



MISC Inst. # 2018100448, Pg: 1 of 8 Rec Date: 12/20/2018 11:50:15.043

Fee Received: \$52.00 Electronically Recorded By: MS

Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

PACE LOAN ACKNOWLEDGEMENT,  
CONSENT AND SUBORDINATION AGREEMENT

Lender Consent and Acknowledgement of Property Owner Participation in Eastern Nebraska Clean Energy Assessment District PACE Program in Omaha, Nebraska.

This PACE Loan Acknowledgement, Consent and Subordination Agreement (this "**Consent and Acknowledgement**") is effective this 17<sup>th</sup> day of December, 2018 (the "**Effective Date**"), among THE CAPITOL DISTRICT, LLC, a Nebraska limited liability company (the "**Fee Lender**"), CAPITOL DISTRICT HOTEL, LLC, a Nebraska limited liability company (the "**Property Owner**"), and PETROS PACE FINANCE, LLC, a Texas limited liability company and its successors and/or assigns (the "**PACE Lender**").

**Recitals**

A. Pursuant to Nebraska state law, the City of Omaha, Nebraska, a municipal corporation, has established the Eastern Nebraska Clean Energy Assessment District ("**ENCEAD**") to administer its Property Assessed Clean Energy ("**PACE**") program to promote installation of energy efficiency improvements and/or renewable energy systems.

B. The Property Owner has applied to ENCEAD to receive PACE financing from PACE Lender in an amount up to Sixteen Million, Five Hundred Thousand Dollars And No/100 (\$16,500,000), which includes all PACE eligible fees and costs, to be paid back as special assessments (the "**PACE Assessments**") levied against the Property Owner's real property located at 222 North 10<sup>th</sup> Street, Omaha, NE 68102, as further described in **Exhibit A** attached hereto (the "**Property**"), over a period of 22 years (the "**Project**") pursuant to the "Property Assessed Clean Energy Act," Sections §13-3201 to §13-3211, inclusive, Neb. R.R.S. (the "**Act**").

C. The Fee Lender is the holder of that certain Promissory Note in the original principal amount of \$4,000,000 and related to that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of July 26, 2017 and recorded in the office of Register of Deeds of Douglas County, Nebraska on August 1, 2017 as Instrument No. 2017060218, as amended from time to time, made, executed and delivered by Property Owner, which encumbers the Property (the "**Security Instrument**").

D. Repayment of the PACE Assessments by the Property Owner pursuant to an Assessment Contract Real Estate Covenant (the "**Assessment Contract**"; all agreements entered into by Property Owner or PACE Lender relating to the Assessment Contract, the "**PACE Loan Documents**") will be a statutory assessment levied against the Property, notice of which shall be recorded against the Property in the Office of the Register of Deeds of Douglas County, Nebraska, and which said PACE Assessments, together with interest and any penalties, shall, in the event of a delinquency, constitute a PACE lien on the Property, and shall be collected subject to the terms agreed to between the parties and as contained in the Assessment Contract.

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### Consent, Acknowledgement and Subordination

Fee Lender, PACE Lender and Property Owner agree as follows:

1. Fee Lender acknowledges that it has been informed of the Property Owner's participation in the Omaha Nebraska ENCEAD PACE Program, and agrees that Property Owner's execution of the Assessment Contract and the other PACE Loan Documents will not constitute a default under the Security Instrument.

2. Fee Lender consents to Property Owner's participation in the Nebraska ENCEAD PACE Program.

3. Fee Lender acknowledges, as provided in the Act, the priority of the Security Instrument is subordinated to PACE liens on the Project.

4. Property Owner acknowledges and agrees that (a) it will immediately provide Fee Lender with a copy of any notice of default or event of default received by it under the PACE Loan Documents, and (b) an event of default (however defined in any PACE Loan Document and subject to any applicable notice and cure periods) shall constitute an immediate event of default under the Security Instrument.

5. Property Owner and PACE Lender acknowledge and agree that they shall not amend, restate or otherwise modify any PACE Loan Document without the prior written consent of Fee Lender, which consent shall not be unreasonably withheld, conditioned, or delayed. Amending, restating, or otherwise modifying any PACE Loan Document does not include PACE Lender assigning its rights under the PACE Loan Documents pursuant to their terms, updating any notice information or payment instructions as permitted by the PACE Loan Documents, or any action specifically permitted to be taken by PACE Lender according to the terms of the PACE Loan Documents.

6. Notwithstanding anything to the contrary contained in the PACE Loan Documents:

(a) PACE Lender shall provide written notice to Fee Lender of the occurrence of any default or event of default under the PACE Loan Documents (each, a "**Default Notice**") promptly following the occurrence thereof, and in all events prior to PACE Lender commencing any action or proceeding for foreclosure under the PACE Loan Documents. PACE Lender shall permit Fee Lender an opportunity to cure such default in accordance with the provisions of this Section 6 and shall not commence any action or proceeding for foreclosure under the PACE Loan Documents on account of such default unless such cure is not effectuated within the applicable cure periods provided for in this Section. If PACE Lender has delivered a Default Notice that has not been cured by Fee Lender pursuant to this Section, PACE Lender shall provide Fee Lender with copies of any and all notices relating to the default giving rise to the Default Notice and all pleadings, agreements, motions and briefs served upon, delivered to or with any party to any enforcement action or proceeding commenced by PACE Lender with respect thereto and,

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at the request of Fee Lender, otherwise keep Fee Lender reasonably apprised as to the current status of any such action or proceeding.

(b) If the default identified in a Default Notice is a monetary default relating to the payment of interest or scheduled principal or a liquidated sum of money, including, without limitation, any installment payment due under and pursuant to the PACE Loan Documents, Fee Lender shall have until 30 days after the later of (i) the receipt by it from PACE Lender of the Default Notice, and (ii) the expiration of Property Owner's cure period with respect to such default provided in the PACE Loan Documents, if any, to cure such monetary default (the "**Monetary Cure Period**").

(c) If the default identified in a Default Notice is of a non-monetary nature, Fee Lender shall have until 60 days after the later of (i) receipt by Fee Lender of such Default Notice, or (ii) the expiration of Property Owner's cure period, if any, for such non-monetary default provided in the PACE Loan Documents (the "**Non-Monetary Cure Period**"), in which to cure such non-monetary default. Notwithstanding the applicable Non-Monetary Cure Period with respect to Fee Lender, if (i) such non-monetary default is reasonably susceptible of cure but cannot reasonably be cured within such applicable Non-Monetary Cure Period or is not reasonably susceptible of cure without foreclosure of the Property or not reasonably susceptible of cure by Fee Lender at all and (ii) curative action, which may include, an enforcement action or proceeding, was promptly commenced and is being diligently pursued by Fee Lender (subject to any applicable stay), Fee Lender shall be given such additional period of time as is reasonably necessary for Fee Lender in the exercise of due diligence to cure such non-monetary default or to foreclose the Property for so long as Property Owner or Fee Lender makes or causes to be made timely payment of Property Owner's regularly installment payments under the PACE Loan Documents and any other amounts due under the PACE Loan Documents (other than any late charges, late fees and default interest accruing other than by reason of any failure to make such regularly scheduled installment payments in a timely manner). The phrase "subject to any applicable stay" as used in this Section 6(c) means that Fee Lender will not be deemed to have failed to be continuously and diligently pursuing a cure or foreclosure if it is prevented from doing so by the existence of a stay or other legal impediment. Notwithstanding anything to the contrary contained herein, Fee Lender shall not be required to pay default interest and/or late fees with respect to non-monetary defaults to the extent the same is cured within the applicable Non-Monetary Cure Period as extended pursuant to the terms hereof.

7. Notwithstanding anything to the contrary contained in the PACE Loan Documents, PACE Lender hereby acknowledges and agrees that, if Fee Lender or any other transferee shall obtain title to the Property pursuant to a foreclosure of the Security Instrument, (a) PACE Lender shall be deemed to have approved the transfer of title to the Property to such other transferee, and such transfer shall not constitute a default or event of default under any PACE Loan Document, (b) Fee Lender or such transferee shall be

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entitled to all of the rights and benefits of the "Property Owner" under and pursuant to the terms of the PACE Loan Documents, and (c) there shall be no reaffirmation of representations and warranties made in the PACE Loan Documents from and after the date that Fee Lender or such transferee obtains title to the Property. If Fee Lender or such transferee obtains title to the Property, Fee Lender or such transferee agrees to be bound by the obligations in the PACE Loan Documents, including any ongoing covenants, both affirmative and negative.

7. Notwithstanding anything to the contrary contained in the PACE Loan Documents, PACE Lender hereby acknowledges and agrees that PACE Lender shall have no right to accelerate the loan and obligations under the PACE Loan Documents.

8. Notices hereunder shall be delivered to the address set forth below unless otherwise designated in a written notice:

If to Fee Lender:       The Capitol District, LLC  
                               1111 North 13th Street  
                               Suite 101  
                               Omaha, NE 68102  
                               Attn: Michael T. Moylan

If to PACE Lender:   Petros PACE Finance, LLC  
                               300 W. 6th Street, Suite 1540  
                               Austin, TX 78701  
                               Attn.: Legal

If to Property Owner: Capitol District Hotel, LLC  
                               1111 North 13th Street  
                               Suite 101  
                               Omaha, NE 68102  
                               Attn: Michael T. Moylan

With a copy to:       Fullenkamp, Jobeun, Johnson & Beller LLP  
                               11440 West Center Road, Suite C  
                               Omaha, Nebraska 68144  
                               Attn: Mark B. Johnson

9. This Consent and Acknowledgment shall be effective on the date that it is executed and delivered by the parties hereto.

10. This Consent and Acknowledgment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed a single agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; EXECUTION PAGE  
 FOLLOWS]

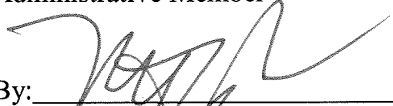
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**FEE LENDER:**

THE CAPITOL DISTRICT, LLC, a  
Nebraska limited liability company


By: MTM Capitol District, LLC,  
a Nebraska limited liability company, its  
Administrative Member

By:   
Name: Michael T. Moylan  
Title: Member

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )



The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of December, 2018, by Michael T. Moylan, Member of MTM Capitol District, LLC, a Nebraska limited liability company, the administrative member of The Capitol District, LLC, a Nebraska limited liability company, on behalf of the company.

  
Notary Public

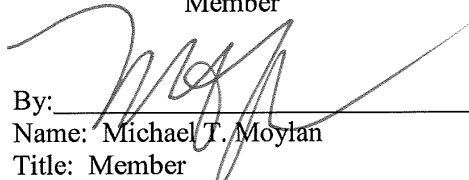
**PROPERTY OWNER:**

CAPITOL DISTRICT HOTEL, LLC, a Nebraska limited liability company

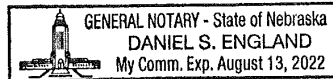
By: Capitol District Hotel Manager, LLC, a Nebraska limited liability company, its Managing Member

By: The Capitol District, LLC, a Nebraska limited liability company, its Sole Member

By: MTM Capitol District, LLC, a Nebraska limited liability company, its Administrative Member

By:   
Name: Michael T. Moylan  
Title: Member

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )




The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of December, 2018, by Michael T. Moylan, Member of MTM Capitol District, LLC, a Nebraska limited liability company, the administrative member of The Capitol District, LLC, a Nebraska limited liability company, the sole member of Capitol District Hotel Manager, LLC, a Nebraska limited liability company, the managing member of Capitol District Hotel, LLC, a Nebraska limited liability company, on behalf of the company.

  
Notary Public

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**LENDER:**

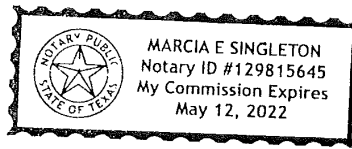
PETROS PACE FINANCE, LLC,  
a Texas limited liability company

By   
Mansoor Ghori, its Manager

STATE OF TEXAS            )  
  ) ss.  
COUNTY OF TRAVIS        )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of December 2018, Mansoor Ghori, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is the Manager of Petros PACE Finance, LLC, and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.

  
Notary Public



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**EXHIBIT A**

**Legal Description**

Lot 2, in THE CAPITOL DISTRICT REPLAT 1, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.

Exhibit A  
Acknowledgement, Consent and Subordination Agreement