

2017-16897

RECORDER MARK BRANDENBURG

POTTAWATTAMIE COUNTY, IA

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RECORDER'S COVER SHEET

Type of Document: Recreational Facilities Joint Sharing Agreement

Tax Statement Address: RIVER PARK APARTMENTS, L.L.C.
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Return Document to: TitleCore National
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Omaha, NE 68114
Ref: NCS-874547-Omaha

GRANTOR/GRANTEE: COUNCIL BLUFFS APARTMENTS, L.L.C.

GRANTEE/GRANTOE: RIVER PARK APARTMENTS, L.L.C.

Legal Description: See Exhibits "A" and "B" .. pages 7+8

RECREATIONAL FACILITIES JOINT SHARING AGREEMENT

This Recreational Facilities Joint Sharing Agreement ("Agreement") is entered into by and between RIVER PARK APARTMENTS, L.L.C., an Iowa limited liability company ("River Park"), and COUNCIL BLUFFS APARTMENTS, L.L.C., an Iowa limited liability company ("CB Apartments").

Recitals

A. CB Apartments is the owner of the real estate described on Exhibit "A" attached hereto (the "CB Apartments Property"), upon which CB Apartments has constructed an apartment residential community.

B. River Park is the owner of the real estate described on Exhibit "B" attached hereto (the "River Park Property"), upon which River Park has constructed an apartment residential community.

C. River Park desires to grant certain rights benefiting the CB Apartments Property, and CB Apartments desires to grant certain rights benefiting the River Park Property, upon the terms and conditions set forth herein.

Agreement

NOW THEREFORE, River Park and CB Apartments hereby agree as follows:

1. Granted Rights. Subject to the terms and conditions set forth herein, each party hereby grants to the other party and its successors and assigns the following rights:

- (a) *Recreational Facilities.* A non-exclusive perpetual right to the use of any clubhouse(s), fitness center(s), sports court(s) and swimming pool(s) now or hereafter located on any portion of such party's property (collectively "Recreational Facilities"); limited, however, to those portions of a party's property which are improved with Recreational Facilities, if any, as such portions may be replaced, relocated or removed from time to time by such party. Provided, however, no Recreational Facilities may be removed from either the CB Apartments Property or River Park Property without the consent of any beneficiary of a lien of indenture, deed of trust or mortgage or similar instrument securing a loan secured by such property, and may only be replaced or removed from time to time by the party that owns such Recreational Facilities.
- (b) *Access.* A non-exclusive perpetual right of access for pedestrian and vehicular traffic over such party's property for ingress and egress to and from the Recreational Facilities; limited, however, to those portions of the property which are improved from time to time for pedestrian and vehicular access, as such portions may be reduced, removed, increased or relocated from time to time.

2. Use of Rights. The use of all rights created by this Agreement will, in each instance, be non-exclusive and for the use and benefit of both parties and their successors, assigns and such tenants of a party as may be designated from time to time (the "Permittees"); provided, each party specifically reserves the right, at any time and from time to time, to promulgate such rules and regulations applicable to its own property (including the Recreational Facilities) as may be necessary to promote and preserve the health, safety, welfare and security of its property, the improvements located thereon, and the Permittees. Each party may, at any time and from time to time, remove, exclude and restrain any person from the use, occupancy and enjoyment of any right hereby created or the area covered thereby for failure to observe the rules and regulations established by such party. Without limiting the foregoing, if

unauthorized use is being made of the Recreational Facilities or any other portion of a party's property by the other party or its Permittees, such unauthorized use may be restrained by appropriate proceeding after written notice to the other party and failure to abate such unauthorized use within a reasonable time.

3. Maintenance of Common Facilities. Each party will operate and maintain the Recreational Facilities located on its property in good operating condition, and any expenses occasioned thereby including, without limitation, maintenance, repairs, replacements, operating (including insurance premiums) and utility costs ("Expenses") will be initially paid by such party. The other party will, upon receipt of invoices from the party incurring the Expenses (but not more frequently than monthly) reimburse such party for that portion of the Expenses equal to the percentage obtained when the total number of apartment units located on its property is divided by the total number of apartment units located on both the CB Apartments Property and the River Park Property. Any invoice remaining unpaid after ten (10) days shall bear interest at the rate of sixteen percent (16%) per annum until paid; provided, either party may, by recording in the public records an irrevocable relinquishment of the rights granted to it hereunder and providing a copy thereof to the other party, be released from its share of the Expenses which accrue from and after the date of such recording.

4. Insurance. Each party agrees to maintain policies of fire and extended coverage insurance and of public liability insurance issued by reputable companies in amounts and on customary policy terms for the Recreational Facilities located on its property.

5. Legal Effect. Each of the rights created by this Agreement are appurtenant to the River Park Property and CB Apartments Property and may not be transferred, assigned or encumbered except as an appurtenance to the River Park Property and the CB Apartments Property. Each covenant contained in this Agreement (a) constitutes a covenant running with the land, (b) binds every owner now having or hereafter acquiring an interest in the River Park Property or the CB Apartments Property, and (c) will bind and inure to the benefit of the parties and their respective successors and assigns.

6. No Dedication. Nothing contained in this Agreement will be deemed to constitute a gift, grant or dedication of any real property to the general public or for any public purpose whatsoever, it being the intention that this Agreement will be strictly limited to the private use and benefit of the parties hereto and their respective successors and assigns. This Agreement is intended to benefit the parties hereto and their respective successors and assigns, and is not intended to make anyone which is not a party hereto a third party beneficiary hereunder.

7. Amendment and Termination. This Agreement shall continue in full force and effect until terminated, modified or amended with the express written consent of all of the owners of the River Park Property and CB Apartments Property; provided, nothing contained herein shall prevent or prohibit the relinquishment by either party of its rights as provided in paragraph 3. No tenant or other person having only a possessory interest in the improvements constructed upon the real estate described herein will be required to join in the execution of or consent to any action taken pursuant to this Agreement.

8. Condemnation. In the event the whole, or any part, of the property of a party is taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, neither the other party nor its Permittees will share in any award, compensation or other payment made by reason of the taking, and such award, compensation or other payment will belong entirely to the party whose property has been taken, and it will have no further liability to the other party for the loss of rights relating to the portion of the property so taken.

9. Default; Remedies. Each party agrees that the provisions of this Agreement will be enforced as follows:

- (a) *Injunctive Relief.* In the event of any violation or threatened violation by any party of any of the provisions of this Agreement, the other party will have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, written notice of the violation will be given to the party claimed to have committed such violation.
- (b) *Lien.* In the event any party shall fail to pay any sums owed to the other party pursuant to this Agreement including, without limitation, a party's payment of its percentage share of Expenses and as provided in subparagraph (3) above, and such failure shall continue for a period of ten (10) days after written notice from the non-defaulting party, the non-defaulting party may, at its option, record in the office of the County Recorder of Pottawattamie County, Iowa a lien against the defaulting party's property and foreclose such lien in the same manner as a mortgage. Any such lien shall be subordinate to any existing liens of record at the time of the recording of the lien by the non-defaulting party.
- (c) *Force Majeure.* If performance of any action by any party is prevented or delayed by act of God, war, labor disputes or other cause beyond the reasonable control of such party, the time for the performance of such action will be extended for the period that such action is delayed or prevented by such cause.
- (d) *No Termination.* No breach of this Agreement by a party will entitle the other party to cancel, rescind or otherwise terminate this Agreement. The foregoing limitation will not affect, in any manner, any other right or remedy which the non-defaulting party might have by reason of such breach.

10. Miscellaneous.

- (a) *Notices.* All notices, invoices, demands and other communications given pursuant to this Agreement will be in writing and will be delivered in person or by mail to the parties at their respective addresses set forth in the real property tax records respecting each property.
- (b) *Waiver of Default.* No waiver of any default by any party will be implied from the failure of the other party to take any action in respect of such default. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in such express waiver. One or more waivers of any default in the performance of any provision of this Agreement will not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act or request by any party will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request. Except as provided in paragraph 9(d), the rights and remedies provided by this Agreement are cumulative and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which any party might otherwise have by virtue of a default under this Agreement and the exercise of any right or remedy by any party will not impair such party's standing to exercise any other right or remedy.
- (c) *Severability.* If any provision of this Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

- (d) *Governing Law.* This Agreement will be construed in accordance with the laws of the State of Iowa.
- (e) *Binding Effect.* The provisions of this Agreement will be binding on the parties and their respective successors and assigns.
- (f) *Priority of Mortgage.* Notwithstanding anything to the contrary contained herein, this Agreement shall be subject to and subordinate to any lien of any indenture, deed of trust or mortgage or similar instrument securing a first lien loan on the CB Apartments Property recorded as of the date hereof (“First Mortgage”) and any subsequent owner of the CB Apartments whose title is acquired by foreclosure, whether judicially or by power of sale, deed in lieu of foreclosure, or otherwise pursuant to the lien rights in the First Mortgage shall take title free and clear of all provisions, obligations and/or other rights under this Agreement and may terminate the Agreement. For so long as a First Mortgage is outstanding, upon a transfer of the CB Apartments Property or River Park Property either by foreclosure, deed-in-lieu of foreclosure, purchase, acquisition, or any other action, this Agreement will terminate with respect to any shared leasing office and River Park will vacate any leasing office located on the CB Property and establish a leasing office on the River Park Property.

Provided, however, that all of the provisions of this Agreement shall be binding upon and effective against the beneficiary of any lien of any indenture, deed of trust or mortgage or similar instrument securing a loan entered into after the date hereof (“Subsequent Mortgage”) or any subsequent owner (either, a “Mortgagee”) of the River Park Property or the CB Apartments Property whose title is acquired by foreclosure, whether judicially or by power of sale, deed in lieu of foreclosure, or otherwise pursuant to the lien rights in any Subsequent Mortgage, except that such Mortgagee shall take title free and clear of any unpaid amounts or breaches of this Agreement attributable to its predecessor(s) in title occurring prior to any such transfer of title.

- (g) *Indemnification.* Each party shall fully indemnify, defend and hold harmless the other party, and its tenants, invitees, licensees, subsidiaries, parents, affiliates, members, officers, directors, employees, contractors, attorneys, and agents (collectively, “Indemitees”) from and against all liability, claims, causes of action, suits, sanctions, costs or expenses for injuries to or death of any person or damage to or loss of property (“Liabilities”), arising out of or resulting from the use of the Easement by such party and any negligent act or omission or any intentional misconduct by each party, its agents, employees, contractors or subcontractors, licensees and invitees in the use of the easements granted herein. Notwithstanding the foregoing provisions of this Paragraph 10(g) to the contrary, each party’s indemnification, hold harmless and defense obligations set forth in this Paragraph 10(g) shall not apply to the extent any Liabilities arise out of or result from the gross negligence or willful misconduct of any of the Indemitees. The indemnification obligations provided for in this Paragraph 10(g) shall survive termination of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been executed effective December
13, 2017.

RIVER PARK APARTMENTS, L.L.C., an Iowa limited liability company

By: Howard M. Kooper
Howard M. Kooper, Manager

COUNCIL BLUFFS APARTMENTS, L.L.C., an Iowa limited liability company

By: Howard M. Kooper
Howard M. Kooper, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 13 day of December, 2017, before me, a notary public in and for said county and state, personally came Howard M. Kooper, Manager of RIVER PARK APARTMENTS, L.L.C., an Iowa limited liability company, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said limited liability companies.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.



Janet Pacula Roos
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 13 day of December, 2017, before me, a notary public in and for said county and state, personally came Howard M. Kooper, Manager of COUNCIL BLUFFS APARTMENTS, L.L.C., an Iowa limited liability company, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said limited liability company.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.



Janet Pacula Roos
Notary Public

Exhibit "A"

PARCEL 1:

A parcel of land located in part of the Northwest Quarter of the Northwest Quarter (NW¼ NW¼) of Section 33, Township 75 North, Range 44 West of the 5th P.M., in the City of Council Bluffs, in Pottawattamie County, Iowa, more fully described as follows:

Commencing at the Southwest corner of the Northwest Quarter of the Northwest Quarter of said Section 33; thence along the West line of said Northwest Quarter of the Northwest Quarter, North 02°31'20" West, 291.04 feet; thence North 77°48'31" East, 106.13 feet, to a point on a curve, concave Northerly, having a radius of 1,672.40 feet and a delta angle of 14°42'03"; thence along said curve 1.70 feet and having a chord bearing of North 77°45'40" East, 1.70 feet, to the East right-of-way line of a levee and the Point of Beginning; thence along the East right-of-way line of said levee North 15°59'55" East, 170.93 feet; thence continuing along said East right-of-way line of said levee North 05°39'55" East, 145.77 feet; thence continuing along said East right-of-way line North 22°30'10" West, 14.30 feet, to a point on a curve with a radius of 1,374.40 feet and a delta angle of 14°42'03"; thence along said curve 227.81 feet having a chord bearing of North 67°50'14" East, 227.55 feet; thence North 63°05'39" East 312.82 feet; thence South 88°35'46" East, 274.12 feet; thence North 63°05'39" East, 99.85 feet, to the Westerly right-of-way line of 41st Street; thence along said Westerly right-of-way line South 26°54'10" East, 168.00 feet; thence South 63°06'10" West, 354.25 feet; thence South 14°21'29" East, 374.13 feet; thence South 80°38'31" West, 544.58 feet; thence South 83°38'31" West, 91.57 feet; thence North 27°07'54" West, 214.35 feet, to a point on a curve having a radius of 1,672.40 feet and a delta angle of 14°42'03"; thence along said curve 36.47 feet having a chord bearing of South 77°19'54" West, 36.47 feet, to the East right-of-way line of said levee, and the Point of Beginning.

PARCEL 2:

That part of the Northwest Quarter of the Northwest Quarter (NW¼ NW¼) of Section 33, Township 75 North, Range 44 West of the 5th P.M., in the City of Council Bluffs, in Pottawattamie County, Iowa, more particularly described as follows:

Commencing at the Southwest corner of said Northwest Quarter; thence North 02°31'20" West (assumed bearing), 291.04 feet, on the West line of said Northwest Quarter; thence North 77°48'31" East, 106.13 feet; thence Northeasterly, on a non-tangent 1672.40 foot radius curve to the left, chord bearing North 77°08'01" East, chord distance 38.13 feet, an arc distance of 38.13 feet; thence South 27°07'54" East, 214.35 feet, on a non-radial line; thence North 83°38'31" East, 91.57 feet; thence North 80°38'31" East, 544.58 feet, to the Point of Beginning; thence North 14°21'29" West, 374.13 feet; thence North 63°06'10" East, 354.25 feet, to the Westerly line of 41st Street; thence South 26°54'10" East, 269.50 feet, on the Southerly extension of the Westerly line of 41st Street; thence South 39°26'12" West, 298.37 feet; thence South 71°32'22" West, 164.00 feet, to the Point of Beginning.

All together with non-exclusive easement rights appurtenant thereto as established by Access Easement dated September 27, 2006 and recorded October 18, 2006, in Book 107 at Page 6575, as amended by First Amendment To Access Easement dated December 11, 2008 and recorded December 12, 2008, in Book 2008 at Page 17021, both of the Records of Pottawattamie County, Iowa;

And, together with rights appurtenant thereto as established by Easement Agreement dated December 11, 2008 and recorded December 12, 2008, in Book 2008 at Page 17022 of the Records of Pottawattamie County, Iowa.

Exhibit "B"

The land referred to is situated in the State of Iowa, County of Pottawattamie and is described as follows:

PARCEL 1:

LOTS 1 & 2, DODGE PARK SUBDIVISION TO THE CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA

PARCEL 2:

A PARCEL OF LAND IN THE SOUTH 41ST STREET R-O-W, LOCATED IN A PORTION OF GOVERNMENT LOT 1 IN THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 75 NORTH, RANGE 44 WEST OF THE 5TH PRINCIPAL MERIDIAN, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 1 IN THE DODGE PARK SUBDIVISION, WHICH IS ALSO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SOUTH 41ST STREET;

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE, SOUTH 24 DEGREES 17 MINUTES 58 SECONDS EAST, 198.93 FEET;

THENCE SOUTH 65 DEGREES 46 MINUTES 10 SECONDS WEST, 79.94 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF SAID SOUTH 41ST STREET;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE, NORTH 24 DEGREES 20 MINUTES 58 SECONDS WEST, 165.63 FEET;

THENCE NORTH 43 DEGREES 11 MINUTES 05 SECONDS EAST, 86.70 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID SOUTH 41ST STREET AND THE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 0.335 ACRES. MORE OR LESS, AND IS ENTIRELY WITHIN THE RIGHT-OF-WAY FOR SOUTH 41ST STREET.

CONSENT TO
RECREATIONAL FACILITIES JOINT SHARING AGREEMENT

For valuable consideration, Deutsche Bank Trust Company Americas, as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2013-K26 (“Lender”), as owner and holder of the promissory note evidencing the debt secured by the Multifamily Mortgage, Assignment of Rents and Security Agreement executed by Council Bluffs Apartments, L.L.C., an Iowa limited liability company, for the benefit of NorthMarq Capital, LLC, a Minnesota limited liability company dated September 18, 2012, recorded September 18, 2012 in the Official Records of Pottawattamie County, State of Iowa in Book 2012 at Page 13982, as assigned to Federal Home Loan Mortgage Corporation, by Assignment of Security Instrument dated September 18, 2012, recorded September 18, 2012 in the Official Records of Pottawattamie County, State of Iowa in Book 2012 at Page 13983, and as further assigned to Lender by an Assignment of Multifamily Mortgage, Assignment of Rents and Security Agreement dated May 1, 2013 and recorded May 9, 2013 in the Official Records of Pottawattamie County, State of Iowa in Book 2013 at Page 07166, hereby consents to the attached Recreational Facilities Joint Sharing Agreement.

[The remainder of this page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, these presents have been executed under the seal of said corporation, pursuant to due authority, this 13th day of December, 2017.

Deutsche Bank Trust Company Americas, as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2013-K26

By: Wells Fargo Bank, National Association, as Master Servicer

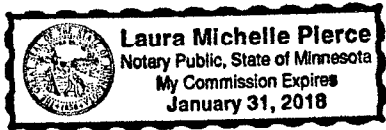
By: NorthMarq Capital, LLC, a Minnesota limited liability company,, as Sub-Servicer

By: *Albert Libke*
Name: Albert Libke
Title: Senior Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On December 13th, 2017, before me, the undersigned, a Notary Public in and for the State of Minnesota, duly commissioned and sworn, personally appeared Albert Libke, to me known to be the Senior Vice President of NorthMarq Capital, LLC, a Minnesota limited liability company, Sub-Servicer to Wells Fargo Bank, National Association, Master Servicer to Deutsche Bank Trust Company Americas, as Trustee for the Registered Holders of Wells Fargo Commercial Mortgage Securities, Inc., Multifamily Mortgage Pass-Through Certificates, Series 2013-K26 and acknowledged the foregoing instrument to be the free and voluntary act and deed of said trustee, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.



Laura Michelle Pierce
Notary Public in and for Hennepin County.
My Commission Expires: 1-31-2018