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Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2015-00180912

BK 15915 PG 92-109

**MASTER SUBORDINATION AGREEMENT
AND ESTOPPEL CERTIFICATE**

Recorder's Cover Sheet

Preparer Information:

Larry James Jr.
Faegre Baker Daniels LLP
801 Grand Avenue, 33rd Floor
Des Moines, IA 50309
Phone: (515) 447-4731

Taxpayer Information:

Ingersoll Square Phase III Associates, L.P.
3408 Woodland Avenue, Suite 504
West Des Moines, IA 50266

RETURN TO:

Return Document To:

Larry James Jr.
Faegre Baker Daniels LLP
801 Grand Avenue, 33rd Floor
Des Moines, IA 50309
Phone: (515) 447-4731

Grantors:

Ingersoll Square Phase III Associates, L.P.

Grantees:

Veridian Credit Union

Legal Description:

See Exhibit A-1

Document or instrument number of previously recorded documents

15088/776; 15088/841; 15088/851; 15088/854; 15088/861; 15088/865

INGERSOLL SQUARE PHASE III
MASTER SUBORDINATION AGREEMENT
AND ESTOPPEL CERTIFICATE

THIS MASTER SUBORDINATION AGREEMENT made and entered into as of the 3rd day of March, 2016 (the "Master Subordination Agreement"), by and among **INGERSOLL SQUARE PHASE III ASSOCIATES, L.P.**, an Iowa limited partnership, with offices located at 3408 Woodland Avenue, Suite 305, West Des Moines, IA 50266 ("**Borrower**"), **VERIDIAN CREDIT UNION**, a national credit union, with its offices located at 1827 Ansborough Avenue, P.O. Box 6000, Waterloo, IA 50704 ("**Veridian**"), the **CITY OF DES MOINES**, Iowa, a municipal corporation with its offices located at 400 Robert D. Ray Drive, Des Moines, IA 50309 ("**City**"), and **SHERMAN HILL ASSOCIATION, INC.**, an Iowa non-profit corporation with offices at 1620 Pleasant St., Suite 254, Des Moines, IA 50314 ("**Sherman Hill**").

RECITALS:

WHEREAS, Borrower has entered into that certain Loan Agreement (the "Veridian Loan"), dated March 3, 2016, by and between Veridian and Borrower, pursuant to which Borrower has (i) obtained a loan from the Veridian in the original principal amount of \$6,080,000.00 (the "First Mortgage Loan") on the real property described in Exhibit A attached hereto (the "Premises") in Des Moines, Iowa.

WHEREAS, Borrower has entered into an Urban Renewal Development Agreement dated November 18, 2013, by and between City and Borrower (the "City Loan Agreement"), pursuant to which Borrower has obtained a loan of Economic Development funds in the original principal amount of \$430,000.00 (the "City Loan") to provide economic assistance for the Project.

WHEREAS, Borrower has entered into a HOME Agreement dated November 18, 2013, by and between City and Borrower (the "HOME Loan Agreement"), pursuant to which Borrower has obtained a loan of HOME funds in the original principal amount of \$350,000.00 (the "HOME Loan") to provide economic assistance for the Project.

WHEREAS, Borrower has entered into a Note in favor of Sherman Hill Association, Inc., an Iowa non-profit corporation pursuant to which Borrower has obtained a loan in the original principal amount of \$569,040.00 (the "Sherman Hill Loan").

WHEREAS, in conjunction with the Veridian Loan, Veridian and Borrower have entered into and executed those certain documents and agreements identified in Exhibit B attached hereto and incorporated herein by reference (the "Veridian Loan Documents").

WHEREAS, in conjunction with the City Loan, Borrower and City have entered into and executed those certain documents and agreements identified in Exhibit C attached hereto and incorporated herein by reference (the "City Loan Documents").

WHEREAS, in conjunction with the HOME Loan, Borrower and City have entered into and executed those certain documents and agreements identified in Exhibit D attached hereto and incorporated herein by reference (the "HOME Loan Documents").

WHEREAS, in conjunction with the Sherman Hill Loan, Sherman Hill and Borrower have entered into and executed those certain documents and agreements identified in Exhibit E attached hereto and incorporated herein by reference (the "Sherman Hill Loan Documents").

WHEREAS, it is intended that the loans and corresponding loan documents referred to herein shall as of the date hereof have the following order of priority:

- 1) The HOME Funded Restrictive Covenant (requiring that 3 units remain rent restricted) shall have a first and senior priority.
- 2) The Veridian Loan and the Veridian Loan Documents shall have a second priority behind the HOME Funded Restrictive Covenant;
- 3) The HOME Funded Mortgage and the balance of the HOME Loan Documents (exclusive of the HOME Funded Restrictive Covenant) shall have third priority behind the HOME Funded Restrictive Covenant, the Veridian Loan and the Veridian Loan Documents;
- 4) The City Loan and the City Loan Documents shall have fourth priority behind the HOME Funded Restrictive Covenant, the Veridian Loan and the Veridian Loan Documents, and the balance of the HOME Loan Documents;
- 5) The Sherman Hill Loan and the Sherman Hill Loan Documents shall have a fifth priority behind the HOME Funded Restrictive Covenant, the Veridian Loan and the Veridian Loan Documents, and the balance of the HOME Loan Documents, and the City Loan and the City Loan Documents.

WHEREAS, it is further intended that the parties wish to specify how the terms and conditions contained in the loan documents referred to herein shall be interpreted in the event of a conflict or inconsistency therein.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, and in further consideration of the parties hereto making and entering into the loans referred to herein, the parties do hereby agree as follows:

1. Certain Defined Terms. In addition to the capitalized terms defined in the preamble and recitals to this Master Subordination Agreement, the following terms as used herein shall have the following meanings:

- A. Event of Default: As the context so requires, “Event of Default” as used herein shall mean an “Event of Default” under the Documents, or an “Event of Default” under particular Documents of an identified Lender.
 - B. Lender: Veridian, Sherman Hill and the City.
 - C. Documents: The Veridian Loan Documents and the Subordinate Lender Documents.
 - D. Subordinate Lender Loans: City Loan, the HOME Loan, and the Sherman Hill Loan.
 - E. Subordinate Lender Documents: City Loan Documents, HOME Loan Documents, and the Sherman Hill Loan Documents.
 - F. Subordinate Lenders: The City and Sherman Hill.
2. Consent to Loans. By executing this Master Subordination Agreement:
- A. Veridian agrees that all of the liens, encumbrances, and restrictive covenants, if any, created by the City Loan Documents and the HOME Loan Documents shall be deemed to be “Permitted Encumbrances” under the Veridian Loan Documents, but subordinate to all liens, rights, and remedies created by the Veridian Loan Documents, except for the HOME Funded Restrictive Covenants which shall have a first and senior priority.
 - B. The City agrees that all of the liens, encumbrances, and restrictive covenants, if any, created by the Veridian Loan Documents shall be deemed to be “Permitted Encumbrances” under the City Loan Documents.
 - C. Sherman Hill agrees that all of the liens, encumbrances, and restrictive covenants, if any, created by the Veridian Loan Documents, the City Loan Documents, and the HOME Loan Documents shall be deemed to be “Permitted Encumbrances” under the Sherman Hill Loan Documents.
3. Subordination of Loans and Documents. The parties agree to the following priority and subordination of the loans and documents referred to and described herein:
- A. The City agrees and acknowledges that the Veridian Loan and the Veridian Loan Documents and all advances made thereunder and accrued interest thereon are senior and prior to the City Loan and the City Loan Documents and the HOME Loan and the HOME Loan Documents, except for the HOME Funded Restrictive Covenants which shall have a first and senior priority. Therefore, City agrees to, and does hereby (i) subordinate any and all liens, security interests and restrictive covenants, if any, included in City Loan and the City Loan Documents and the HOME Loan and the HOME Loan Documents to any and all liens, security interests and restrictive covenants, if any, securing repayment of the Veridian

Loan or created by the Veridian Loan Documents, except for the HOME Funded Restrictive Covenants which shall have a first and senior priority. In the event of default under the HOME Funded Restrictive Covenants, the City may accelerate the HOME Funded Promissory Note and demand immediate repayment from the Borrower.

- B. Sherman Hill agrees and acknowledges that the Veridian Loan and the Veridian Loan Documents, the City Loan and the City Loan Documents, and the HOME Loan and the HOME Loan Documents, and all advances made thereunder and accrued interest thereon are senior and prior to the Sherman Hill Loan and the Sherman Hill Loan Documents. Therefore, Sherman Hill agrees to, and does hereby subordinate any and all liens, security interests and restrictive covenants, if any, included in Sherman Hill Loan and the Sherman Hill Loan Documents to any and all liens, security interests and restrictive covenants, if any, securing repayment of the Veridian Loan or created by the Veridian Loan Documents, the City Loan or created by the City Loan Documents, and the HOME Loan or created by the HOME Loan Documents.

4. Veridian Priority.

- A. Veridian Priority. In the event of the bankruptcy of, or the appointment of a trustee, receiver or other representative or liquidator for any of the property of Borrower, or in the event Borrower shall become the subject of any proceeding of any character under any federal or state bankruptcy or insolvency act or law, (a) all moneys and other property allocated or allocable to the Subordinate Lender Loans and which would be payable or deliverable to any of the Subordinate Lenders in the absence of the provisions of this Master Subordination Agreement shall be paid and delivered directly to Veridian for application by Veridian to the Veridian Loan, in such order as Veridian shall elect, until full payment of the Veridian Loan with the excess, if any, to be paid to the Subordinate Lenders, in the order of priority as set forth herein, regardless of whether any of the Subordinate Lenders or Veridian or both file a claim on behalf of the Subordinate Lenders in any such proceeding; and (b) Veridian is hereby irrevocably appointed attorney-in-fact for Sherman Hill with full power to act in the place and stead of Sherman Hill in all matters relating to or affecting the Sherman Hill Loan, including the right to make, present, file and vote such proofs of claim against Borrower on account of all or any part of said Sherman Hill Loan, as Veridian may deem advisable and to receive and collect any and all dividends or other payments ("Dividends") made thereon and to apply the same on account of the Veridian Loan. Sherman Hill will execute and deliver to Veridian such instruments as may be required by Veridian to enforce the Sherman Hill Loan, to effectuate the aforesaid power of attorney and to effect collection of any and all Dividends which may be made at any time on account thereof. As collateral securing payment of the Veridian Loan, the Subordinate Lenders hereby transfer and assign to Veridian all collateral security therefor to which the Subordinate Lenders may be entitled, provided that such transfer and assignment shall be

effective (i) only in the event of a bankruptcy of, or the appointment of a trustee, receiver or other representative or liquidator for any of the property of Borrower, (ii) in the order of priority set forth herein, and (iii) only in the amount necessary for the full payment of the Veridian Loan. Veridian may file one or more financing statements concerning any security interest hereby created without the signature of any of the Subordinate Lenders.

- B. Limitations on Payment. None of the Subordinate Lenders will receive, nor take action to collect or enforce, payment from Borrower, and Borrower will not make payment to any of the Subordinate Lenders, of any amounts outstanding under the Subordinate Lender Documents or any part thereof; except that Borrower may pay installments of principal and accrued interest under the Subordinate Lender Documents as long as, but only in the event that, no Event of Default then exists with respect to the Veridian Loan. Upon the occurrence of an Event of Default, each of the Subordinate Lenders agrees that it will not, without the prior written consent of Veridian, receive or take any action to collect or enforce, payment of any of the Subordinate Lender Documents or any part thereof from any trustee in bankruptcy, receiver, or other liquidator of any part of Borrower's property, or from any other person. The Subordinate Lenders and Veridian agree to notify the other, within a reasonable time period, of their knowledge of an Event of Default under their respective loan documents with Borrower. None of the Subordinate Lenders will exercise any right of set-off against the Borrower otherwise available to it until the Veridian Loan is paid in full.
- C. Pay Over of Monies. In the event that any of the Subordinate Lenders receive any payment of the Subordinate Loans in violation of the terms of this Agreement, such payments shall be held in trust by the Subordinate Lender and the Subordinate Lender will forthwith pay over or deliver the same to Veridian to be held by Veridian as cash collateral securing the Veridian Loan.
5. Provisions in Documents. Notwithstanding the subordination and order of priority set forth and agreed to in Section 3 hereinabove, and notwithstanding any contrary provision contained in any of the documents referred to herein, the parties hereby agree that, if there are any inconsistencies or conflicts with respect to the provisions contained in any of the documents referred to herein, then the provisions contained in the Veridian Loan Documents shall control over any such inconsistent or conflicting provision in any other document, except that the HOME Funded Restrictive Covenants shall have and maintain a first and senior priority for the purpose of requiring that 3 units remain rent restricted.
6. Interpretation. The parties are entering into and executing this Master Subordination Agreement to establish the subordination and priority of the loans and the documents referred to herein and to resolve any inconsistencies or conflicts in such documents, and accordingly, the parties hereby agree, understand, and acknowledge that the enforceability of this Master Subordination Agreement is not, and shall not, be restricted, limited, or impaired by the fact that not all of the parties are signatories to each or any of the documents referred to and incorporated by reference herein.

7. Excess Insurance Proceeds. Notwithstanding any provisions contained in any of the Documents described herein (including the Veridian Loan Documents), upon the occurrence of a casualty or condemnation with respect to the Project, Borrower shall be required to restore the Project as nearly as possible to its condition immediately prior to such casualty or condemnation, to the extent such restoration is feasible as determined by the Borrower and the holder of the Veridian Loan (i.e. sufficient proceeds and other funds to permit restoration are available to Borrower). If restoration of the Project is not feasible (as determined by Borrower and the holder of the Veridian Loan), then the proceeds of such casualty funds or condemnation award shall be distributed in accordance with the priority in Section 3 hereof.
8. Tax and Insurance Escrow. Notwithstanding any provision contained in any of the Subordinate Lender Documents, the Veridian Loan Documents shall supercede and govern all agreements of Borrower relating to escrowing of tax and insurance payments.
9. Additional Provisions.
 - A. No renewal, modification, or extension of time of payment of any indebtedness referred to herein, no releases or surrender of any security therefor, nor any delay or omission in exercising any right or remedy contained therein shall, in any event, impair or affect the subordination of loan documentation and/or rights and obligations of the parties hereunder. Any party hereto, in its sole discretion, may waive or release any right or option under the loan documentation held by it and may exercise or refrain from exercising any right thereunder without the consent of any other party hereto.
 - B. None of the parties hereto have any obligation under this Agreement to the other parties hereto to advance any funds to Borrower or to insure that any funds so advanced are used for any specific purpose. Any application or use of funds advanced should not impair the subordination provided herein.
 - C. Each of the parties hereto waives any right to require marshaling of assets or to require any other party hereto to proceed against or exhaust any specific security for the indebtedness held by it and any defense arising out of the loss or of impairment of any right of subrogation through the lien of any loan documentation.
 - D. Each agreement, and each and every covenant, agreement, and other provisions hereof shall be binding upon each of the parties hereto and their successors and assigns and shall inure to the benefit of each of the parties hereto and their successors and assigns and, in particular, to any subsequent holder of the loan documentation referred to herein, including, in particular, any person or entity advancing any funds under the respective loan documents.

- E. This Master Subordination Agreement may be changed only by an instrument in writing executed by the parties hereto. No waiver, amendment, or modification by custom, usage, or by implication shall be effective unless in writing signed by the parties. This Master Subordination Agreement shall not be construed as altering, amending, or modifying any of the terms and conditions of the loan documentation referred to herein other than for the subordination of priorities expressed herein.
10. Notices. All notices to be given by any party to the other under this Master Subordination Agreement shall be in writing and shall be deemed to have been given when delivered personally, or when deposited in the United States Mail, registered or certified postage prepaid, addressed to the party's address listed below or addressed to any such party at such other address as such party shall furnish subsequently by notice to the other parties. Each Lender agrees that notwithstanding any provision in their respective Documents with respect to the address of notice to Borrower, all notices given by such Lender to Borrower shall be delivered as addressed below, with a copy of such notice delivered concurrently as designated below. Any notice delivered personally to Borrower shall be delivered to a general partner of Borrower, and any notice delivered personally to any of the other parties to this Agreement shall be delivered to an officer of such party at the address set forth in the introductory paragraph of the Agreement.

To Borrower at:

Attn: Frank Levy
Ingersoll Square Phase III Associates, L.P.
3408 Woodland Avenue, Suite 305
West Des Moines, IA 50266

To Veridian at:

Veridian Credit Union
Attn: Commercial Loan Department
1827 Ansborough Avenue
P.O. Box 6000
Waterloo, IA 50704

To the City at:

Attn: City Manager
City of Des Moines - City Hall
400 Robert D. Ray Drive
Des Moines, IA 50309-1891

To Sherman Hill at:

Attn: _____
1620 Pleasant St., Suite 254
Des Moines, IA 50314


11. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Master Subordination Agreement and Estoppel Certificate as of the date and year first above written.

[SIGNATURES ON FOLLOWING PAGES]

**Signature Page to Master Subordination Agreement
and Estoppel Certificate**

VERIDIAN CREDIT UNION,
an Iowa state-chartered credit union

By: 

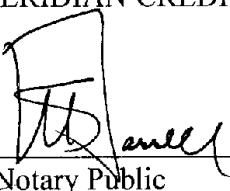
Its: Commercial Lending Manager
WILLIAM J. KALIANOV

STATE OF IOWA)
) SS
COUNTY OF POLK)

The foregoing instrument was acknowledged before me this 3rd day of March, 2016, by William J. Kalianov, the Commercial Lending Manager of VERIDIAN CREDIT UNION, an Iowa state-chartered credit union, on behalf of said credit union.



7/25/17


Notary Public

**Signature Page to Master Subordination Agreement
and Estoppel Certificate**

CITY OF DES MOINES, IOWA

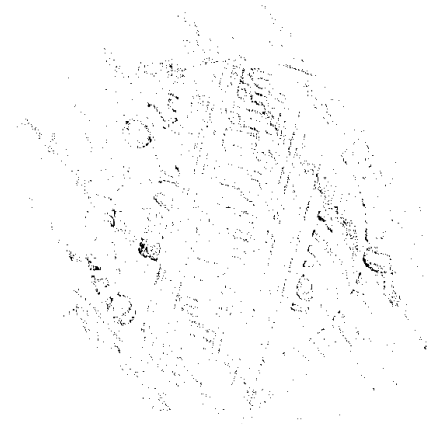
ATTEST:

By: *Diane Rauh*
Diane Rauh, City Clerk

By: *T.M. Franklin Cownie*
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

Glenn K. Brown
~~Roger K. Brown~~
Assistant City Attorney



STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 22nd day of February, 2016, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and DIANE RAUH, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of the City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by the City Council under Roll Call No. No 0288 of the City Council on the 22nd day of February, 2016, and that T.M. FRANKLIN COWNIE and DIANE RAUH acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.



Laura L. Baumgartner
Notary Public in the State of Iowa
My commission expires: *Aug. 14, 2016*

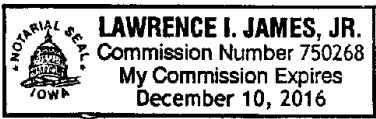
**Signature Page to Master Subordination Agreement
and Estoppel Certificate**

SHERMAN HILL ASSOCIATION, INC.,
an Iowa non-profit corporation

By: David Schlem
Its: President

STATE OF IOWA)
) ss
COUNTY OF POLK)

The foregoing instrument was acknowledged before me this 1st day of MARCH, 2016, by David Schlem, the President of SHERMAN HILL ASSOCIATION, INC., an Iowa non-profit corporation, on behalf of the non-profit corporation.



[Signature]
Notary Public

EXHIBIT A

TO MASTER SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE

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.

EXHIBIT B
TO MASTER SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE

VERIDIAN DOCUMENTS

1. Loan Agreement
2. Promissory Note
3. Mortgage
4. Assignment of Leases and Rents
5. Environmental Indemnity
6. Financing Statement
7. Mortgage Modification
8. Master Subordination Agreement

EXHIBIT C
TO MASTER SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE

CITY LOAN DOCUMENTS

1. Urban Renewal Development Agreement
2. Declaration of Covenants
3. Promissory Note
4. Subordinate Permanent Mortgage

EXHIBIT D
TO MASTER SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE

HOME LOAN DOCUMENTS

1. HOME Agreement, Loan No. 13-HM-900-00070
2. HOME Funded Promissory Note
3. HOME Funded Mortgage
4. HOME Funded Restrictive Covenants

EXHIBIT E
TO MASTER SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE
SHERMAN HILL LOAN DOCUMENTS

1. Note
2. Mortgage