



MISC 2016098191



NOV 23 2016 13:32 P 6

Fee amount: 40.00  
FB: 07-05674  
COMP: PN

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
11/23/2016 13:32:08.00



2016098191

**WHEN RECORDED, PLEASE RETURN TO:**

Mortgage Loan Department  
First National Bank of Omaha  
Third Floor, First National Plaza  
11404 West Dodge Road  
Omaha, Nebraska 68154

**FIRST AMENDMENT TO INTERCREDITOR AGREEMENT**

**THIS FIRST AMENDMENT TO INTERCREDITOR AGREEMENT** (this "*Amendment*") dated as of November 17, 2016 (the "*Effective Date*"), is by and between **FIRST NATIONAL BANK OF OMAHA**, and its successors and assigns (in such capacity, the "Senior Lender"), having an office at 1620 Dodge Street, Omaha, Nebraska 68102, Attn: Senior Officer, Mortgage Loan Department, and **CMB NEBRASKA INFRASTRUCTURE INVESTMENT GROUP 47, LP**, a Delaware limited partnership, and its successors and assigns (in such capacity, the "Mezzanine Lender"), having an office at 7819 42<sup>nd</sup> Street West, Rock Island, Illinois 61201.

**INTRODUCTORY STATEMENTS**

WHEREAS, Senior Lender and Mezzanine Lender entered into that certain Intercreditor Agreement dated as of May 29, 2015 (together with all riders, amendments, restatements, extensions, renewals or modifications thereof, the "*Intercreditor Agreement*"), a memorandum of which was filed for record on June 2, 2015 as Instrument No. 2015042751 in the Official Records of the County Clerk's Office of Douglas County, Nebraska on the property described in Exhibit A attached hereto (the "*Property*"). All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Intercreditor Agreement; and

WHEREAS, the undersigned have agreed to amend the Intercreditor Agreement upon the terms and conditions set forth herein;

**AGREEMENT**

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

**Section 1. Amendment.** Senior Lender and Mezzanine Lender amend Exhibit A to each of the Intercreditor Agreement and the Memorandum by replacing it in its entirety with Exhibit B hereto.

**Section 2. *Consent.*** Mezzanine Lender hereby acknowledges that it has been provided with copies of the following documents (collectively, the “Amendments”): (a) the First Global Amendment to the Loan Documents dated as of even date herewith between Senior Lender and Borrower and (b) the First Global Amendment to Recorded Documents dated as of even date herewith between Senior Lender and Borrower. Mezzanine Lender consents to the Amendments.

**Section 3. *Effect of Amendment on Intercreditor Agreement and the Memorandum; Ratification and Confirmation of Intercreditor Agreement, as Amended.*** On and after the date of this Amendment, each reference in the Intercreditor Agreement or the Memorandum to “this Agreement”, “this Intercreditor Agreement, the “Intercreditor Agreement”, “hereunder,” “herein,” “hereof” or words of like import referring to the Intercreditor Agreement shall mean the Intercreditor Agreement as amended by this Amendment. This Amendment shall not constitute in any manner a waiver by either Senior Lender or Mezzanine Lender of any of their respective rights under the Intercreditor Agreement. As specifically amended herein, the Intercreditor Agreement is and shall continue to be in full force and effect and is hereby in all respects ratified and confirmed. Except as set forth in Section 1 hereof, this Amendment does not change the effectiveness or amend or nullify the Intercreditor Agreement or any portion thereof.

**Section 4. *Governing Law.*** This Amendment shall be governed by and construed in accordance with the laws of the State of Nebraska.

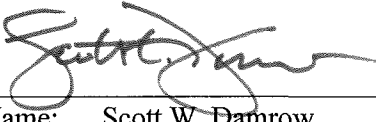
**Section 5. *Counterparts.*** This Amendment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

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

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Intercreditor Agreement to be executed as of the Effective Date.

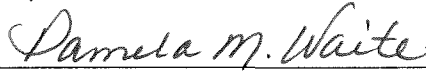
**SENIOR LENDER:**

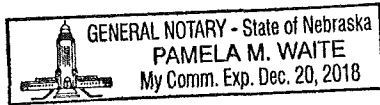
**FIRST NATIONAL BANK OF OMAHA**

By:   
Name: Scott W. Damrow  
Title: Vice President

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS     )

The foregoing instrument was acknowledged before me this 9 day of November, 2016, by Scott W. Damrow, a Vice President of First National Bank of Omaha, on behalf of the bank.

  
Notary Public

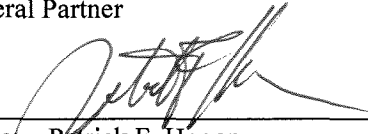


[EXECUTION PAGE 1 OF 2 OF FIRST AMENDMENT TO INTERCREDITOR AGREEMENT]

**MEZZANINE LENDER:**

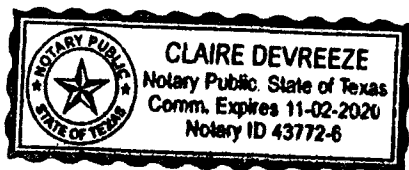
**CMB NEBRASKA INFRASTRUCTURE  
INVESTMENT GROUP 47, LP,**  
a Delaware limited partnership

**By: CMB NEBRASKA LLC,**  
a Delaware limited liability company  
Its: General Partner

By:   
Name: Patrick F. Hogan  
Title: Manager

STATE OF *Texas* )  
 ) ss.  
COUNTY OF *Dallas* )

The foregoing instrument was acknowledged before me this 17 day of November, 2016, by Patrick F. Hogan, Manager of CMB Nebraska LLC, the general partner of CMB Nebraska Infrastructure Investment Group 47, LP, a Delaware limited partnership, on behalf of the company.



  
Notary Public

[EXECUTION PAGE 2 OF 2 OF FIRST AMENDMENT TO INTERCREDITOR AGREEMENT]

**EXHIBIT A**

**PREMISES 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 B**

**EXHIBIT A**

**PREMISES 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, together with part of the vacated Davenport Street adjacent thereto on the North;

Together with rights appurtenant thereto as established by Agreement for Skyway Construction, Operation, Maintenance, and Easements dated October 6, 2016 and recorded October 7, 2016, as Instrument No. 2016083555 of the Records of Douglas County, Nebraska.

And, together with rights appurtenant thereto as established by Parking License Agreement dated September 18, 2015, as amended by the First Amendment to Parking License Agreement dated September 19, 2016, a Memorandum of which was dated October 28, 2016 and recorded November 1, 2016, as Instrument No. 2016091179 of the Records of Douglas County, Nebraska.