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Fee Amt: \$37.00 Page 1 of 7
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2014-00058116

BK **15088** PG **854-860**

Prepared by: Roger K. Brown, Assistant City Attorney, City Hall - Legal Dept, 400 Robert D. Ray Drive, Des Moines, IA 50309 Phone: 515/283-4130
RETURN TO: City Clerk - City Hall, 400 Robert D. Ray Drive, Des Moines, IA 50309
Taxpayer: No change
Title of Document: Subordinate Mortgage
Grantor's Name: Ingersoll Square Phase III Associates, L.P.
Grantee's Name: City of Des Moines, Iowa
Legal Description: See page 6, below.

SUBORDINATE MORTGAGE

(Security for potential repayment of Economic Development Grant)

THIS SUBORDINATE MORTGAGE is made as of this 5th day of December, 2013, between **INGERSOLL SQUARE PHASE III ASSOCIATES, L.P.**, an Iowa limited partnership (the "Mortgagor"), and the City of Des Moines, Iowa (the "City").

1. **Grant of Mortgage and Security Interest.** Mortgagor hereby sells, conveys and mortgages unto the City, and grants a security interest to City in the following described property:

(a) **Land and Buildings.** All of Mortgagor's right, title and interest in and to the real estate situated in Polk County, Iowa and legally described on Exhibit A attached hereto (the "Land") and all buildings, structures and improvements now standing or at any time hereafter constructed or placed upon the Land (the "Buildings"), including all hereditament, easements, appurtenances, riparian rights, mineral rights, water rights, rights in and to the lands lying in streets, alleys and roads adjoining the land, estates and other rights and interests now or hereafter belonging to or in any way pertaining to the Land.

(b) **Personal Property.** All fixtures and other personal property integrally belonging to, or hereafter becoming an integral part of the Land or Buildings, whether attached or detached, products, increase, issue, accessions, attachments, accessories, parts, additions, repairs, replacements and substitutes of, to, and for the foregoing (the "Personal Property").

TO HAVE AND TO HOLD the Land, Buildings, Personal Property (collectively called the "Mortgaged Property"), together with all privileges, hereditament thereunto now or hereafter belonging, or in any way appertaining and the products and proceeds thereof, unto City, its successors and assigns.

2. **Obligations.** This Mortgage secures the repayment of the Economic Development Loan made by City to Mortgagor evidenced by the Development Agreement between the parties dated November 18, 2013 (the "Agreement"), and the Note from Mortgagor to the City, in the principal amount of Four Hundred Thirty Thousand Dollars (\$430,000.⁰⁰), together with any renewals, extensions, modifications or refinancing thereof (hereinafter the "Obligations");

3. **Representations and Warranties of Mortgagor.** Mortgagor represents, warrants and covenants to City that (a) Mortgagor holds clear title to the Mortgaged Property and title in fee simple in the Land; (b) Mortgagor has the right, power and authority to execute this Mortgage and to mortgage, and grant a security interest in the Mortgaged Property; (c) the Mortgaged Property is free and clear of all liens and encumbrances, except for the Permitted Encumbrances listed on Exhibit B attached hereto; (d) Mortgagor will warrant and defend title to the Mortgaged Property and the lien and priority of this Mortgage against all claims and demands of all persons, whether now existing or hereafter arising; and (e) all buildings and improvements now or hereafter located on the Land are, or will be, located entirely within the boundaries of the Land.

4. **Payment and Performance of the Obligations.** Mortgagor will pay all amounts payable under the Obligations in accordance with the terms of the Obligations when and as due and will timely perform all other obligations of Mortgagor under the Obligations. The provisions of the Obligations are hereby incorporated by reference into this Mortgage as if fully set forth herein.

5. **Taxes.** Mortgagor shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against the Mortgaged Property before the same become delinquent, without notice or demand, and shall, if requested by City, deliver to City proof of such payment within fifteen (15) days after the date in which such tax or assessment becomes delinquent.

6. **Liens.** Mortgagor shall not create, incur or suffer to exist any lien, encumbrance, security interest or charge on the Mortgaged Property or any part thereof which might or could be held to be equal or prior to the lien of this Mortgage, other than the Permitted Encumbrances. Mortgagor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.

7. **Compliance with Laws.** Mortgagor shall comply with all present and future statutes, laws, rules, orders, regulations and ordinances affecting the Mortgaged Property, any part thereof or the use thereof.

8. **Permitted Contests.** Mortgagor shall not be required to (a) pay any tax, assessment or other charge referred to in paragraph 5 hereof, (b) discharge or remove any lien, encumbrance or charge referred to in paragraph 6 hereof, or (c) comply with any statute, law, rule, regulation or ordinance referred to in paragraph 7 hereof, so long as Mortgagor shall contest, in good faith, the existence, amount or the validity thereof, the amount of damages caused thereby or the extent of Mortgagor's liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (i) the collection of, or other realization

upon the tax, assessment, charge or lien, encumbrances or charge so contested, (ii) the sale, forfeiture or loss of the Mortgaged Property or any part thereof, and (iii) any interference with the use or occupancy of the Mortgaged Property or any part thereof. Mortgagor shall give prompt written notice to City of the commencement of any contest referred to in this paragraph 8.

9. **Care of Property.** Mortgagor shall take good care of the Mortgaged Property; shall keep the Buildings and Personal Property now or later placed upon the Mortgaged Property in good and reasonable repair and shall not injure, destroy or remove either the Buildings or Personal Property during the term of this Mortgage.

10. **Insurance.** Mortgagor, at its sole cost and expense, shall maintain insurance on the Buildings and other improvements now existing or hereafter erected on the Land and on the Personal Property included in the Mortgaged Property against loss by fire, extended coverage perils and such other hazards and in such amounts as are commercially reasonable.

11. **Events of Default.** Each of the following occurrences shall constitute an event of default hereunder ("Event of Default"):

(a) Mortgagor shall default in the due observance or performance of or breach its agreement contained in paragraph 4 hereof or in the Note, or shall default in the due observance or performance of or breach any other covenant, condition or agreement on its part to be observed or performed pursuant to the terms of this Mortgage and such default shall not have been remedied to the City's satisfaction within forty five (45) days after written notice by the City (or within ten (10) business days after such notice if the default is for nonpayment of a liquidated sum). Notwithstanding the foregoing, if the default reasonably requires more than forty five (45) days to cure, such default shall not constitute an Event of Default if Mortgagor commences to cure the default promptly upon receipt of the notice of the default and with due diligence thereafter continuously prosecutes such cure to completion.

(b) Mortgagor shall make an assignment for the benefits of its creditors, or a petition shall be filed by or against Mortgagor under the United States Bankruptcy Code or Mortgagor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties or of the Mortgaged Property or shall not, within thirty (30) days after the appointment of a trustee, receiver or liquidator of any material part of its properties or of the Mortgaged Property, have such appointment vacated.

(c) A judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien on or be issued or levied against the Mortgaged Property or any part thereof which is not released, vacated or fully bonded within thirty (30) days after its entry, issue or levy.

12. **Acceleration; Foreclosure.** Upon the occurrence of any Event of Default and at any time thereafter while such Event of Default exists, City may, at its option, after such notice as may be required by law, exercise one or more of the following rights and remedies (and any other rights and remedies available to it):

(a) City may declare immediately due and payable all Obligations secured by this Mortgage, and the same shall thereupon be immediately due and payable, without further notice or demand.

(b) City may (and is hereby authorized and empowered to) foreclose this Mortgage in accordance with the law of the State of Iowa, and at any time after the commencement of an action in foreclosure, or during the period of redemption, the court having jurisdiction of the case shall at the request of City appoint a receiver to take immediate possession of the Mortgaged Property and of the revenues and income accruing therefrom, and to rent or operate the same as the receiver may deem best for the interest of all parties concerned, and such receiver shall be liable to account to Mortgagor only for the net profits, after application of rents, issues and profits towards the costs and expenses of the receivership and foreclosure and towards the Obligations.

13. **Attorneys' Fees.** Mortgagor shall pay on demand all costs and expenses incurred by City in enforcing or protecting its rights and remedies hereunder, including, but not limited to, reasonable attorneys' fees and legal expenses.

14. **Notices.** All notices required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the United States mail, postage prepaid, sent certified or registered, addressed as follows:

(a) If to Mortgagor, to:
Attn: President and CEO
Ingersoll Square III Investments, L.L.C.
3408 Woodland Avenue, Suite 504
West Des Moines, Iowa 50266

(b) If to City, to:
Attn: City Manager
City of Des Moines
400 Robert D. Ray Drive
Des Moines, IA 50309

or to such other address or person as hereafter designated in writing by the applicable party in the manner provided in this paragraph for the giving of notices.

15. **Severability.** In the event any portion of this Mortgage shall, for any reason, be held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Mortgage is invalid, illegal, or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable then such provision shall be deemed to be written, construed and enforced as so limited.

16. **Successors and Assigns Bound; Number; Gender; Agents; Captions.** The rights, covenants and agreements contained herein shall be binding upon and inure to the benefit of the respective legal representatives, successors and assigns of the parties. Words and phrases contained herein, including acknowledgment hereof, shall be construed as in the singular or

plural number, and as masculine, feminine or neuter gender according to the contexts. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

17. **Governing Law.** This Mortgage shall be governed by and construed in accordance with the laws of the State of Iowa.

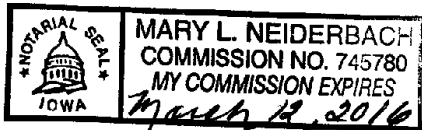
18. **Acknowledgment of Receipt of Copies of Debt Instrument.** Mortgagor hereby acknowledges the receipt of a copy of this Mortgage together with a copy of the Agreement secured hereby.

Ingersoll Square Phase III Associates, L.P.,
an Iowa limited partnership,
By: **Ingersoll Square III GP, LLC,**
an Iowa limited liability company, its General Partner

By: Frank Levy
Frank Levy, Managing Member

State of Iowa)
) ss:
County of Polk)

On this 5th day of December 2013, before me, a notary public, personally appeared **Frank Levy**, to me personally known, who being by me duly sworn did say that he is the Managing Member of **Ingersoll Square III GP, LLC**, an Iowa limited liability company, which is the General Partner of **Ingersoll Square Phase III Associates, L.P.**, an Iowa limited partnership; that he signed the forgoing instrument on behalf of **Ingersoll Square Phase III Associates, L.P.**, by authority of its General Partner, and on behalf of said General Partner as its Managing Member; and he acknowledged the execution of the said instrument to be the voluntary act and deed of said limited partnership and limited liability company, by each entity and by him voluntarily executed.



Mary L. Neiderbach
Notary Public in the State of Iowa
My commission expires:
March 12, 2016

Exhibit "A"
to Subordinate Mortgage
Legal Description of the Land

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.

EXHIBIT "B"
to Subordinate Mortgage
PERMITTED ENCUMBRANCES

The City hereby approves and consents to the following encumbrances and other exceptions to the Mortgagor's title to the land described in this Mortgage:

1. Liens for ad valorem taxes and special assessments or installments thereof not then delinquent.
2. Utility, access and other easements and rights-of-way, mineral rights, restrictions and exceptions that will not materially interfere with or impair the operations being conducted on the land described in this Mortgage.
3. Zoning and building laws, ordinances or regulations and similar restrictions which do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the Mortgagor.
4. Terms and conditions contained in the Declaration of Covenants granted by Mortgagor for the benefit of the City of Des Moines, Iowa.
5. First Mortgage from Ingersoll Square Phase III Associates, L.P., to Veridian Credit Union dated January 15, 2014 and recorded in the land records of the Polk County, Iowa, Recorder on Jan 22, 2014 in Book 15088, commencing at Page 798.
6. Assignment of Rents from Ingersoll Square Phase III Associates, L.P., to Veridian Credit Union dated January 15, 2014, and recorded in the land records of the Polk County, Iowa, Recorder on Jan 22, 2014, in Book 15088, commencing at Page 809.
7. HOME Loan Mortgage from Ingersoll Square Phase III Associates, L.P., to the City of Des Moines dated December 5, 2013, and recorded in the land records of the Polk County, Iowa, Recorder on Jan 22, 2014, in Book 15088, commencing at Page 841.
8. HOME Program Covenants from Ingersoll Square Phase III Associates, L.P., to the City of Des Moines dated December 5, 2013, and recorded in the land records of the Polk County, Iowa, Recorder on Jan 22, 2014, in Book 15088, commencing at Page 851.