



MISC 2017060220



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 FB: 07-05674
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Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
 08/01/2017 16:03:37.00



2017060220

This Instrument was prepared by:
 Andrew Romshek
 Kutak Rock LLP
 1650 Farnam Street
 Omaha, NE 68102

Upon Recordation, Return to:
 Mortgage Loan Department
 First National Bank of Omaha
 Third Floor, First National Plaza
 11404 West Dodge Road
 Omaha, Nebraska 68154

MEMORANDUM OF AGREEMENT

THIS IS A MEMORANDUM OF AGREEMENT dated as July 26, 2017 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 **THE CAPITOL DISTRICT, LLC**, a Nebraska limited liability company, and its successors and assigns (in such capacity, the "Mezzanine Lender"), having an office at 1111 N. 13th Street, Suite 101, Omaha, Nebraska 68102. For good and valuable consideration, Senior Lender and Mezzanine Lender have entered into that certain Intercreditor Agreement of even date herewith (as the same may hereafter be amended, modified, supplemented or restated, the "Agreement") by and between Senior Lender and Mezzanine Lender to evidence Senior Lender's and Mezzanine Lender's agreement with respect to (i) the relative priority of the payment of, and the liens securing, that certain loan made by Senior Lender (the "Senior Loan") to Capitol District Hotel, LLC ("Borrower") and that certain loan made by Mezzanine Lender (the "Mezzanine Loan") to Borrower, and (ii) the relationship between the Mezzanine Loan and the documents and instruments securing or otherwise relating to the Mezzanine Loan (as the same may from time to time be amended, consolidated, renewed or replaced), on the one hand, and the Senior Loan and the documents and instruments securing or otherwise relating to the Senior Loan (as the same may from time to time be amended, consolidated, renewed or replaced), on the other hand, all as more particularly set forth in the Agreement. Pursuant to that certain Construction Deed of Trust, Security Agreement and Assignment of Rents dated as of May 29, 2015 (including any and all renewals, modifications, amendments, restatements, consolidations, substitutions, Instrument No. 2015042746

4811-3864-7116.2

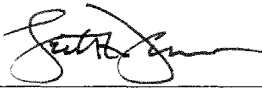
replacements and extensions thereof) from Borrower for the benefit of Senior Lender and that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of July 26th, 2017 (including any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements and extensions thereof) by Borrower for the benefit of Mezzanine Lender, each of the Senior Loan and the Mezzanine Loan are secured by certain real property owned by Borrower and more particularly described on Exhibit A hereto.

The purpose of this Memorandum of Agreement is to give record notice of the Agreement and the rights created thereby, all of which are hereby confirmed and this shall not have the effect of in any way amending, modifying, supplementing or abridging the Agreement or any of its provisions as the same are now or may hereafter be in force and effect. The Agreement provides, among other things, that Mezzanine Lender subordinates and makes junior the Mezzanine Loan, the Mezzanine Loan Documents and the liens and security interests created thereby to the Senior Loan, the Senior Loan Documents and the liens and security interests created thereby unless otherwise provided for in the Agreement. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Agreement. In the event of any conflict between the provisions of the Agreement and this Memorandum of Agreement, the provisions of the Agreement shall prevail.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Agreement to be executed on the date set forth below.

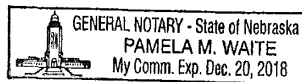
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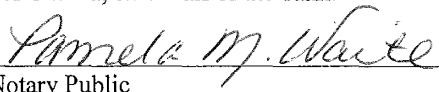
SENIOR LENDER:**FIRST NATIONAL BANK OF OMAHA**

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

STATE OF NEBRASKA)
) ss.
 COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 24 day of July, 2017, by Scott W. Damrow, a Vice President of First National Bank of Omaha, on behalf of the bank.

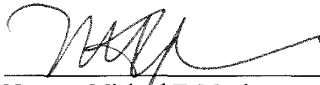



 Notary Public

MEZZANINE LENDER:

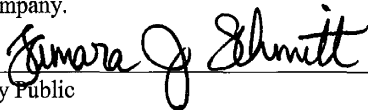
THE CAPITOL DISTRICT, LLC,
a Nebraska limited liability company

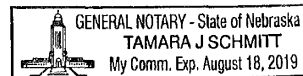
By: **MTM CAPITOL DISTRICT, LLC,** a
Nebraska limited liability company, its
Administrative Member

By: 
Name: Michael T. Moylan
Title: Member

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 26th day of July, 2017, by Michael T. Moylan, Member of MTM Capitol District, LLC, the administrative member of The Capitol District, LLC, a Nebraska limited liability company, on behalf of the company.


Notary Public



ACKNOWLEDGMENT OF ASSIGNEE

The undersigned, as collateral assignee of Mezzanine Lender, hereby represents, warrants and covenants as follows: (a) the undersigned may enforce all of Mezzanine Lender's rights, title and interests in the Mezzanine Loan and the Mezzanine Loan Documents, (b) the undersigned has received and reviewed a copy of the Agreement, (c) the collateral assignment of Mezzanine Loan and the Mezzanine Loan Documents is subject to the Agreement and the terms and conditions hereof, and (d) the undersigned agrees to comply, as applicable, with all of the terms and conditions of the Agreement as Mezzanine Lender thereunder.

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

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

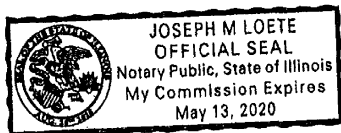
By: _____

Name: Patrick F. Hogan
Title: Manager

STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 26th day of July, 2017, 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.

Joseph M Loete
Notary Public



4811-3864-7116.2

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, 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.

4811-3864-7116.2