

2018-02299

RECORDER MARK BRANDENBURG

POTTAWATTAMIE COUNTY, IA

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RECORDING FEE	45.00
AUDITOR FEE	5.00
RMA FEE	1.00
ECM FEE	1.00

Prepared by, and after recording
return to:
Moss & Barnett (KYA)
A Professional Association
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402

**AMENDMENT TO SECURITY INSTRUMENT AND
REAFFIRMATION OF LOAN DOCUMENTS**

FHLMC Loan No. 708063691

**AMENDMENT TO SECURITY INSTRUMENT AND
REAFFIRMATION OF LOAN DOCUMENTS**

THIS AMENDMENT TO SECURITY INSTRUMENT AND REAFFIRMATION OF LOAN DOCUMENTS (this "Agreement") is made effective as of the 19th day of December, 2017, by and among Council Bluffs Apartments, L.L.C., an Iowa limited liability company, whose address is c/o Broadmoor Development Co., Inc., 809 N. 96th Street, Omaha, NE 68114 ("Borrower") and 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, whose address is c/o NorthMarq Capital, LLC, a limited liability company organized and existing under the laws of Minnesota, whose address is 3500 American Boulevard West, Suite 500, Bloomington, Minnesota 55431 ("Noteholder").

RECITALS:

- A. Borrower obtained a mortgage loan (the "Loan") from NorthMarq Capital, LLC, a Minnesota limited liability company ("Original Lender"), which loan is secured by certain real property and improvements located on the real property (the "Property"), located in Pottawattamie County, State of Iowa .
- B. Borrower executed a Multifamily Note evidencing the Loan, dated as of September 18, 2012 in the original principal amount of \$7,960,000.00, payable to Original Lender (the "Note").
- C. To secure repayment of the Loan, Borrower executed and delivered to Original Lender, among other documents, a Multifamily Mortgage, Assignment of Rents and Security Agreement dated as of September 18, 2012 which was recorded on September 18, 2012 in the Official Records of Pottawattamie County, State of Iowa in Book 2012 at Page 13982 (the "Security Instrument").
- D. The Note, Security Instrument and any other document executed by Borrower in connection with the Loan are referred to collectively in this Agreement as the "Loan Documents".
- E. Original Lender endorsed the Note to the order of Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States ("Freddie Mac"); and by an Assignment of Security Instrument dated as of September 18, 2012 and recorded on September 18, 2012 in the Official Records of Pottawattamie County, State of Iowa in Book 2012 at Page 13983 sold, assigned and transferred all right, title and interest of Original Lender in and to the Security Instrument and the Loan Documents to Freddie Mac.
- F. Freddie Mac endorsed the Note to the order of the Noteholder and sold, assigned and transferred all right, title and interest of Freddie Mac in and to the Security Instrument and the Loan Documents to the Noteholder by assignment dated May 1,

2013, and recorded on May 9, 2013, in the Official Records of Pottawattamie County, State of Iowa in Book 2013 at Page 07166. Noteholder is now the owner and holder of the Loan.

NOW, THEREFORE, in consideration of these premises, the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Exhibit A of the Security Instrument is deleted and replaced with the Exhibit A attached as Exhibit 1 to this Agreement.
2. Borrower agrees that the Loan Documents are and will be and remain in full force and effect, enforceable against Borrower in accordance with their terms, except as modified by this Agreement. The remainder of the Mortgaged Property will remain subject to the lien, charge and encumbrance of the Security Instrument. Nothing contained in this Agreement or done pursuant to this Agreement will affect or be construed to affect the lien, charge, and encumbrance of the Security Instrument or the priority of the Security Instrument over other liens, charges and encumbrances. Nothing contained in this Agreement or done pursuant to this Agreement will release or be construed to release or affect the liability of any party or parties who may now or after the date of this Agreement be liable under or on account of the Note and the Security Instrument, except as expressly provided in this Agreement. Borrower is now and will continue to be liable for the payment of all sums and the performance of every obligation required under the Loan Documents to the extent set forth in the Loan Documents.
3. Representations and Agreements.
 - a) Borrower represents to Noteholder that, except as modified by this Agreement, all of the representations and warranties made by Borrower in the Loan Documents are true as of the date on which Borrower executes this Agreement.
 - b) Borrower represents that, to the best of its knowledge, it is not aware of an Event of Default (or event which, with the giving of notice or the passage of time or both, would be an Event of Default) that has occurred or is continuing under the Security Instrument.
 - c) Borrower represents that it has no claims, offsets, defenses, or counterclaims of any kind to its performance under, or Noteholder's enforcement of, the Note and the other Loan Documents; and to the extent any such counterclaims, setoffs, defenses or other causes of action may exist, whether known or unknown, Borrower waives all such items. Borrower acknowledges that all of Noteholder's actions in connection with the Loan have been in compliance with the terms of the applicable Loan Documents, and Borrower acknowledges and agrees that Noteholder has not breached or failed to perform any duty or obligation that Noteholder may owe Borrower.

- d) There are no suits or actions threatened or pending against Borrower which affect the enforcement or validity of the Note, the Security Instrument and/or the Loan Documents.
4. Continuing Obligations. Borrower will execute, acknowledge and deliver such other documents as Noteholder or Servicer may require to document the transaction described in this Agreement and to more fully effectuate the provisions of this Agreement including any documents deemed reasonably necessary or appropriate by Noteholder or Servicer to continue the proper perfection and priority of Noteholder's lien. The failure of Borrower to comply with the additional obligations contained in this Section, which failure continues beyond 30 days after written notice from Noteholder (or the Servicer), will constitute an Event of Default under the Security Instrument, and upon any such Event of Default the Noteholder will be entitled to exercise all remedies available to it under the terms of the Loan Documents.
5. Miscellaneous.
- a) This Agreement will be binding upon and will inure to the benefit of the parties to the Agreement and their respective heirs, successors and permitted assigns.
- b) Except as expressly modified by this Agreement, the Note, the Security Instrument and all other Loan Documents will be unchanged and remain in full force and effect, and are hereby expressly approved, ratified and confirmed. No provision of this Agreement that is held to be inoperative, unenforceable or invalid will affect the remaining provisions, and to this end all provisions of this Agreement are declared to be severable.
- c) This Agreement may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.
- d) This Agreement will be construed in accordance with the laws of the jurisdiction in which the Property is located.
- e) This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same document.
- f) All notices given pursuant to the Agreement must be in writing and will be effectively given if personally delivered or, if mailed, postage prepaid, certified or registered mail, return receipt requested, to the addresses of the parties set forth below or to such other address as any party subsequently may designate in writing.
- g) Any term used in this Agreement and not defined shall have the meaning given to that term in the Security Instrument.

6. **ATTACHED EXHIBITS.** The following Exhibits are attached to this Instrument:

Exhibit 1 Legal Description of Land

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

EXHIBIT 1

Legal Description

PARCEL 1:

A parcel of land located in part of the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) 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 (NW $\frac{1}{4}$ NW $\frac{1}{4}$) 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.

And, together with rights appurtenant thereto as established by Recreational Facilities Joint Sharing Agreement dated December 13, 2017 and recorded December 20, at Instrument No. 2017-16897, of the Records of Pottawattamie County, Iowa.

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