

WRITTEN AGREEMENT REGARDING C-PACE ASSESSMENT FOR THE
SNOWPINE LODGE

This WRITTEN AGREEMENT (this “Agreement”) is entered into this January 13, 2021, between the Town of Alta and Greenworks Lending LLC and its designee, successor and assigns (including its designee, successors and assigns, the “Lender”).

R E C I T A L S:

1. Pursuant to the Commercial Property Assessment Clean Energy Act, Title 11 Chapter 42a, Utah Code Annotated 1953, as amended (the “Act”) and Resolution 2021-R-2 adopted by the Alta Town Council , the Town of Alta may authorize the designation of an energy assessment area and the levying of an assessment within such energy assessment area to facilitate the financing and refinancing of the costs of acquiring, constructing and installing certain Energy Efficiency Upgrades, Renewable Energy Systems and/or Electric Vehicle Charging Infrastructure and related improvements as set forth on Exhibit D attached hereto (collectively, the “Improvements”) to be owned by one or more fee owners of the property on which such Improvements are located (the “Borrower”) and assign to a third-party lender the Town of Alta’s rights in its energy assessment lien.

2. The Town of Alta hereby determines that it is in the best interest of the Town of Alta to designate an energy assessment area and levy an assessment against a property benefited by the Improvements to refinance the costs of said Improvements and has obtained from lienholders on the property to be assessed within such energy assessment area an executed Consent of Lienholder to Assessment (the “Waiver and Consent”) attached hereto as Exhibit A.

3. The Town of Alta now desires to designate the assessment area, to levy said assessments and to assign to the Lender the Town of Alta’s rights in the energy assessment lien all in accordance with this Agreement.

4. Capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Act.

NOW, THEREFORE, in consideration of the premises stated herein, the designation of the Energy Assessment Area (as defined below), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

Section 1. Requirements for Designation of Energy Assessment Area. The Borrower has provided to the Town of Alta its written consent to the Town of Alta’s designation of the Energy Assessment Area, levying of the assessment, and creation of the Assessment Lien (as defined below) on the Borrower’s property attached hereto as Exhibit B, and pursuant to Section 11-42a-202 of the Act, has also provided to the Town of Alta:

(a) the written consent from each person or institution holding a lien on the Borrower’s property;

(b) evidence that there are no delinquent taxes, special assessments, or water or sewer charges on the Borrower's property;

(c) evidence that the property is not subject to a trust deed or other lien on which there is a recorded notice of default, foreclosure, or delinquency, that has not been cured; and

(d) evidence that there are no involuntary liens, including a lien on the Borrower's property, or on the proceeds of a contract relating to the Borrower's property, for services, labor, or materials furnished in connection with the construction or improvement of the Borrower's property.

Section 2. Designation of Energy Assessment Area. Pursuant to Section 11-42a-302 of the Act, the Town of Alta hereby designates a voluntary energy assessment area that shall be known as the "SNOWPINE LODGE ASSESSMENT AREA" (the "Energy Assessment Area") and approves the refinancing of the Improvements which have been installed at Borrower's property. The legal description and tax identification number of the Energy Assessment Area are set forth in Exhibit C attached hereto.

Section 3. Levy of Assessment. Pursuant to Section 11-42a-302 of the Act, the Town of Alta hereby levies an assessment against the parcel of property identified on Exhibit C attached hereto in an aggregate principal amount not to exceed \$19,700,000.00 (the "Assessment Lien"). The final terms of the Assessment Lien shall be as set forth in a financing agreement between the Lender and the Borrower (the "Financing Agreement") and shall be deemed approved by the Town of Alta provided that such final terms are within the parameters set forth in this Agreement. Per Section 11-42a-204 of the Act, the assessments will not exceed in the aggregate the sum of: (a) the Contract Price or estimated Contract Price of the Improvements; (b) Overhead Costs not to exceed fifteen percent (15%) of the sum of the contract price or estimated Contract Price; (c) an amount for contingencies of not more than ten percent (10%) of the sum of the Contract Price or estimated Contract Price; (d) capitalized interest; and (e) an amount sufficient to fund a reserve fund. If Lender and the Borrower fail to agree on the Financing Agreement, or do not close the financing for any other reason, then the Lender's sole obligation hereunder shall be the release of the Assessment Lien.

Pursuant to Section 11-42a-201(4) of the Act, the Lender will cause to be filed with the Salt Lake County Recorder an Energy Assessment and Lien with respect to this Agreement, stating that the Town of Alta has an assessment interest in the Energy Assessment Area describing the Energy Assessment Area by legal description and tax identification number, and containing any other information required by Section 11-42a-201 of the Act. The Lender shall file that Energy Assessment and Lien within five (5) days after the effective date of this Agreement.

Section 4. Assignment of Assessment Lien. Pursuant to Section 11-42a-302 of the Act, the Town of Alta hereby assigns to the Lender all its rights and interests in the Assessment Lien, including but not limited to (i) the right to directly bill and collect from the Borrower any amounts owed pursuant to the Assessment Lien, and (ii) the rights and

powers of the Town of Alta at law or in equity to enforce the Assessment Lien, including those set forth in Sections 11-42a-303 (other than those set forth in Section 11-42a-303(1)(a)(ii)(A) of the Act) and 11-42a-304 of the Act. In the event of a delinquency on amounts owned pursuant to the Assessment Lien, the Town of Alta instructs Lender, pursuant to Section 11-42a-303(2) of the Act, to pursue any of the methods of enforcement described below. The Town of Alta hereby acknowledges that, pursuant to Section 11-42a-303(1)(a)(ii) of the Act, the Lender may sell the property on which the Assessment Lien has been levied for the amount due plus interest, penalties, and costs:

(a) in the manner provided in Title 59, Chapter 2, Part 13, Utah Code Annotated 1953, as amended, for the sale of the property for delinquent property taxes, provided, however, that the pursuit of this method of enforcement does not result in any costs to the Town of Alta or require any actions on the part of the Town of Alta;

(b) by judicial foreclosure; or

(b) in the manner provided in Title 57, Chapter 1, Utah Code Annotated 1953, as amended, as though the property were the subject of a trust deed in favor of the Lender.

Section 5. Requirements for Written Agreement. In connection with the assignment of the Assessment Lien to the Lender as set forth herein and pursuant to Section 11-42a-302, the Lender agrees that:

(a) It shall be subject to an audit by the auditor of the State of Utah (the “State”) regarding the Assessment Lien;

(b) It shall submit to the Town of Alta monthly reports, including information regarding payments received by the Lender in connection with the Assessment Lien;

(c) The Town of Alta shall in no event be liable for any actions taken by the Lender in connection with Assessment Lien; and

(d) The Town of Alta is not liable to pay the assessment, and the financing in connection with this Agreement is not an obligation of the Town of Alta or a charge against the Town of Alta’s general credit or taxing power.

Section 6. Written Agreement. This Agreement shall constitute the written agreement pursuant to Section 11-42a-104 and Section 11-42a-302(1)(b) of the Act.

Section 7. Representations and Warranties of the Town of Alta. The Town of Alta represents and warrants that:

(a) the Town of Alta is public body corporate and politic duly organized and existing under the laws of the State of Utah;

(b) the execution and delivery of this Agreement by the Town of Alta does not materially conflict with, violate, or constitute on the part of the Town of Alta a material breach or violation of any of the terms and provisions of, or constitute a material default under (i) any existing constitution, law, or administrative rule or regulation, decree, order, or judgment; (ii) any corporate restriction or any bond, debenture, note, mortgage, indenture, agreement, or other instrument to which the Town of Alta is party or by which the Town of Alta is or may be bound or to which any of the Town of Alta's property or assets is or may be subject; or (iii) the creation and governing instruments of the Town of Alta;

(c) there is no action, suit, proceeding, inquiry, or investigation at law or in equity, with merit, by or before any court or public board or body to which the Town of Alta is a party, or threatened against the Town of Alta wherein an unfavorable decision, ruling, or finding would adversely affect the validity or enforceability or the execution and delivery by the Town of Alta of this Agreement;

(d) this Agreement (i) does not conflict with or create a material breach or default under the Utah Constitution, or any existing law, regulation, order, or agreement to which the Town of Alta is subject, and (ii) after expiration of the 30-day statute of repose (or challenge period) under Section 11-42a-104 of the Act, will be a legal, valid, and binding obligation of the Town of Alta enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency, or other similar laws generally affecting creditors' rights and by the application of equitable principles and by the exercise of judicial discretion in appropriate cases; and

(e) In order to evidence the assignment of the Assessment Lien made by the Town of Alta to the Lender pursuant to this Written Agreement, the Town of Alta shall cause an Assignment of Energy Assessment and Lien to be fully executed and delivered to the Lender upon the execution and delivery of this Agreement.

Section 8. Representations and Warranties of Lender; Release and Indemnification.

(a) The Lender represents and warrants that:

(i) The Lender is validly organized and existing under the laws of the United States of America;

(ii) Assuming the due authorization, execution and delivery by the Town of Alta, this Agreement constitutes a valid and binding obligation of the Lender, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights and by the application of equitable principles and by the exercise of judicial discretion in appropriate cases.

(b) The Lender hereby releases the Town of Alta from any possible claim it may have that results from any act or omission of the Town of Alta with respect to this Agreement, the financing to which it relates, or the designation of the Energy Assessment Area, the levying of the assessment, or the creation of the Assessment Lien.

(c) The Lender shall indemnify and hold harmless the Town of Alta from and against any and all losses, liabilities, penalties, fines, damages, and claims, and all related costs and expenses (including attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties) arising from or in connection with any dispute, claim, demand, action, citation, or legal proceeding (i) arising out of or related to the financing of the Improvements, (ii) arising out of or related to the enforcement of the assessment and the Assessment Lien, or (iii) resulting from any act or omission of the Lender related to the foregoing. Notwithstanding anything to the contrary contained in this Section 8, no indemnification shall be required by the Lender for any losses, liabilities, penalties, fines, damages or claims incurred by the Town of Alta solely as the result of the gross negligence or willful misconduct of the Town of Alta.

(d) The Lender and the Town of Alta hereby acknowledge and agree that the Assessment Lien is senior in rank and priority to all other liens, encumbrances and claims against Borrower's property subject to the Assessment Lien except for those ad valorem taxes and charges levied against Borrower's property and owed to the Town of Alta to which the Assessment Lien is junior in rank and priority.

Section 9. Effective Date. Upon the execution of this Agreement, the Lender shall cause a summary of this Agreement and Town of Alta Resolution No. 2021-R-2 to be published once in the Salt Lake Tribune, a newspaper published and having general circulation in the jurisdiction of the Town of Alta. Pursuant to Section 11-42a-201(3)(a) of the Act, this Agreement shall take effect on the date of such publication.

Section 10. Severability. The invalidity or un-enforceability in particular circumstances of any provision of this Agreement will not extend beyond such provision or circumstances and no other provision hereof will be affected by such invalidity or un-enforceability.

Section 11. Headings. The headings of the sections of this Agreement are inserted for convenience only and will not affect the meaning or interpretation hereof.

Section 12. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their successors and assigns. Lender may assign its rights and obligations under this Agreement to any person, firm, corporation, partnership (limited or general) or other entity without the prior written consent of the Town of Alta. Lender's assignee shall be a party to this Agreement and shall have all the rights and obligations of Lender hereunder to the extent that such rights and obligations have been assigned by

Lender pursuant to the assignment documentation between Lender and such assignee, and Lender shall be released from its obligations hereunder to a corresponding extent.

Section 13.Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

Section 14.Counterparts. This Agreement may be executed in several counterparts, all or any of which may be treated for all purposes as an original and shall constitute and be one and the same instrument

IN WITNESS WHEREOF, the Town of Alta, by the undersigned, and the Lender have executed this Agreement all as on the date first set forth above.

DATED this January 13, 2021.

TOWN OF ALTA

By: _____

Name: Harris Sondak

Title: Mayor

GREENWORKS LENDING LLC

By: _____

Name: Jessica Bailey

Title: Chief Executive Officer

EXHIBIT A

[See Following Pages]

CONSENT OF LIENHOLDER TO ASSESSMENT

THIS CONSENT OF LIENHOLDER TO ASSESSMENT (the “Agreement”) is made and entered into effective as of January 7, 2021, by EAGLEBANK, a Maryland banking corporation (the “Lienholder”) in favor of SNOWPINE REAL PROPERTY, LLC, a Utah limited liability company (the “Borrower”).

RECITALS

A. Borrower is the owner of that certain parcel of real property located in Salt Lake County, Utah, which property is more fully described in Exhibit A attached hereto and made a part hereof, together with the buildings and improvements located thereon (the “Property”).

B. The Property, as of the date hereof, is encumbered by that certain Deed of Trust (With Power of Sale), Security Agreement, Fixture Filing, Financing Statement and Assignment of Rents and Leases dated May 31, 2017, recorded May 31, 2017 among the official records of Salt Lake County, Utah in Book 10562 at pages 7540-7569, as amended by that certain Deed of Trust Increase and Modification Agreement dated November 15, 2017 and recorded November 16, 2017 among the official records of Salt Lake County, Utah in Book 10620 at pages 563-569, made by the Borrower for the benefit of the Lienholder (as so amended, the “Deed of Trust”).

C. Pursuant to the Commercial Property Assessed Clean Energy Act, Title 11, Chapter 42a, Utah Code Annotated 1953, as amended (the “Act”), the Borrower’s Property will be included as part of an energy assessment area (the “Assessment Area”) designated by the Town of Alta for the purpose of financing the costs of acquiring, constructing or installing certain Energy Efficiency Upgrades, Renewable Energy Systems and/or Electric Vehicle Charging Infrastructure (as such terms are defined in the Act) on the Property (the “Financing”) and is subject to a first-priority assessment lien thereon (the “Assessment Lien”) to secure the repayment of the Financing, which shall not exceed the principal sum of \$19,700,000.00.

D. In connection with the execution and delivery of the Deed of Trust as of the date hereof, the Borrower hereby requests that Lienholder acknowledge and consent to the placement of the Assessment Lien on the Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Lienholder agrees with and certifies to Owner as follows:

Section 1. Representations.

A. The Lienholder representative has been duly authorized to sign this Agreement.

B. To Lienholder's knowledge, no default exists as to the performance of any of the terms or conditions of the Deed of Trust or any documents entered into by the Borrower in connection therewith, nor, to Lienholder's knowledge, is there any uncured default which with the giving of notice or the passage of time or both would constitute a default under the Deed of Trust or any document entered into by the Borrower in connection therewith as of the date of this Agreement.

Section 2. Acknowledgement and Consent to Assessment. Lienholder hereby acknowledges and irrevocably consents to the (i) inclusion of the Property in the Assessment Area and (ii) placement of the Assessment Lien on the Property and any and all other action as shall be reasonably necessary in connection therewith.

Section 3. Waiver. As of the date of this Agreement, the Lienholder hereby waives its right to contest and shall not contest, pursuant to the Act, the (i) inclusion or designation of the Property in the Assessment Area and (ii) placement of the Assessment Lien and related assessments on the Property and any and all other action as shall be reasonably necessary in connection therewith, including a proceeding to levy the related assessments.

Section 4. Assignments. This Agreement may not be assigned in whole or in part by any party hereto, by operation of law or otherwise, without the prior written consent of each party hereto (and any purported assignment without such consent shall be null and void).

Section 5. Modifications. None of the terms or provisions of this Agreement may be waived, amended, or otherwise modified except by a written instrument executed by the party against which enforcement of such waiver, amendment, or modification is sought.

Section 6. Counterparts. This Agreement may be executed in counterparts, all of which together shall constitute one agreement, notwithstanding that all such parties are not signatories to the original or the same counterpart.

Section 7. Third Party Reliance. Lienholder (i) acknowledges that Greenworks Lending LLC (the "C-PACE Lender") is relying on the certifications within this Consent in order to make the Financing to the Owner and that C-PACE Lender is an intended third-party beneficiary of this Consent and (ii) consents to the foregoing. Therefore, the C-PACE Lender shall have the right to rely on this Consent and shall be considered a third-party beneficiary of this consent.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

Dated this 7th day of January, 2021.

EAGLEBANK, a Maryland banking
corporation

By: 

Name: Daniel Swanson

Title: Vice President

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The land located in Salt Lake County, UT and described as:

A PART OF THE NORTHEAST QUARTER, SECTION 5, TOWNSHIP 3 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS SOUTH 40°05' EAST 1,104.21 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION; THENCE NORTH 61°09' EAST 236.99 FEET; THENCE SOUTH 13°16' EAST 246.44 FEET; THENCE SOUTH 71°45' WEST 217.62 FEET; THENCE NORTH 16°31' WEST 202.05 FEET TO THE POINT OF BEGINNING.

Said property is also known by the street address of:
10420 East Little Cottonwood
Alta, UT 84092

EXHIBIT B

WRITTEN CONSENT OF BORROWER

[See Following Pages]

WRITTEN CONSENT OF BORROWER

This CONSENT OF BORROWER (this “Consent”) is made and entered into effective as of January 12, 2021, by Snowpine Real Property, LLC (the “Borrower”).

R E C I T A L S:

1. As of the date hereof the Borrower owns the real property described in Exhibit A attached hereto (the “Property”) which constitutes property which has been assessed within the Energy Assessment Area, described herein.

2. The Borrower desires that Town of Alta designate an energy assessment area (the “Energy Assessment Area”) pursuant to the Commercial Property Assessed Clean Energy Act, Title 11, Chapter 42a, Utah Code Annotated 1953, as amended (the “Act”) for the purpose of financing the costs of acquiring, constructing and/or installing certain Energy Efficiency Upgrades and/or Renewable Energy Systems (as such terms are defined in the Act) (collectively, the “Improvements”) on the Property (the “C-PACE Financing”).

3. The Borrower has obtained a title report or commitment for title insurance, attached hereto as Exhibit B (the “Title Commitment”) which Title Commitment provides the following evidence required by Section 11-42a-202 of the Act:

(a) there are no existing delinquent taxes, special assessments, or water or sewer charges on the Property;

(b) the Property is not subject to a trust deed or other lien on which there is a recorded notice of default, foreclosure, or delinquency that has not been cured;

(c) there are no involuntary liens, including a lien on real property or on the proceeds of a contract relating to the real property, for services, labor, or materials furnished in connection with the construction or improvement of the Property; and

(d) there are no liens on the Property requiring consent of lienholders as described in Section 11-42a-202(4) of the Act.

NOW, THEREFORE, in consideration of the premises stated herein, the designation of the Energy Assessment Area, the Borrower agrees as follows:

Representations, Covenants and Warranties of Borrower. The Borrower hereby represents, covenants and warrants that:

1. the Borrower is the owner of the Property identified as such in Exhibit A attached hereto;

2. the Borrower has taken all action necessary to execute and deliver this Consent;

3. the execution and delivery of this Consent by the Borrower does not conflict with, violate, or constitute on the part of the Borrower a breach or violation of any of the terms and provisions of, or constitute a default under (i) any existing constitution, law, or administrative rule or regulation, decree, order, or judgment; (ii) any corporate restriction or any bond, debenture, note, mortgage, indenture, agreement, or other instrument to which the Borrower is a party as a result of the C-PACE Financing, or by which the Borrower is or may be bound as a result of the C-PACE Financing, or to which any of the property or assets of the Borrower is or may be subject as a result of the C-PACE Financing; or (iii) the creation and governing instruments of the Borrower, if applicable; and

4. there is no action, suit, proceeding, inquiry, or investigation at law or in equity by or before any court or public board or body and to which the Borrower is a party, or threatened against the Borrower wherein an unfavorable decision, ruling, or finding would adversely affect the validity or enforceability or the execution and delivery by the Borrower of this Consent.

Section 2. Acknowledgment by Borrower. The Borrower hereby acknowledges that:

1. the undersigned, on behalf of the Borrower, is a duly qualified representative of the Borrower with the power and authority to execute this Consent for and on behalf of the Borrower; and

2. the consents set forth herein will benefit the Borrower by providing for the financing of the Improvements.

Section 3. Consent by Borrower. The Borrower hereby consents to

1. the designation by the City of the Energy Assessment Area which includes the Property, for the purpose of financing the cost of the Improvements with assessments levied against properties within said Energy Assessment Area, including the Property;

2. the prior filing a notice of assessment interest with the Salt Lake County recorder's office; and

3. the City assigning to Greenworks Lending LLC (the "Lender") the energy assessment lien arising from the levy of the assessments by the Town of Alta (the "Assessment Lien") for the purpose of financing the cost of the Improvements.

Section 4. Waiver. The Borrower hereby waives the right to contest the Assessments and any proceeding to designate the Energy Assessment Area or the levy of the Assessments as provided in Section 11-42a-104 of the Act.

Section 5. Reliance. The Town of Alta and the Lender shall have the right to rely on and shall be considered third-party beneficiaries of this Consent.

Dated: January 12, 2021 .

SNOWPINE REAL PROPERTY, LLC

By:  _____

Name: Brent K. Pratt

Title: Authorized Manager

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY TO BE ASSESSED

The land located in Salt Lake County, UT and described as:

A PART OF THE NORTHEAST QUARTER, SECTION 5, TOWNSHIP 3 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS SOUTH 40°05' EAST 1,104.21 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION; THENCE NORTH 61°09' EAST 236.99 FEET; THENCE SOUTH 13°16' EAST 246.44 FEET; THENCE SOUTH 71°45' WEST 217.62 FEET; THENCE NORTH 16°31' WEST 202.05 FEET TO THE POINT OF BEGINNING.

Said property is also known by the street address of:
10420 East Little Cottonwood Canyon Road, East Highway 210
Alta, UT 84092
Tax Identification Number: 30-05-251-003-0000

EXHIBIT C

LEGAL DESCRIPTION AND TAX IDENTIFICATION NUMBER

The land located in Salt Lake County, UT and described as:

A PART OF THE NORTHEAST QUARTER, SECTION 5, TOWNSHIP 3 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN, UTAH DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS SOUTH 40°05' EAST 1,104.21 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION; THENCE NORTH 61°09' EAST 236.99 FEET; THENCE SOUTH 13°16' EAST 246.44 FEET; THENCE SOUTH 71°45' WEST 217.62 FEET; THENCE NORTH 16°31' WEST 202.05 FEET TO THE POINT OF BEGINNING.

Said property is also known by the street address of:
10420 East Little Cottonwood Canyon Road, East Highway 210
Alta, UT 84092

Tax Identification Number: 30-05-251-003-0000

EXHIBIT D

C-PACE IMPROVEMENTS TO BE FINANCED

- Mechanical and plumbing upgrades
- Lighting and electrical improvements
- Building envelope upgrades
- Seismic resiliency