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Revenue Tax: \$0.00  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2014-00058108

BK 15088 PG 776-797

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SPACE ABOVE THIS LINE FOR RECORDER

Prepared by: Mary Neiderbach, Community Development Dept., NCS Division, 602 Robert D. Ray Drive, Des Moines, IA  
50309, 515-283-4913

Return to: SAME

## HOME AGREEMENT

(HOME Rental Program)

## CITY OF DES MOINES

### HOME INVESTMENT PARTNERSHIPS PROGRAM

AGENCY: CITY OF DES MOINES  
COMMUNITY DEVELOPMENT DEPARTMENT  
NEIGHBORHOOD CONSERVATION SERVICES DIVISION

BORROWER: Ingersoll Square Phase III Associates, L.P.  
ADDRESS: 2005 Ingersoll Avenue  
LOAN #: 13-HM-900-00070  
LOAN CLOSING DATE: December 5 2013  
EFFECTIVE DATE: NA  
(Rescission Period Expired)

HOME INVESTMENT PARTNERSHIPS PROGRAM  
PROJECT AGREEMENT

THIS HOME AGREEMENT (the "AGREEMENT") is entered into by and between the City of Des Moines, Iowa (hereinafter called "CITY") and Ingersoll Square Phase III Associates, L.P.(hereinafter called "BORROWER"), effective the day of execution.

WHEREAS, the City has entered into an Agreement with United States Department of Housing and Urban Development ("HUD") for funding of its HOME Program pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act, and

WHEREAS, this program is consistent with the CITY's Consolidated Plan which was approved by City Council by Roll Call No. 12-1735 on November 5, 2012, and

WHEREAS, the CITY's Home Investment Partnerships Program is designed to provide affordable rental and home ownership housing through acquisition, rehabilitation, and new construction, and

WHEREAS, the BORROWER intends to construct a mixed use development that includes 47 units of housing, three of which will be designated for tenants under 60% of median income; and

WHEREAS, the City of Des Moines is providing the following additional economic incentives:

- An Economic Development Grant to be paid in installments for a term of 10 years commencing after expiration of the 10-year tax abatement, with the installments in each year to be in an amount equal to 58% of the TIF generated in that year by the residential component of the Improvements; and,
- A Supplemental Grant to be paid in advance of construction in the amount of \$430,000, with such grant subject to repayment upon any default by Ingersoll Square under the Agreement, and also subject to possible repayment from available project cash flows as described in the Agreement;

to BORROWER for the mixed-use development; and

WHEREAS, the BORROWER has applied to the CITY for the use of \$350,000 of HOME funds (hereinafter referred to as the "LOAN"), for construction of the housing located at 2005 Ingersoll Avenue (hereinafter referred to as "PROJECT" or "IMPROVEMENTS"), DES MOINES, IA and legally described as

**See Attachment 1**

WHEREAS, the BORROWER's application and all supporting documents have been reviewed by the CITY's Community Development Department, which administers the HOME Program, and it has been determined that the BORROWER meets all the eligibility requirements as set out in the CITY's NEIGHBORHOOD CONSERVATION SERVICE Handbook, as Amended (hereinafter called the "Handbook").

NOW, THEREFORE, the CITY and the BORROWER mutually agree as follows:

1. Use of HOME Funds. The CITY agrees to loan the BORROWER Three Hundred Fifty Thousand and no/100- DOLLARS (\$350,000.00) in HOME funds (the "LOAN") for the purpose of construction of low-income rental housing units including land purchase and architectural costs related to the development hereinafter referred to as the "PROJECT" and as more specifically set out in Exhibits "A", the Mortgage; "B", the Promissory Note and "C" the Restrictive Covenants (consisting of Exhibit "C-1" to be signed by BORROWER and Exhibit "C-1" to be signed by the Senior Lender) which are attached hereto and by this reference made a part hereof as if set out in full in this section. The full amount of the LOAN will be secured by the Mortgage attached hereto as Exhibit "A". This PROJECT shall be subject to all the terms and conditions specified in the HOME Investment Partnerships Agreement by and between the United States Department of Housing and Urban Development and the City and all governing regulations set out at 24 C.F.R. Part 92 as amended August 24, 2013. (See Supplement for 24 CFR 92 and Federal Register Volume 78 No. 142, Wednesday July 24, 2013.)

2. Affordability. The BORROWER agrees to use a total of three (3) units in the PROJECT as City HOME Units (the "HOME Units"). All three of the HOME Units will be affordable to households at or below 60% of median income and will be considered high HOME Units. Of the three (3) HOME Units, two units will be 1-bedroom units and one unit will be a 2-bedroom unit. The HOME Units are considered floating and may be any of the one or two bedroom units in the PROJECT.

The HOME Units will remain affordable for a period of twenty years (20) from the time of PROJECT completion and provision of final demographic information and construction reports to the City (the Period of Affordability). The City will notify the BORROWER as to the beginning of

the Period of Affordability. The parties specifically agree that the PROJECT will meet the affordability requirements of 24 C.F.R., 92.252 as set out in Exhibit "C" the Restrictive Covenants.

The rents for the HOME Units will not exceed the annual HOME rents as published by the U.S. Department of Housing and Urban Development annually accessed at <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/>. Maximum HOME rents apply to the rent plus the utilities or the utility allowance in accordance with 92.252 (a). In addition, the City of Des Moines must annually review and approve rents for any HOME assisted units within the rental project to ensure compliance with HOME rent limits and that low income tenants are not rent burdened in accordance with 92.252(d). The City may annually review the financial condition of the PROJECT to determine if a rent increase is needed or warranted.

Should the CITY in its sole and reasonable discretion determine that the subject PROJECT fails to comply with the affordability requirement during the Period of Affordability referred to above and BORROWER fails to cure such default within thirty (30) days, the BORROWER shall repay the LOAN in full to the CITY within sixty (60) days from receipt of the CITY'S Demand letter to the undersigned.

3. Repayments. The BORROWER will repay the LOAN, interest and other return on the HOME Investment to the CITY as specifically set out in Exhibits "A" and "B".

4. PROJECT Requirements. The BORROWER specifically agrees to comply with each of the HOME Program PROJECT requirements set forth at 24 C.F.R., Part 92, Subpart F.

Accessibility - A minimum of five percent (5%) or three (3) units of the 47 units must be accessible to individuals with mobility impairments in accordance with the Uniform Federal Accessibility Standards (UFAS) (24 CFR Part 8). An additional unit must be accessible to persons with hearing or visual impairments in accordance with UFAS. The BORROWER must develop procedures so that information regarding the accessible units reaches eligible persons with disabilities and ensures that reasonable, nondiscriminatory steps are taken to make sure that when accessible units become available, they are first offered to persons with disabilities who require the accessibility.

5. Property Standards. The BORROWER hereby agrees to maintain the housing in compliance with local housing code requirements for the duration of the Period of Affordability, as required by 24 C.F.R. 92.504(c)(3)(iv).

6. Reporting and Monitoring: Hiring Practices During Construction: The BORROWER and its Contractors must comply with the Equal Employment Opportunity, Executive Order 11246, as amended (41 CFR Part 60) prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin and Section 3 of the Housing and Urban Development Act of 1968 as amended (12 U.S.C. 1711u) that requires to the greatest extent feasible, opportunities for training and employment arising

from HOME will be provided to low-income persons residing in the program service area. Also to the greatest extent feasible, contracts for work to be performed in connection with HOME will be awarded to business concerns that are located in or owned by persons residing in the program service area. The BORROWER or his contractor will be required to provide information and complete forms provided by the City on Minority and Women Contractors and Section 3 Hiring during the construction period.

Federal (Davis-Bacon) Wage requirements are not applicable to this Agreement.

7. Reporting and Monitoring: Tenant Income and Rent Restrictions. The income of each tenant of a HOME Unit must be determined initially in accordance with 92.203(A)(1)(i). In addition, each year during the period of affordability the project owner must re-examine each tenant's annual income in accordance with the procedure established by the City of Des Moines in accordance with the 24 CFR 92.203 and submit the information to the City of Des Moines. An owner of a multifamily project with an affordability period of 20 years who re-examines tenant's annual income through a statement and certification with 92.203(A)(1)(ii), must examine the income of each tenant, in accordance with 92.203(A)(1)(i) in years six, twelve (12), and eighteen (18) of the affordability period.

The BORROWER must annually make the PROJECT available for the City of Des Moines staff that monitors the HOME program to physically inspect all three (3) HOME Units to ensure the units meet CITY HOME standards and are comparable to market rate units.

8. Other Program Requirements. The BORROWER agrees to carry out the project in specific compliance with the federal requirements set out at 24 C.F.R., Part 92, Subpart H, as applicable.

*Affirmative Marketing:* The BORROWER must provide an Affirmative Marketing Plan that includes procedures to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach. The CITY reserves the right to review such plans and recommend changes to such plans.

*Tenant Selection:* The BORROWER must also adopt and implement a tenant selection plan with policies and criteria that is 1) Consistent with the purpose of providing affordable housing; 2) Provide for selection of tenants from a written waiting list in chronological order of application subject to tenant's qualification under the approved tenant selection plan to the extent practical and give prompt written notification to any rejected applicant of the grounds for rejection.

*Tenant Protection:* The BORROWER must have a written lease with the tenant that includes all statutory tenant protections in accordance with 92.253.

*Conflict of Interest:* No owner, developer or sponsor of a project may occupy a HOME assisted unit. In addition no investor, officer, employee, agent, or consultant of the BORROWER or their

immediate families may occupy a HOME-assisted unit without the express agreement of the CITY.

I. **BORROWER'S OBLIGATION TO DEVELOP AND MANAGE THE HOME UNITS**

a. The BORROWER agrees to develop the PROJECT to the extent and in the manner specified in the SITE PLAN 10-13-7.137 adopted by the Plan and Zoning Commission and to comply with the BORROWER'S obligations, and to enforce any contractor's and/or subcontractor's obligations, under the HOME program and this AGREEMENT. The construction should begin within 90 days of this Agreement and be ready for occupancy by March 1, 2015. **The BORROWER assumes the risks of any non-completion of the IMPROVEMENTS which is not caused by the CITY'S failure to advance LOAN proceeds in accordance with this AGREEMENT, and the BORROWER agrees to repay all amounts advanced by the CITY on account of the LOAN without regard to whether the IMPROVEMENTS have been completed on time or are not completed at all.** The CITY is not a party to any construction contracts, and the CITY accepts no legal responsibility to the BORROWER for the quality or timeliness of the work performed or materials supplied under the BORROWER'S contract with a general or sub-contractor.

b. Although the BORROWER is responsible to the CITY for the performance and completion of the SITE PLAN and the selection of any contractor and/or subcontractor thereunder, the BORROWER agrees as follows for the benefit of the CITY as lender, in order to provide additional assurance that the work will be completed in accordance with the SITE PLAN and the local standards required by the CITY:

- (1) No provision of the SITE PLAN shall be modified, deleted, waived, or terminated without the prior written approval of the CITY; and
- (2) No contractor and/or subcontractor shall be selected, whether initially or in substitution for the original contractor and/or subcontractor, who has not been determined eligible for HOME-assisted work by the CITY under the standards contained in, or authorized within the HOME funded Program.

The term "SITE PLAN" as used in this AGREEMENT includes the SITE PLAN presented and adopted by the Plan and Zoning Commission as 10-13-7.137 plus any financial and physical change orders, amendments, waivers, or successor contracts approved by the CITY.

II. **PRIOR ENCUMBRANCES; MECHANIC'S LIENS**

THE BORROWER SHALL CREATE OR SUFFER NO MECHANICS' OR MATERIALSMEN'S LIENS ON THE PROJECT, and the BORROWER agrees to defend and hold the CITY harmless from any such liens, whether or not caused by any action or inaction of the BORROWER.

To the extent determined necessary by the CITY, the CITY may require the BORROWER to extend the title evidence obtained at LOAN Closing to the date of each such disbursement, showing no mechanics' or materialsmen's liens

against the PROJECT, or to obtain from the contractor and all subcontractors and materialsmen, if determined necessary by the CITY, acknowledgments of payments and releases of liens covering the period from the inspection of the work to the date of the disbursement, and for the entire job concurrently with the final disbursement. Such acknowledgment and releases shall be in the form required by State and local lien laws and shall cover all work done, labor performed and materials (including equipment and fixtures) furnished for the work. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, the CITY, for additional security in connection with the LOAN, may also withhold the final payment, under this AGREEMENT until the expiration of any period which mechanics and materialsmen may have for filing liens, if BORROWER fails to obtain all necessary lien waivers.

### III. ADVANCE AND DEPOSIT OF LOAN PROCEEDS

a. The BORROWER agrees that HUD may make the LOAN proceeds available to the BORROWER by making advances, directly or indirectly, to the CITY, for deposit in accordance with the City's Finance Department procedures, for disbursement by the CITY on behalf of the BORROWER. The CITY will make disbursements of LOAN proceeds at the times and in the amounts requested by the BORROWER, provided that:

- (1) The request meets the requirements of and is in compliance with the SITE PLAN, the current Neighborhood Conservation Services Handbook (as amended), and this AGREEMENT;
- (2) The CITY has not issued any notice of LOAN termination;
- (3) HUD has not received a notice of LOAN termination from the CITY; and
- (4) The LOAN documents executed by the BORROWER at LOAN Closing are acceptable to the CITY. (If the documents are not acceptable, the BORROWER will be given a reasonable opportunity to correct the documents before the LOAN is terminated).

b. The City's Finance Department has an account for the deposits of LOAN proceeds and Supplemental Funds from all projects processed by the CITY. The BORROWER agrees that the BORROWER'S LOAN proceeds and Supplemental Funds may be co-mingled with other parties' funds in this Account.

c. The BORROWER understands that, among other things, the current Neighborhood Conservation Services Handbook requires both the CITY and the BORROWER to authorize any disbursement of LOAN proceeds by executing the necessary invoice and supporting documentation which will be processed only following execution of the SITE PLAN. Under this procedure, the BORROWER agrees to request the CITY, to disburse funds in a timely manner for purposes of carrying out the IMPROVEMENTS.

d. No provision of this paragraph shall limit, or prescribe procedures for the exercise of, the CITY'S rights to complete the IMPROVEMENTS using the LOAN proceeds and other advances secured by the Mortgage Documents, in the event the BORROWER fails to complete the IMPROVEMENTS.

### IV. SUPPLEMENTAL FINANCING.

The City of Des Moines will also provide a non federally funded Economic Development Loan under a separate agreement.

**V. DISBURSEMENT BY THE CITY**

a. The BORROWER agrees to take all actions necessary to cause the CITY to disburse, on a timely basis, the LOAN proceeds advanced by the CITY for the purposes set forth in the BORROWER'S obligations under the SITE PLAN. The BORROWER agrees that once the BORROWER has authorized the CITY to advance LOAN proceeds by executing the necessary invoice or other documentation required by the CITY, the CITY may disburse such funds on behalf of the BORROWER to the payee(s) designated in such invoice or other documentation without any further action by the BORROWER.

b. The CITY may temporarily suspend any or all disbursements under this AGREEMENT if at any time should the BORROWER fail to enforce each and every provision of the SITE PLAN. The CITY will directly advise the BORROWER of the material reasons for the suspension and the deadline for compliance before the LOAN is terminated. However, such suspension is an additional remedy, and not a necessary prerequisite to termination.

c. In the event that the LOAN is terminated pursuant to Paragraph VI, and any funds remain undisbursed, the BORROWER authorizes the CITY to return such funds to the source from which they were secured forthwith, without any further action by the BORROWER

d. After completion of the IMPROVEMENTS, the CITY may furnish the BORROWER with a Disposition of Funds Statement, showing in detail how the LOAN proceeds have been disbursed and the amount of retainage being held until the City approved beginning date of the Period of Affordability. By executing such statement, the BORROWER agrees that the IMPROVEMENTS have been completed in accordance with the SITE PLAN, except for any warranty items (which the BORROWER is responsible to have the warrantor correct). By such execution, the BORROWER further agrees to assess no claim against the CITY, or any defense against collection of the LOAN, with respect to any defect or inadequacy in the construction, whether or not the BORROWER is aware of such defect or inadequacy.

e. Disbursements of LOAN proceeds shall be made only on the basis of invoices that include:

- (i) the amount of the payment to be made (to the Contractor or other payee);
- (ii) the authorization of the CITY following an on-site inspection.

Disbursements shall be made by the CITY from funds received. The City will also require information concerning disbursements from other lenders to ensure which work is being reimbursed.

f. Funds shall be disbursed by the CITY as reasonably requested, however, must conform with overall HOME program completion deadlines in 24 CFR 92.205 (d)(1) and (e)(2). The following is an approximate disbursal schedule:



\$50,000 upon payment of land and architectural fees  
\$100,000 upon 30% of completion  
\$100,000 upon 60% of completion  
\$100,000 upon 90% of completion.

10% of each draw is withheld until completion of entire project and the beginning of the Period of Affordability. (i.e. \$50,000 has been expended with the land costs and architectural fees but the city only pays out \$45,000 of HOME funds)

g. LOAN proceeds placed on deposit in the City's bank account not otherwise disbursed in accordance with this AGREEMENT shall, after Final Payment under the SITE PLAN, be allocated in a prorated portion to the agencies where the funds were originally secured. This pro-rated portion shall be determined from the percentage of the **total project** costs and the amount of funds supplied from each agency.

THE BORROWER UNDERSTANDS AND THE CITY AGREES THAT NO DISBURSEMENTS WILL BE MADE FOR MATERIALS STORED ON-SITE OR IN ANOTHER LOCATION. PAYMENTS MAY ONLY BE MADE FOR COMPLETED WORK WHICH HAS BEEN INSPECTED AND APPROVED BY THE BORROWER AND AUTHORIZED BY THE CITY.

#### **VI. LOAN TERMINATION AND OTHER REMEDIES**

a. The BORROWER agrees that the CITY shall have the unilateral right to cancel or terminate this LOAN if:

1. For a period of sixty (60) days, (or such lesser time as established by the executed Notice to Proceed), from the date the CITY authorizes the BORROWER to give notice to the CONTRACTOR to commence work under the SITE PLAN and this AGREEMENT, the BORROWER has failed or refused to cause the commencement of the IMPROVEMENTS, unless this period has been extended by the CITY in writing;
2. The BORROWER or the Contractor cease work for a continuous period of more than thirty (30) days, unless such period has been extended by the CITY, in writing, or the BORROWER fails or refuses to complete the IMPROVEMENTS within the time frame as established in the SITE PLAN and this AGREEMENT;
3. Notwithstanding any other provision of this AGREEMENT, the LOAN proceeds have not been fully advanced by the CITY subsequent to completion of the work on or by the completion date as specified in the AGREEMENT, unless such date has been extended by the CITY in writing;
4. The BORROWER makes changes in or terminates the SITE PLAN or enters into another contract or subcontract for work on the PROJECT, without the prior written approval of the CITY;
5. The BORROWER will not submit a dispute between the BORROWER and the CONTRACTOR and/or a subcontractor to

the dispute resolution procedure provided under the SITE PLAN and/or the current Neighborhood Conservation Services Handbook, if applicable, or to litigation, and the CITY's inspection indicates that the work in dispute was done in accordance with the SITE PLAN;

6. ALL BORROWERS die, become legally incapacitated, or otherwise become legally unable to act prior to the completion of the IMPROVEMENTS;
7. The BORROWER abandons the PROJECT;
8. Any interest in the PROJECT, including a beneficial interest, but excluding transfers of limited partnership interest, is sold or transferred (other than leases to tenants) prior to the completion of the IMPROVEMENTS (as evidenced by the CITY's execution of a Certificate of Final Inspection and Request for Final Payment) without the CITY'S prior written consent;
9. The BORROWER obtains a Balloon Note secured by the PROJECT which is junior to the City's Mortgage, but will be due and payable prior to the scheduled completion of the IMPROVEMENTS; or
10. Any event which is or may be declared a material breach of this AGREEMENT or an Event of Default, as defined in the Mortgage or Restrictive Covenants and such breach or event of default is not cured within thirty (30) days.

b. As used in this AGREEMENT, the terms "terminate/cancel" and "termination/cancellation" refer to the rescission of the CITY'S obligation to advance LOAN proceeds to, and the CITY'S duty to disburse LOAN proceeds on behalf of the BORROWER from the City's bank account, and cessation of all further performance by the CITY under this AGREEMENT. Termination shall be accomplished by mailing by certified mail or by personally delivering written notice of termination to the BORROWER at the PROJECT address, or to the BORROWER'S personal address during the construction period if different from the PROJECT address, or to any other address of which the BORROWER has given the CITY notice personally or by mail addressed to the CITY's address stated in the introduction to this AGREEMENT. Termination/cancellation shall be effective on the date the notice is mailed or personally delivered to the BORROWER'S address, regardless of whether the notice is actually received by the BORROWER.

c. The BORROWER agrees that termination/cancellation shall not affect the CITY'S rights under the MORTGAGE; including, but not limited to:

1. To declare the entire principal amount of the LOAN which has been advanced to the BORROWER, together with any accrued interest and late charges, and any other amounts secured by the MORTGAGE, immediately due and payable without any benefit of forgiveness or without any notice or demand to the BORROWER;

2. To collect any LOAN proceeds disbursed prior to termination/cancellation by whatever means are deemed necessary by the CITY and permitted by law;
3. To assess interest and late charges under the Mortgage;
4. To make advances under the applicable provisions of the Mortgage to preserve and protect the CITY'S security interest in the PROJECT;
5. To add any amounts so advanced to the principal amount due under the Mortgage.
6. Collect from the BORROWER all amounts necessary to pay off any mechanics' and/or materialsmen's liens which have been filed against the PROJECT;

**VII. PRE-DISBURSEMENT INSPECTION**

Prior to disbursement of LOAN proceeds or for any other purpose in connection with the completion of the IMPROVEMENTS, the CITY shall have free access and right of entry at any reasonable time of the day to inspect all or any portion of the PROJECT and the IMPROVEMENTS. These inspections are for the benefit of the CITY as lender, to assure that the LOAN proceeds are being expended on the PROJECT in accordance with the approved Loan Application and the SITE PLAN and for the benefit of the local government to assure that local law is being complied with in the project. In the event of any such inspection, the CITY may inform the BORROWER of any noncompliance with respect to the SITE PLAN, but the CITY shall not issue direct orders or instructions to the Contractor or subcontractor performing the work, except as authorized by the BORROWER. The BORROWER shall take all steps necessary to assure that the CITY is permitted to examine and inspect such work, and all contracts, materials, equipment, fixtures, payrolls and conditions of employment pertaining to the work, and all relevant data, books, and records of the BORROWER.

**VIII. FEDERAL/LOCAL REQUIREMENTS FOR MARKETING**

The BORROWER must provide an Affirmative Marketing Plan with procedures to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach. The CITY reserves the right to review such plans and recommend changes to such plans. In soliciting tenants the BORROWER certifies:

1. To use the Equal Opportunity Housing logo, slogan, or statement in all advertising; to provide copies of all material used in advertising in commercial media to the City;
2. Where appropriate, to advertise and use media, including minority outlets, likely to reach persons of low and low-moderate income;
3. To display a Fair Housing poster in any rental office or common area of rehabilitated PROJECT, if practicable, and where there is a project sign, to display the Equal Housing Opportunity logo;

4. For management/maintenance staff, if any, to maintain a non-discriminatory hiring policy, including Equal Opportunity, Affirmative Marketing, and Minority & Women's Business enterprise requirements:
5. To keep information on income, race, ethnic, gender characteristics, and other demographic statistics of applicants for tenancy for the most recent five year period following completion as determined by the City, with a copy of that information available to the City;
6. To not discriminate against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance under any governmental program(s), and to not discriminate against tenants that have a minor child living with them (except for elderly housing projects which are legally exempt from this requirement); and
7. To provide existing and potential (those making application for tenancy) tenants with information relating to Federal Fair Housing laws and to affirmatively market vacant units as required by the CITY for a period of fifteen years following the completion of the PROJECT as determined by the City.
8. Information must also be retained on all methods of marketing including copies of media advertisements, etc. on marketing of available rental units; and any other records that might be required from time to time by the CITY.

#### **IX. PRESERVATION OF SECURITY**

The BORROWER agrees to preserve the security of the LOAN by keeping the PROJECT free from all unnecessary hazards during the construction; by complying with all lawful requirements and directives of Federal, State, and Local governments pertaining thereto (including the payment of all applicable taxes, licenses, and fees); and by maintaining in effect at all times the hazard insurance on the PROJECT, including builder's risk insurance where applicable.

The BORROWER further agrees that IT will not sell or transfer the PROJECT (excluding leases to tenants) without repaying the entire amount due on the LOAN, unless express written consent is received from the CITY. Repayment of the loan does not release the BORROWER from the Period of Affordability.

In the event the PROJECT or any portion thereof is sold, City shall release the PROJECT or the portion thereof so sold from the Lien of the HOME Mortgage contemporaneously with the closing on such conveyance, if all the following conditions are satisfied:

1. BORROWER has been current with interest payments on the HOME loan;
2. BORROWER presents the City with a pro forma cash flow which shows 1.15 coverage of all debt service for the remaining term of the HOME loan.
3. For any sale after year 12, BORROWER presents the City with an appraisal conducted by an MAI certified appraiser and a pro forma which together show there will be adequate equity in year twenty to make the balloon payment on the HOME loan.
4. There have been no findings or concerns during monitoring for affordability, marketing or renting the 3 HOME Units.

5. Senior Lender executes covenants acknowledging the affordability requirements of the 3 HOME Units in the form of Exhibit "C-2".

In the event the Construction Mortgage, or any prior replacement thereof, is to be refinanced by BORROWER and replaced with a new mortgage, BORROWER may request that City subordinate the HOME Mortgage to such new mortgage. City shall subordinate the HOME mortgage to such new mortgage if all the following conditions are satisfied:

1. BORROWER has been current with interest payments on the HOME loan;
2. BORROWER presents the City with a pro forma cash flow which shows 1.15 coverage of all debt service for the remaining term of the HOME loan.
3. For any refinance after year 12, BORROWER presents the City with an appraisal conducted by an MAI certified appraiser and a pro forma which together show there will be adequate equity in year twenty to make the balloon payment on the HOME loan
3. There have been no findings or concerns during monitoring for affordability, marketing or renting the 3 HOME Units.
4. Senior Lender execute covenants acknowledging the affordability requirements of the 3 HOME Units in the form of Exhibit "C-2".

#### **X. RECORDS**

a. For a period of five (5) years after the PROJECT completion date, the BORROWER agrees to keep the following records: all contract, invoices, materials, personnel and payroll records, conditions of employment, books of accounts, and any other documentary data pertaining to the construction of the PROJECT and the disposition of the LOAN proceeds; where applicable; and any other records that might be required from time to time by the CITY.

b. For a period of TWENTY (20) years following completion of the IMPROVEMENTS, submittal of final demographics and reports to the City of Des Moines, the BORROWER agrees to keep the following records: all records of income and expenses related to the rental of the CITY HOME Units: Records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five year period, until five years after the affordability period terminates. Information must be retained to back-up rent and utility allowance calculations. In the case of floating HOME Units, the owner should keep records to show how HOME Units were replaced if a HOME Unit was vacated or over income per 92.252.

c. The BORROWER shall, at all reasonable times (including normal business hours) permit the CITY, officials of the Dept. of HUD., the Comptroller General of the United States, and their designees, to have full and free access to its records with respect to the utilization of the LOAN proceeds and/or SUPPLEMENTAL FINANCING, and when applicable, to the income and expenses incurred through rental, and affirmative marketing efforts and will permit the CITY and the Comptroller General and their designees during regular business hours to audit, examine and make excerpts or transcripts from its records, and to review, inspect and make audits of all work financed in whole or in part by the LOAN, including, but not limited to, all records described above.

#### **XI. SCOPE OF AGREEMENT; LIABILITY**

a. The CITY'S only liability is to the BORROWER under this AGREEMENT and is limited to making the LOAN proceeds available, in the principal amount under the terms and conditions stated in this AGREEMENT, the MORTGAGE, and the CITY assumes no obligations other than as stated in this AGREEMENT. Specifically, the CITY has no authority under this AGREEMENT to obligate the HOME Program beyond the principal amount of the LOAN. The CITY shall act in accordance with all local, state, and Federal Regulations, the current Neighborhood Conservation Services Handbook, and this AGREEMENT. The City is not bound by any representations inconsistent with HUD regulations, the Federal Regulations, the current Neighborhood Conservation Services Handbook, or this AGREEMENT.

b. The BORROWER understands and agrees that the selection of a contractor and/or subcontractors, and acceptance of materials used and work performed, is solely its responsibility, and THE CITY ASSUMES NO RESPONSIBILITY FOR OR GUARANTEES OF THE WORK, MATERIALS, AND/OR QUALITY OF WORKMANSHIP.

## XII. DEFINITION OF BORROWER; BORROWER'S AUTHORITY

a. The term "BORROWER" as used in this AGREEMENT refers to each and every party which executes this AGREEMENT as a "BORROWER." Each party which executes this AGREEMENT as a BORROWER is jointly and severally liable under this AGREEMENT. Notwithstanding such liability, each party executing this AGREEMENT as a BORROWER hereby agrees that any such party may act for and bind all such parties ("BORROWERS") with respect to any right or obligation of a BORROWER under this AGREEMENT, including the authorization of advances of LOAN proceeds and disbursements to contractors, subcontractors, suppliers, and the receipt of notices, unless otherwise stated in Paragraph b. below.

b. Each party executing this AGREEMENT as a BORROWER hereby agrees that only

Frank Levy, Managing Member, Ingersoll Square III GP, LLC

may act for BORROWER under this AGREEMENT and that this individual may act for all BORROWERS under this AGREEMENT to approve inspections, Authorizations for Payments, Payment Vouchers and any other document required to complete the construction process and payment procedures. If the Designated BORROWER is unwilling or unable to act under this AGREEMENT, the BORROWERS may designate, in writing another BORROWER under this paragraph, but until they do so, the CITY is entitled to treat the actions and inactions of the Designated BORROWER as binding on all BORROWERS.

9. Faith Based Organizations and Activities. The BORROWER agrees to comply with Section 92.257 governing the use of HOME funds for religious organizations where applicable.

10. Request for Disbursement of Funds. The BORROWER agrees that it may not request disbursement of funds under this Agreement until the funds are needed for the payment

of eligible costs and that the amount of each request will be limited to only the amount needed. Furthermore, HOME funds may not be used for materials on site which have not been installed.

11. Records and Reports. Prior to final payment disbursement and beginning the Period of Affordability BORROWER agrees to furnish to the CITY

- Final Sources and Uses
- Initial Tenant Demographic Information per sheet provided by CITY
- Affirmative Marketing Plan for underserved markets including outreach to handicapped accessible units
- Tenant Selection Policy in accordance with 24 CFR 92.253
- Copy of Lease for compliance with CFR 24 CFR 92.214
- Completed Section 3 Report, form to be provided by CITY
- Completed Minority/Women Contractor Report, form to be provided by CITY

and any other such statements, records, data and information pertaining to any matter covered by this Agreement upon the request of the CITY or HUD official monitoring the PROJECT.

12. Enforcement of the Agreement. This Agreement shall be enforceable pursuant to the provisions of the MORTGAGE, Note and Restrictive Covenants set forth in Exhibits "A", "B", and "C" along with all legal and equitable remedies available to the parties pursuant to local state and federal law.

13. Duration. This Agreement shall be in full force and effect beginning on the date of execution of this document and shall remain in full force and effect until the expiration or release of the Mortgage, Note, and Restrictive Covenants, Exhibits "A" and "B" and "C" respectively.

14. Amendments. Any additions, modifications, or amendments to this Agreement including the attachments, shall be in writing and executed by the parties.

15. Release and Hold Harmless. The BORROWER shall indemnify, release, save and hold harmless the CITY from any and all liability, claims, litigation, loss, damages, costs and expenses arising out of an act or omission of the BORROWER, the BORROWER's agent, employee, assigns or contractors, or in any way connected in the performance of the PROJECT or the terms of this Agreement. The BORROWER's obligation to indemnify, release, save and hold harmless shall include the obligation to pay all reasonable expenses incurred by the CITY in defending itself, or in enforcing the provisions of this Agreement.

16. Disclaimer. It is mutually understood by the parties that nothing in this Agreement is intended or shall be construed as in any way creating or establishing the

relationship of co-partners between the parties hereto or as constituting the BORROWER as an agent or representative of the CITY for any purpose whatsoever. It is further mutually understood by the parties that the BORROWER and the BORROWER's contractor are not to be considered employees of the CITY.

17. Controlling Provisions. The terms and conditions set forth in this Agreement shall supersede and replace all terms and conditions in the building and zoning code requirements regarding the LOAN. Except for those terms and provisions regarding the Agreement, all terms and provisions of the construction and building and zoning code requirements shall remain in full force and effect.

18. Notices. All notices and demands relating to this Agreement shall be served by certified letter, return receipt request on upon the following:

- a. For the CITY: Neighborhood Development Administrator, Community Development Department, 602 Robert D. Ray Drive, Des Moines, IA 50309
- b. For the BORROWER: Ingersoll Square Phase III Associates, L.P.  
Frank Levy, Managing Member,  
3408 Woodland Avenue, Suite 504  
West Des Moines, IA 50266

19. Attachment 2. Attachment 2 is incorporated herein.

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CITY OF DES MOINES, IOWA

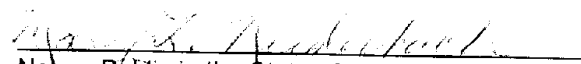


Phillip Delafield  
Community Development Dept

As authorized by the Des Moines City Council pursuant to  
Roll Call No.13-1809 on November 18, 2013

STATE OF IOWA            )  
  ) ss.  
COUNTY OF POLK        )

On this 7<sup>th</sup> day of December, 2013, before me, the undersigned, a Notary Public, personally appeared Phillip Delafield, to me personally known, who, being by me duly sworn, did state that he is the Community Development Director for the City of Des Moines, Iowa; and that the instrument was signed on behalf of the municipal corporation, by authority of its City Council, as contained in the Roll Call No. 13-1809 approved on November 18, 2013 by the City Council, and that he acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

  
Notary Public in the State of Iowa  
My Commission Expires: March 12, 2016



Attachment 1

Legal Description

Parcel "D" being described on Plat of Survey filed November 13, 2012, and recorded in Book 14528 Page 338 in the Office of the Recorder of Polk County, Iowa, being a part of Lots 1 through 6 in Harding Road Place and part of Lots 5 through 9 in Block B of West & Burton's Addition to Des Moines, Polk County, Iowa.

**The following language must be included in all contracts pursuant to Federal Executive Orders 11246 and 11375**

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of the Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or

vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

**ASSURANCE OF COMPLIANCE (SECTION 3, HUD ACT OF 1968)  
TRAINING, EMPLOYMENT AND CONTRACTING OPPORTUNITIES FOR  
BUSINESSES AND LOWER INCOME PERSONS**

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled
- (1) after the contractor is selected but before the contract is executed, and
  - (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.