any interest in such Real Property to which it relates, regardless of whether that interest arose before or after the Recording of the Assessment and Assessment Lien. The Assessment and Assessment Lien is enforceable by the Qualified Capital Provider by judicial foreclosure like a mortgage.

Summary of Program Qualifying Criteria

To qualify for the Program, the Property must meet the following statutory criteria:

- The Property is located in the corporate boundaries of the Jurisdiction;
- The Property constitutes a Tract (as defined in NRS 271.235); and
- The Property is commercial or industrial property other than (i) a residential dwelling that contains fewer than 5 individual dwelling units, (ii) property financed by government-guaranteed financing that prohibits subordination of the government's interest therein or otherwise prohibits a contract under the Act, and (iii) property owned by the US Department of Defense.

To qualify for the Program, the proposed improvements to the Property to be C-PACE-financed must meet the following statutory criteria:

- The proposed improvements are permanently affixed to the Property;
- The proposed improvements have a useful life of not less than ten (10) years; and
- The proposed improvements qualify as (i) an Energy Efficiency Improvement Project as determined by an Energy Audit performed by a Qualified Service Company, (ii) a Renewable Energy Project as supported by a written feasibility study by a Qualified Service Company, (iii) a Resiliency Project as determined by a licensed professional in the field of resiliency projects approved by the Jurisdiction, or (iv) a Water Efficiency Improvement Project as determined by a written analysis by a Qualified Service Company (each as defined in the Act).

To qualify for the Program, the proposed financing of the Qualified Improvement Project must meet the following statutory criteria:

- All applicable "Lenders" in existence as of the date of creation of the Assessment and Assessment Lien must consent to the transaction pursuant to the attached consent, which must be Recorded against the Property;
- The Jurisdiction and the Property Owner must enter into an Assessment Agreement, which becomes an attachment to the Notice of Assessment and Assessment Lien and will be Recorded against the Property;

- If the Financing is through a Qualified Capital Provider, the Qualified Capital Provider and the Property Owner shall enter into a Financing Agreement (which is essentially the loan agreement);
- For improving or retrofitting an existing structure, the amount of the Assessment and Assessment Lien for a Qualified Improvement Project shall not exceed twenty-five percent (25%) of the fair market value of the Property assessed, as determined by a certified appraiser pursuant to guidelines adopted under NRS 271.6325;
- For a new structure or gut rehab, the amount of the Assessment and Assessment Lien for a Qualified Improvement Project shall not exceed thirty-five percent (35%) of the fair market value of the Property as determined by a certified appraiser pursuant to guidelines adopted under NRS 271.6325; and
- The contract for the Qualified Improvement Project must be an independent contract with a contractor licensed in the State of Nevada.

Reasons Supporting Lender Consent to the Assessment and Assessment Lien

1. *Qualified Improvement Projects financed through the Program have public benefits.* To qualify for the Program, a project must install improvements that decrease energy consumption, generate energy from renewable sources, reduce water consumption, conserve or remediate water or improve safety and public health through certain resiliency enhancements (e.g., seismic stability). Under the Program eligibility requirements, a proposed project must include verification by a qualified and licensed professional certifying that the improvements will provide these public benefits. Therefore, Qualified Improvement Projects typically enhance property value and improve its collateral value for the mortgage or other obligatory interests that Lender holds in the Property.
2. *Assessment and Assessment Lien payments do not accelerate.* Most loan agreements permit acceleration (i.e., all amounts become due and payable upon default); however, if Capital Provider or another lender forecloses on the Property, only the Assessment and Assessment Lien payments currently due and in arrears plus any applicable interest or penalties under the Financing Agreement would be payable (not the entire balance because acceleration is not an available remedy under the Program). The remaining balance of the Assessment and Assessment Lien runs with the land and regular installment payments would be paid by the new Property owner.
3. *Improvements financed through the Program often reduce operating costs.* Creating resiliency and energy and water efficiencies often reduces utility bills and cuts down on the potential for catastrophic damage to the Property from overuse of outdated system. Further, such improvements often improve health and comfort of occupants, all of which make a Property more attractive to lessees and future owners.
4. *Qualified Improvement Projects financed through the Program align with sustainability plans and commitments of everyone involved.* The Jurisdiction has adopted the Program in furtherance of its goal to promote sustainable building and to protect public health and safety. The Program likely aligns with similar goals of Lender.

Things that Lender Should Know Regarding this Project

Property Owner has indicated its intention to apply for Program Financing. The proposed terms of this Financing are as follows:¹

Description of Qualified Improvement Project(s):	[Approximately 289,000 sf of Entertainment, Retail and F&B space and containing an approximately 990-space parking garage, commonly known as AREA15 District 2.]
Total cost of Qualified Improvement Project(s):	[\$267,300,000]
Total Program financing requested (+/- 5%):	[\$108,000,000]
Annual interest rate for Financing not to exceed:	[]% per annum ²
Term of repayment of Financing:	30 years
Total estimated payments/occurrence:	338
# of payments per year:	12

As required by the Act, Property Owner is sending this Notice of Proposed Assessment and Assessment Lien and Request for Consent of Assessment and Assessment Lien by Lender to:

- provide notice of Property Owner's proposed participation of the Property in the Program;
- request confirmation from Lender that such participation will not trigger a default nor the exercise of any remedies under the documents creating Lender's encumbrance on the Property; and
- provide notice that, upon Property Owner's participation in the Program, the agreements required to create the Assessment and Assessment Lien will require Financing payments collected in installments that (a) run with the land until paid in full and released of record, (b) are not subject to acceleration or extinguishment by the sale of any of the Real Property constituting the Tract on account of the non-payment of general taxes, and (c) are prior and superior to all liens, claims, encumbrances and titles other than the liens of assessments and general taxes attached to the Tract pursuant to the provisions of NRS 361.450.

Property Owner acknowledges and agrees that the participation of the Property in the Program shall not modify Lender's agreements with Property Owner nor Property Owner's commitment to pay on a timely basis the existing obligations to Lender which are secured by the Property.

Execution and Return of Consent. Property Owner would appreciate your executing the attached Consent Form for Program and returning it to the undersigned at your earliest convenience. The attached will be Recorded against the Property at the closing of the C-PACE Financing.

Sincerely,

FBLV District 2 LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

¹ NTD: Subject to Borrower review.

² NTD: To be completed at rate lock.

PROPERTY OWNER MAILING ADDRESS:

c/o Fisher Brothers Management Co. LLC
299 Park Avenue, 42nd Floor
New York, New York 10171
Attention: Winston Fisher
E-Mail: Wfisher@fisherbrothers.com

With a copy to:

c/o Fisher Brothers Management Co. LLC
299 Park Avenue, 42nd Floor
New York, New York 10171
Attention: General Counsel
E-Mail: JWeiss@fisherbrothers.com

With a copy to: Paul Hastings LLP
200 Park Avenue
New York, New York 10166
Attention: Eric R. Landau, Esq.
E-mail: ericlandau@paulhastings.com