

R FEE \$ 50<sup>00</sup> RMA \$ 1<sup>00</sup>  
A FEE \$ \_\_\_\_\_ ECOM \$ 1<sup>00</sup>  
T TAX \$ \_\_\_\_\_



8 1 6 8 0 0 9

Tx: 4139278

**ORIGINAL**  
2016-11-16

RECORDER MARK BRANDENBURG  
POTTAWATTAMIE COUNTY, IA  
FILE TIME: 12/22/2016 3:40:29 PM  
REC: 50.00AUD: T TAX:  
RMA: 1.00ECM: 1.00

---

**Type of Document:** MINIMUM ASSESMENT AGREEMENT BETWEEN THE  
CITY OF COUNCIL BLUFFS AND RIVER'S EDGE  
APARTMENTS, L.L.C.

**Return Document to:** Brenda Carrico  
City of Council Bluffs  
403 Willow Avenue  
Council Bluffs, IA 51503

**Preparer Information:** Nathan J. Overberg  
Ahlers & Cooney, P.C.  
100 Court Ave., Ste. #600  
Des Moines, IA 50309  
(515) 243-7611

**Taxpayer Information:** N/A

GRANTORS: N/A

GRANTEES: N/A

**LEGAL DESCRIPTION:** See first page of Minimum Assessment Agreement.

01305400-1\10342-129

**EXHIBIT G**

**MINIMUM ASSESSMENT AGREEMENT**

THIS MINIMUM ASSESSMENT AGREEMENT ("Minimum Assessment Agreement" or "Assessment Agreement"), is dated as of December 20, 2016, by and between the City of Council Bluffs, Iowa (the "City"), a municipal corporation established pursuant to the Code of Iowa and acting under the authorization of Chapter 403 of the Code of Iowa, 2015, as amended (the "Urban Renewal Act"), and Chapter 15A, and River's Edge Apartments, L.L.C., an Iowa limited liability company having an office for the transaction of business at 809 North 96 Street, Omaha, NE 68114 ("Developer").

**WITNESSETH:**

WHEREAS, the City and Developer have entered into an Agreement for Private Development dated as of December 20, 2016 ("Development Agreement" or "Agreement") regarding certain real property located in the City which is legally described as follows (each a "Parcel" and collectively the "Development Property"):

Block 6 of River's Edge Subdivision further described as:

Parcel Number 7544 28 356 006 (Pottawattamie County)

AND

Lot 1, Block 2 of River's Edge Subdivision Replat Two further described as:

Parcel Number 7544 28 358 001 (Pottawattamie County)

AND

Lot 1, Block 3 of River's Edge Subdivision further described as:

Parcel Number 7544 28 358 002 (Pottawattamie County)

WHEREAS, it is contemplated that Developer will undertake the construction of Minimum Improvements (as defined in the Development Agreement) on the Development Property, as provided in the Development Agreement; and

WHEREAS, pursuant to Section 403.6(19) of the Code of Iowa, as amended, the City and Developer desire to establish a minimum actual value for the Minimum Improvements to be constructed on the Development Property by Developer pursuant to the Development Agreement; and

WHEREAS, the City and the Assessor for the County have reviewed the

preliminary plans and specifications for the Minimum Improvements that are contemplated to be constructed.

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

1. Upon completion of construction of the above-referenced Minimum Improvements, but no later than January 1, 2019 for the Lot 1 of Block 2 Parcel; no later than January 1, 2020 for the Block 6 Parcel; and no later than January 1, 2024 for the Lot 1 of Block 3 Parcel, the minimum actual value which shall be fixed for assessment purposes for each Parcel and the Minimum Improvements constructed thereon shall be not less than:

- Sixteen Million Nine Hundred Thousand Five Hundred Forty-Four Dollars (\$16,900,544) for Block 6;
- Three Million Two Hundred Seventy Two Thousand Five Hundred Ninety Two Dollars (\$3,272,592) for Lot 1 of Block 2;
- Three Million Three Hundred Twenty Six Thousand Nine Hundred Seventy-One Dollars (\$3,326,971) for Lot 1 of Block 3; and
- 

(as to each Parcel, the "Minimum Actual Value"), for a total assessed value for the Development Property of Twenty Three Million Five Hundred Thousand Once Hundred Seven Dollars \$23,500,107).

The Minimum Actual Value shall continue to be effective for twenty (20) years for each Parcel ("Assessment Termination Date"). The Minimum Actual Value shall be maintained during such period regardless of: (a) any failure to complete the Minimum Improvements; (b) destruction of all or any portion of the Minimum Improvements; (c) diminution in value of the Development Property or the Minimum Improvements; or (d) any other circumstance, whether known or unknown and whether now existing or hereafter occurring. Notwithstanding the foregoing, Developer may terminate this Minimum Assessment Agreement for a Parcel prior to the Assessment Termination Date for that Parcel if, and only if: (a) the Parcel is condemned by a local, state or federal government through an eminent domain process; or (b) the Development Agreement and Minimum Assessment Agreement are terminated by the Developer under Paragraph 8.4(c) of the Development Agreement. In addition, should the Development Agreement be terminated in its entirety by the City due to an uncured Event of Default by Developer such that no further Economic Development Grants will be paid to the Developer, then this Minimum Assessment Agreement shall terminate as of December 31 of the year in which the Development Agreement is finally and conclusively terminated.

2. Developer shall pay or cause to be paid when due all real property taxes and assessments payable with respect to all and any parts of the Development Property and the Minimum Improvements pursuant to the provisions of this Minimum Assessment Agreement and the Development Agreement. Such tax payments shall be made without regard to any loss, complete or partial, to the Development Property or the Minimum Improvements, any interruption in, or discontinuance of, the use, occupancy, ownership or operation of the Development Property or the Minimum Improvements by Developer, or any other matter or thing which for any reason interferes with, prevents or renders burdensome the use or occupancy of the Development Property or the Minimum Improvements.

3. Developer agrees that, prior to the Assessment Termination Date for each Parcel, it will not:

a. seek administrative review or judicial review of the applicability or constitutionality of any Iowa tax statute relating to the taxation of property constituting a Parcel or the Minimum Improvements determined by any tax official to be applicable to the Parcel, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; or

b. seek any tax deferral or abatement, either presently or prospectively authorized under Iowa Code Chapter 403 or 404, or any other local or State law, of the taxation of real property, including improvements and fixtures thereon, contained in the Development Property or the Minimum Improvements between the date of execution of this Agreement and the Assessment Termination Date; or

c. request the Assessor to reduce the Minimum Actual Value; or

d. appeal to the board of review of the County, State, District Court or to the Director of Revenue of the State to reduce the Minimum Actual Value; or

e. cause a reduction in the actual value or the Minimum Actual Value through any other proceedings.

4. This Minimum Assessment Agreement shall be promptly recorded by the City with the Recorder of Pottawattamie County, Iowa. Such filing shall constitute notice to any subsequent purchaser or encumbrancer of the Development Property (or part thereof), whether voluntary or involuntary, and this Minimum Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent purchaser or encumbrancer, including the holder of any mortgage. The City shall pay all costs of recording.

5. Neither the preambles nor provisions of this Minimum Assessment Agreement are intended to, or shall be construed as, modifying the terms of the Development Agreement.

6. This Minimum Assessment Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

7. Nothing herein shall be deemed to waive the rights of Developer under Iowa Code Section 403.6(19) to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Value established herein. In no event, however, shall Developer seek to reduce the actual value to an amount below the Minimum Actual Value established herein during the term of this Agreement. This Minimum Assessment Agreement may be amended or modified and any of its terms, covenants, representations, warranties or conditions waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance.

8. If any term, condition or provision of this Minimum Assessment Agreement is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder hereof, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained herein.

9. The Minimum Actual Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate as to each Parcel on the Termination Date set forth in Section 1 above.

10. All lienholders shall have signed consents to this Assessment Agreement, which consents are attached hereto and made a part hereof.

[Remainder of this page intentionally left blank. Signature pages to follow.]

CITY OF COUNCIL BLUFFS, IOWA

By: Matt Walsh  
Matt Walsh, Mayor

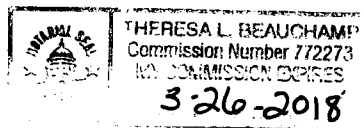
ATTEST:

By: Jodi Worden  
Marcy Worden, City Clerk  
Jodi Worden, Deputy

STATE OF IOWA )  
 ) SS  
COUNTY OF POTTAWATTAMIE )

On this 20 day of December, 2016, before me, a Notary Public in and for said State, personally appeared Matt Walsh and ~~Marcy Worden~~, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Council Bluffs, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Theresa L. Beauchamp  
Notary Public in and for the State of Iowa



**RIVER'S EDGE APARTMENTS, L.L.C.**

By: Howard M. Kooper  
Howard Kooper, Manager

STATE OF Nebraska )  
COUNTY OF Douglas ) SS

On this 7 day of November, 2016, before me the undersigned, a Notary Public in and for said State, personally appeared Howard Kooper, to me personally known, who, being by me duly sworn, did say that he is Manager of River's Edge Apartments, L.L.C., and that said instrument was signed on behalf of said limited liability company; and that the said Mr. Kooper as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by him voluntarily executed.

Joe H. Paulak  
Notary Public in and for the State of Nebraska

LIENHOLDER'S CONSENT, IF ANY

In consideration of one dollar and other valuable consideration, the receipt of which is hereby acknowledged, and notwithstanding anything in any loan or security agreement to the contrary, the undersigned ratifies, approves, consents to and confirms the Minimum Assessment Agreement entered into between the parties, and agrees to be bound by its terms. This provision shall be binding on the parties and their respective successors and assigns.

\_\_\_\_\_ [NAME OF LIENHOLDER]

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me the undersigned, a Notary Public in and for said County, in said State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that they are the \_\_\_\_\_ and \_\_\_\_\_, respectively, of \_\_\_\_\_ and that said instrument was signed on behalf of said company, and that the said \_\_\_\_\_, and \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said domestic company, by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_

[Add additional pages for each Lienholder]



## CERTIFICATION OF ASSESSOR

The undersigned, having reviewed the plans and specifications for the Minimum Improvements to be constructed, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certifies as follows: The undersigned Assessor, being legally responsible for the assessment of the Development Property described in the foregoing Minimum Assessment Agreement, certifies that upon completion of the Minimum Improvements on each Parcel, but no later than January 1, 2019 for the Lot 1 of Block 2 Parcel, and no later than January 1, 2020 for the Block 6 Parcel, and no later than January 1, 2024 for the Lot 1 of Block 3 Parcel, the actual value assigned to the Parcel and the Minimum Improvements thereon shall not be less than Sixteen Million Nine Hundred Thousand Five Hundred Forty-Four Dollars (\$16,900,544) for Block 6; Three Million Two Hundred Seventy Two Thousand Five Hundred Ninety Two Dollars (\$3,272,592) for Lot 1 of Block 2; and Three Million Three Hundred Twenty Six Thousand Nine Hundred Seventy-One Dollars (\$3,326,971) for Lot 1 of Block 3; for a total assessed value for the Development Property of Twenty Three Million Five Hundred Thousand One Hundred Seven Dollars (\$23,500,107), all until the Assessment Termination Date for each Parcel.

William Kealy  
Assessor for the County of Pottawattamie, Iowa.

12-22-16  
Date

STATE OF IOWA )  
COUNTY OF POTTAWATTAMIE ) SS



Subscribed and sworn to before me by William Kealy, Assessor for the County of Pottawattamie, Iowa.

Erin L. Duchman  
Notary Public in and for the State of Iowa

Consistent with Iowa Code §403.6(19)(b), filed with this assessor certification is a copy of subsection 19 as follows:

19. a. A municipality, upon entering into a development or redevelopment agreement pursuant to section 403.8, subsection 1, or as otherwise permitted in this chapter, may enter into a written assessment agreement with the developer of taxable property in the urban renewal area which establishes a minimum actual value of the land and completed improvements to be made on the land until a specified termination date which shall not be later than the date after which the tax increment will no longer be remitted to the municipality pursuant to section 403.19, subsection 2. The assessment agreement shall be presented to the appropriate assessor. The assessor shall review the plans and specifications for the improvements to be made and if the minimum actual value contained in the assessment agreement appears to be reasonable, the assessor shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made on it, certifies that the actual value assigned to that land and improvements upon completion shall not be less than \$ .....

b. This assessment agreement with the certification of the assessor and a copy of this subsection shall be filed in the office of the county recorder of the county where the property is located. Upon completion of the improvements, the assessor shall value the property as required by law, except that the actual value shall not be less than the minimum actual value contained in the assessment agreement. This subsection does not prohibit the assessor from assigning a higher actual value to the property or prohibit the owner from seeking administrative or legal remedies to reduce the actual value assigned except that the actual value shall not be reduced below the minimum actual value contained in the assessment agreement. An assessor, county auditor, board of review, director of revenue, or court of this state shall not reduce or order the reduction of the actual value below the minimum actual value in the agreement during the term of the agreement regardless of the actual value which may result from the incomplete construction of improvements, destruction or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording of an assessment agreement complying with this subsection constitutes notice of the assessment agreement to a subsequent purchaser or encumbrancer of the land or any part of it, whether voluntary or involuntary, and is binding upon a subsequent purchaser or encumbrancer.