RECORDING REQUESTED BY:

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WHEN RECORDED MAIL THIS INSTRUMENT TO:

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT AND ASSUMPTION AND BIFURCATION AND SUBORDINATION OF AGREEMENT FOR PRIVATE DEVELOPMENT

This ASSIGNMENT AND ASSUMPTION AND BIFURCATION AND SUBORDINATION OF AGREEMENT FOR PRIVATE DEVELOPMENT (this "Agreement"), is made as of this ___ day of _____, 2021, by and among the City of Council Bluffs, Iowa ("City"), River's Edge Apartments, L.L.C., an Iowa limited liability company ("Assignor"), River's Edge Apartments I, L.L.C., an Iowa limited liability company ("River's Edge I") and River's Edge Apartments II, L.L.C., an Iowa limited liability company ("River's Edge II") and acknowledged, agreed and consent to by NorthMarq Capital, LLC, a Minnesota limited liability company, its successors and assigns ("Lender").

WHEREAS, the City and Assignor, did on or about the 20th day of December, 2016, make, execute and deliver each to the other, an Agreement for Private Development (the "TIF Agreement"), a Memorandum of which was recorded December 22, 2016, as Instrument No. 2016-17746 of the Records of Pottawattamie County, Iowa, wherein and whereby Assignor agreed, in accordance with the terms of the Agreement, to develop and maintain certain real property located within the City and as more particularly described as follows:

> Lot 1, Block 2 of River's Edge Subdivision Replat Two in the City of Council Bluffs, Pottawattamie County, Iowa, further described as Parcel Number 7544 28 358 001 ("Parcel 1");
>
> Block 6 of River's Edge Subdivision in the City of Council Bluffs, Pottawattamie County, Iowa, further described as Parcel Number 7544 28 356 006 ("Parcel 2");

and

Lot 1, Block 3 of River's Edge Subdivision Replat Two, in the City of Council Bluffs, Pottawattamie County, Iowa, further described as Parcel Number 7544 28 358 002 ("Parcel 3")

WHEREAS, contemporaneously with the execution and delivery hereof Assignor is transferring Parcels 1 and 2 to River's Edge I and in connection with such transfer, Assignor has agreed to partially assign the TIF Agreement affecting the Parcels 1 and 2 to River's Edge I and River's Edge I has agreed to assume such TIF Agreement to the extent the Agreement affects Parcels 1 and 2;

WHEREAS, contemporaneously with the execution and delivery hereof, the City will execute and deliver to Assignor certain Certificates of Completions with respect to Parcels 1 and 2 wherein and whereby the City will certify that all covenants and conditions of the TIF Agreement with respect to the obligations of Assignor and its successors and assigns, to construct the Minimum Improvements (as that term is defined in the TIF Agreement) on Parcel 1 and Parcel 2 have been completed and performed by Assignor and are thereby released absolutely and forever terminated;

WHEREAS, contemporaneously with the execution and delivery hereof Assignor is transferring Parcel 3 to River's Edge II and in connection with such transfer, Assignor has agreed to partially assign the TIF Agreement affecting Parcel 3 to River's Edge II and River's Edge II has agreed to assume such TIF Agreement to the extent the TIF Agreement affects Parcel 3; and

WHEREAS, simultaneously herewith River's Edge I is refinancing a loan secured by Parcel 1 and Parcel 2.

WHEREAS, in connection with the refinancing of the loan secured by Parcel 1 and Parcel 2 by River's Edge I, Lender is making a loan to River's Edge I in the original principal amount of $_____ ("Loan") pursuant to a Multifamily Loan and Security Agreement between Lender and River's Edge I (as supplemented or amended from time to time, the "Loan Agreement") and evidenced by a Multifamily Note by River's Edge I to Lender (as supplemented or amended from time to time, the "Note"). The Loan is to be secured by a Multifamily Mortgage, Assignment of Rents and Security Agreement that will be recorded among the official records of Pottawattamie County, Iowa (as supplemented or amended from time to time, the "Mortgage") (the Loan Agreement, the Note and the Mortgage, together with all other documents executed with respect to the Loan, are hereinafter collectively referred to as the "Loan Documents").

WHERAS, as a condition to making the Loan, Lender requires that the Loan Documents be a lien on Parcel 1 and Parcel 2 superior to the lien of the TIF Agreement and that the rights of Lender under the Loan Documents be superior to the rights of the City and River's Edge I under

the TIF Agreement. Lender will not make the Loan unless the City and River's Edge I agree to subordinate their rights and obligations under the TIF Agreement.

WHEREAS, River's Edge I and City hereby agree to subordinate the TIF Agreement on and subject to the terms, conditions and requirements set forth herein.

WHEREAS, the City consents to the partial assignments of the TIF Agreement and the bifurcation of the TIF Agreement as between Parcels 1 and 2 and Parcel 3, as herein provided.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the sufficiency and receipt whereof hereby is acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. **Partial Assignments**.

(a) Assignor hereby conveys, assigns, transfers and sets over unto River's Edge I all of its right, title and interest in, under and to the TIF Agreement affecting the Parcels 1 and 2, together with all of the right, title and interest of the Assignor, as Developer, in, under and to the Agreement in respect of Parcels 1 and 2 created thereby. From and after the date hereof, any Economic Development Grants (as that term is defined in the Agreement) due or payable by the City under the TIF Agreement with respect to Parcels 1 and 2 shall be paid to River's Edge I.

b) Assignor hereby conveys, assigns, transfers and sets over unto River's Edge II all of its right, title and interest in, under and to the TIF Agreement affecting the Parcel 3, together with all of the right, title and interest of the Assignor, as Developer, in, under and to the Agreement in respect of Parcel 3 created thereby. From and after the date hereof, any Economic Development Grants due or payable by the City under the TIF Agreement with respect to Parcel 3 shall be paid to River's Edge II.

2. **Partial Assumptions**.

(a) River's Edge I hereby accepts the partial conveyance, transfer and assignment of the TIF Agreement and assumes, from and after the date hereof, the obligations of Assignor arising and accruing on or after the date of this Agreement with respect to Parcels 1 and 2.

(b) River's Edge II hereby accepts the partial conveyance, transfer and assignment of the Agreement and assumes, from and after the date hereof, the obligations of Assignor arising and accruing on or after the date of this Agreement with respect to Parcel 3.

3. **Indemnification by Assignor**. Assignor hereby indemnifies and agrees to hold harmless River's Edge I and River's Edge II, respectively, from and against any and all liabilities,

claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, attorney's fees and court costs) which River's Edge I or River's Edge II may respectively incur, sustain or suffer, or which may be asserted or charged against River's Edge I or River's Edge II, arising out of, pertaining to, or in any way connected with Assignor's obligations, duties and liabilities under the TIF Agreement first arising or accruing prior to the date hereof.

4. **Consent**. The City hereby consents to the partial assignments of the TIF Agreement by Assignor to River's Edge I and River's Edge II, respectively, as herein provided.

5. **Bifurcation of the Agreement**. The parties hereby acknowledge and agree to bifurcate and divide the TIF Agreement, and the rights and obligations thereunder, with respect to the Parcels 1 and 2 and with respect to Parcel 3. As of the date hereof:

   (a) River's Edge I shall be solely and exclusively responsible with respect to any remaining obligations of the Developer under the TIF Agreement with respect to Parcels 1 and 2, and River's Edge I shall be solely and exclusively entitled to enforce to the terms of the TIF Agreement with respect to Parcels 1 and 2;

   (b) River's Edge II shall be solely and exclusively responsible with respect to any remaining obligations of the Developer under the TIF Agreement with respect to Parcel 3 and River's Edge II shall be solely and exclusively entitled to enforce to the terms of the TIF Agreement with respect to Parcel 3;

   (c) the City hereby releases River's Edge I with respect to any obligations under the TIF Agreement with respect to Parcel 3 and shall not to seek to enforce the terms of the TIF Agreement with respect to Parcel 3 against River's Edge I;

   (d) the City hereby releases River's Edge II with respect to any obligations under the TIF Agreement with respect to Parcels 1 and 2 and shall not to seek to enforce the terms of the TIF Agreement with respect to Parcels 1 and 2 against River's Edge II;

   (e) no Event of Default (as that term is defined in the TIF Agreement) with respect to Parcel 3 shall constitute an Event of Default with respect to Parcels 1 and 2 and, similarly, no Event of Default with respect to Parcel 3 shall constitute an event of default with respect to Parcels 1 and 2.

For the avoidance of doubt, the parties acknowledge and agree that, notwithstanding anything to the contrary in the TIF Agreement, from and after the date hereof the obligations of the River's Edge I and Parcels 1 and 2, and the obligations of the River's Edge II and Parcel 3, under the TIF Agreement shall be several and separate and distinct from each other, and shall be expressly limited to the obligations of each such party. In furtherance of the foregoing, each of the parties acknowledges and agrees that the liability of River's Edge I and River's Edge II, respectively,

for the payment and performance of their respective covenants, representations and warranties set forth in the TIF Agreement shall be several from but not joint with the obligations of each other and each of River's Edge I and River's Edge II, respectively, is exclusively liable for its own obligations under the TIF Agreement.

6. **Estoppel**. The City hereby certifies and confirms as follows:

(a) The TIF Agreement has not been modified, changed, altered, supplemented or amended in any respect, nor have any provisions thereof been waived.

(b) The TIF Agreement is valid and in full force and effect on the date hereof. The TIF Agreement represents the entire agreement between the City and Assignor with respect to Parcels 1 and 2 and Parcel 3.

(c) No event has occurred and no condition exists that constitutes, or that with the giving of notice or the lapse of time or both, would constitute, a default by the City or Assignor under the TIF Agreement. Neither the City nor the Assignor have received any notices of defaults and are not aware of any default notices having been issue. The City has no existing defenses or offsets against the enforcement of the TIF Agreement.

(d) Any and all notice and consent requirements under the TIF Agreement for purposes of assigning, bifurcating and subordinating the TIF Agreement shall be deemed satisfied.

(e) There are no outstanding obligations with the TIF Agreement with respect to Parcel 1 and Parcel 2 including, without limitation, payment of any and all fees related to the TIF Agreement have been paid with respect to Parcel 1 and Parcel 2.

(f) Other than a loan in favor of First National Bank of Omaha (which is being paid off in connection with Loan), the TIF Agreement has not been pledged as collateral for any other obligation by the Assignor or the City.

(g) Ad Valorem Property Taxes for 2020 are $_____ for Parcel 1 and are due and payable _____. Ad Valorem Property Taxes for 2020 are $_____ for Parcel 2 and are due and payable _____. These taxes are not reduced or abated pursuant to the TIF Agreement and are the full assessed property taxes due for Parcel 1 and Parcel 2 respectively.

(h) There is no subordinate indebtedness or other obligations due and owing by the Assignor or as required by the TIF Agreement with respect to Parcel 1 and Parcel 2.

7. **No Right of Reversion.** All covenants and conditions of the TIF Agreement with respect to the obligations of Assignor and its successors and assigns, to construct the Minimum

Improvements on Parcel 1 and Parcel 2 have been completed and performed by Assignor and are hereby released absolutely and forever terminated, and that any right of reversion is terminated for Parcel 1 and Parcel 2 as further evidenced by the Certificate of Completions for Parcel 1 and Parcel 2 which are to be recorded simultaneously with this Agreement.

8. **Subordination.** The City hereby covenants and agrees that the TIF Agreement is and will at all times continue to be, subordinate, subject and inferior to the rights of Lender under the Loan Documents and that the liens, rights (including approval and consent rights), remedies, payment interests, priority interests, and security interests, if any, granted to City pursuant to or in connection with the TIF Agreement with respect to Parcel 1 and Parcel 2 are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights (including approval and consent rights), remedies, payment, priority and security interests granted to Lender pursuant to the Loan Documents and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, the City may exercise the remedies of specific performance or injunctive relief.

9. **Financing, Encumbrance and Transfer Approval.** The City hereby approves the transfer of the Parcel 1 and Parcel 2 to River's Edge I and the financing evidenced by the Mortgage. The City further agrees that any transfer of the Property in connection with foreclosure or deed in lieu thereof will not require City's consent. Further, the City hereby approves the transfer of the Parcel 3 to River's Edge II and the refinancing of Parcel 3.

10. **Lender Notice of Default.** In consideration of the City's agreements contained in this Agreement, Lender agrees that in the event of any default by River's Edge I under the Loan Documents, the City will be entitled to receive a copy of any notice of default given by Lender to River's Edge under the Loan Documents. Neither the giving nor the failure to give a notice to the City pursuant to this Section 10 will affect the validity of any notice given by Lender to River Edge's I.

11. **City Notice of Default.** The City must give Lender a concurrent copy of each material notice (including without limitation each notice of default) given by the City under or with respect to the TIF Agreement, and agrees that Lender, at Lender's sole election, will have the right (but not the obligation) to cure any default by River's Edge I under the TIF Agreement on its and/or River Edge's I's behalf.

12. **City's Rights.** Except as set forth in Sections 8 and 13 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of River's Edge I and/or the City, respectively, under the TIF Agreement; provided that, (A) the TIF Agreement may not be modified, amended, changed or altered without the prior written consent of Lender so long as the Loan is secured by Parcel 1 and Parcel 2 and (B) for so long as the Loan is secured by Parcel 1 and Parcel 2, notwithstanding the terms of the TIF Agreement to the contrary, neither River's Edge I nor the City will, without Lender's prior written consent, exercise or seek any right or remedy under the TIF Agreement or available at law or in equity which will or could result in (i) a transfer of possession of

the Parcel 1 and Parcel 2 or the control, operations or management thereof, (ii) collection or possession of rents or revenues from or with respect to Parcel 1 and Parcel 2 by any party other than River's Edge I or Lender; (iii) appointment of a receiver for Parcel 1 and Parcel 2; (iv) application of insurance or condemnation proceeds other than as approved by Lender pursuant to the Loan Documents; (v) removal or replacement of the existing property manager of Parcel 1 and Parcel 2; or (vi) a material adverse effect on Lender's security for the Loan.

13. **Foreclosure by Lender.** In the event of foreclosure, deed in lieu of foreclosure, or similar disposition of Parcel 1 and Parcel 2 by Lender, no consent will be required from the City and Lender will have no indemnification obligations to the City for any period during which Lender does not own or is not in possession of the Property.

14. **Refinancing.** The City agrees that its agreement to subordinate hereunder will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the indebtedness evidenced by the Loan Documents (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Loan Documents and Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

15. **Miscellaneous Provisions.**

(a) This Agreement represents the entire understanding and agreement between the parties with regard to the matters addressed herein, and will supersede and cancel any prior agreements with regard to such matters.

(b) If there is any conflict or inconsistency between the terms of the TIF Agreement and the terms of this Agreement, then the terms of this Agreement will control.

(c) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement, which will include with regard to the City any permitted successor or assign of the City under or pursuant to the terms of the TIF Agreement and, with regard to Lender, any subsequent holder of the Note. No other party will be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.

(d) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.

(e) Each notice, request, demand, consent, approval or other communication (collectively, "Notices," and singly, a "Notice") which is required or permitted to

be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

If to the Assignor:
River's Edge Apartments, L.L.C.
c/o Broadmoor Development
809 N. 96th Street
Omaha, NE 68114
Attention: Howard M. Kooper
Email: thkoopster@yahoo.com and LKelberg@broadmoor.cc

If to the City:
City of Council Bluffs
209 Pearl Street
Council Bluffs, IA 51503
Attention: Richard Wade, City Attorney
Telephone: (712) 890-5317
Email: rwade@councilbluffs-ia.gov

If to River's Edge I:
River's Edge Apartments I, L.L.C.
c/o Broadmoor Development
809 N. 96th Street
Omaha, NE 68114
Attention: Howard M. Kooper
Email: thkoopster@yahoo.com and LKelberg@broadmoor.cc

If to River's Edge II:
River's Edge Apartments II, L.L.C.
c/o Broadmoor Development
809 N. 96th Street
Omaha, NE 68114
Attention: Howard M. Kooper
Email: thkoopster@yahoo.com and LKelberg@broadmoor.cc

If to Lender:
NorthMarq Capital, LLC
3500 American Boulevard West, Suite 500
Bloomington, MN 55431
Attention: Servicing Dept.
Email: _____

Any party, by Notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section.

(f) Each of the parties will, whenever and as often as they are requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.

(g) This Agreement will be governed by the laws of the State of Iowa.

(h) Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.

(i) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.

(j) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

(k) This Agreement may be assigned at any time by Lender to any subsequent holder of the Note.

(l) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.

(m) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

(Signatures on following pages.)

IN WITNESS WHEREOF, the parties have caused this instrument to be signed as of the date first above written.

ASSIGNOR

River's Edge Apartments, L.L.C.

By: _____
Howard Kooper, Manager

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

On this _____ day of _____, 2021, before me a Notary Public in and for said State, personally appeared Howard Kooper, to me personally known, who being duly sworn, did say that he is the Manager of River's Edge Apartments, L.L.C., an Iowa limited liability company, and that this instrument was signed behalf of said company and acknowledged said instrument to be the free act and deed of said company by it voluntarily executed.

_____
Notary Public

RIVER'S EDGE I

River's Edge Apartments I, L.L.C.

By: BRE Manager, Inc., a Nebraska corporation
Its: Manager

By: _____
Howard Kooper, Secretary

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

On this _____ day of _____, 2021, before me a Notary Public in and for said State, personally appeared Howard Kooper, to me personally known, who being duly sworn, did say that he is the Secretary of BRE Manager, Inc., a Nebraska corporation, the Manager of River's Edge Apartments I, L.L.C., an Iowa limited liability company, and that this instrument was signed behalf of said company and acknowledged said instrument to be the free act and deed of said company by it voluntarily executed.

_____
Notary Public

RIVER'S EDGE II

River's Edge Apartments II, L.L.C.

By: _____
Howard Kooper, Manager

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

On this _____ day of _____, 2021, before me a Notary Public in and for said State, personally appeared Howard Kooper, to me personally known, who being duly sworn, did say that he is the Manager of River's Edge Apartments II, L.L.C., an Iowa limited liability company, and that this instrument was signed behalf of said company and acknowledged said instrument to be the free act and deed of said company by it voluntarily executed.

_____
Notary Public

CITY

CITY OF COUNCIL BLUFFS, IOWA

By: _____
Matt Walsh, Mayor

ATTEST:

By: _____
Jodi Quakenbush, City Clerk

STATE OF IOWA)
) ss
COUNTY OF POTTAWATTAMIE)

On this _____ day of _____, 2021, before me a Notary Public in and for said State, personally appeared Matt Walsh and Jodi Quakenbush, 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.

_____
Notary Public in and for the State of Iowa

LENDER

ACKNOWLEDGED, AGREED AND CONSENTED TO:

NORTHMARQ CAPITAL, LLC
A Minnesota Limited Liability Company

By: _____
Name: Paul W. Cairns
Title: Senior Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On _____, 2021, before me, the undersigned, a Notary Public in and for the State of Minnesota, duly commissioned and sworn, personally appeared Paul W. Cairns, to me known to be the Senior Vice President of NorthMarq Capital, LLC, a Minnesota limited liability company, and acknowledged the foregoing instrument to be the free and voluntary act and deed of said limited liability company, 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.

_____
Notary Public in and for Minnesota

My Commission Expires: _____

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