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Grantors:

INGERSOLL SQUARE PHASE III ASSOCIATES, L.P.

Grantees:

SECRETARY OF HOUSING AND URBAN DEVELOPMENT

Legal Description: SEE EXHIBIT "A" OF THIS DOCUMENT ON PAGE 6.

Document or Instrument number of previously recorded documents: Book 15088 at Page 861 and
Book 17125 at Page 495.

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1. **Title of Document:** HUD AMENDMENT TO RESTRICTIVE COVENANTS
2. **Date of Document:** DATED AS OF OCTOBER 1, 2018
3. **Grantor (Borrower):** CITY OF DES MOINES, IOWA
4. **Grantee (Agency):** INGERSOLL SQUARE PHASE III ASSOCIATES, L.P.
5. **Statutory Mailing Address(es):**

Mailing Address of Grantor:

*City of Des Moines, Iowa
400 Robert D. Ray Drive
Des Moines, IA 50309*

Mailing Address of Grantee:

*Ingersoll Square Phase III Associates, L.P.
5607 74TH Street Court SW
Cedar Rapids, IA 52404*

6. **Legal Description:** See Exhibit A of this document for legal description on page 5
7. **Reference(s) to Book and Page(s):** Declaration of Covenants, recorded January 22, 2014, in Book 15088 at Page 861 in the records of Polk County, Iowa AND BOOK 17125 AT PAGE 495

Note: The terms "grantor" and "grantee" as used in this Cover Page are for recording and indexing purposes only. The instrument itself refers to the parties by other designations.

Prepared by and return recorded document to: Nelson H. Howe II, Lashly & Baer, P.C.
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HUD AMENDMENT TO RESTRICTIVE COVENANTS

This AMENDMENT TO RESTRICTIVE COVENANTS is made as of October 1, 2018, by **Ingersoll Square Phase III Associates, L.P.**, an Iowa limited partnership ("Borrower") and the **City of Des Moines, Iowa**, a municipal corporation ("Agency").

WHEREAS, Borrower has obtained financing from **Gershman Investment Corp.** ("Lender") for the benefit of the project known as **Ingersoll Square Lofts Phase III** ("Project"), which loan is secured by a Multifamily Mortgage, Security Agreement, Assignment of Rents, and Fixture Filing (Iowa) ("Security Instrument") dated as of October 1, 2018, and recorded in the records of Polk County, Iowa ("Records") on October 29, 2018, as Document Number BOOK 17125 PG495, and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, Borrower has received financial incentives pursuant to an Urban Renewal Development Agreement dated as of November 18, 2013 from the Agency, which Agency has required certain restrictions be recorded against the Project; and

WHEREAS, Borrower entered into that certain Declaration of Covenants ("Restrictive Covenants") with respect to the Project, as more particularly described in Exhibit A attached hereto, dated as of December 5, 2013, and recorded in the Records;

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Agency has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Amendment.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Amendment, the provision contained in this Amendment shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Lender” means Gershman Investment Corp., its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act of 1934, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions thereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(e) Borrower and the Agency acknowledge that Borrower’s failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Agency’s reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available surplus cash, if the Borrower is a for-profit entity;
- ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity. [or
- iv. A HUD-approved collateral assignment of any HAP contract.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

Signature Pages to Follow

BORROWER:

**INGERSOLL SQUARE PHASE III
ASSOCIATES, L.P.**

An Iowa limited partnership

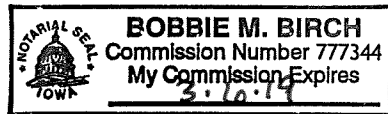
By: Ingersoll Square III GP, LLC,
an Iowa limited liability company
Its General Partner

By: *Craig W. Mettill*
Name: Craig W. Mettill
Title: Manager

STATE OF IOWA
COUNTY OF POLK

On this 3rd day of October, 2018, before me, the undersigned, a Notary Public in and for said state, appeared Craig W. Mettill, to me personally known, who, being by me duly sworn, did say that he is the Manager 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, and that said instrument was signed in behalf of said company by authority of its Members, and said Craig W. Mettill acknowledged said instrument to be the free act and deed of said company and limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Bobbie Birch
Notary Public

[SEAL]

AGENCY

Date: October 3, 2018

City of Des Moines, Iowa

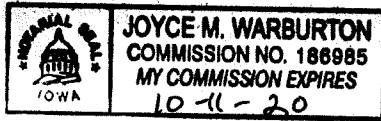
By: [Signature]
Scott Sanders, City Manager

FORM APPROVED:

[Signature]
Roger K. Brown
Assistant City Attorney

State of Iowa)
) ss:
County of Polk)

This instrument was acknowledged before me on October 3, 2018, by **Scott Sanders** as the City Manager of the **City of Des Moines, Iowa**, on behalf of whom the instrument was executed.



[Signature]
Notary Public in the State of Iowa
My commission expires: 10-11-20

Executed by the City Manager on behalf of the City of Des Moines, Iowa, under authority delegated to the City Manager by §2-201(e)(5) of the Municipal Code of the City of Des Moines, Iowa.

Exhibit A Legal Description

The land referred to herein is situated in the County of Polk, State of Iowa, and described as follows:

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.

NOTE:

A Declaration of Submission of Property to Horizontal Property Regime for Ingersoll Square Phase III Condominiums regarding the above-described land was recorded on October 1, 2018, in the records of Polk County, Iowa, resulting in the above land being described as follows:

Commercial Units 100 and 106 and Residential Units 201 thru 215 inclusive, Units 301 thru 315 inclusive and Units 401 thru 417 inclusive, Ingersoll Square Phase III Condominiums, a condominium regime existing pursuant to Chapter 499B, Code of Iowa (2015), as established in Declaration of Submission of Property to Horizontal Property Regime for Ingersoll Square Phase III Condominiums recorded October 1, 2018 at Book 17095 at Page 415 of the Official Records of Polk County, Iowa, along with each units undivided interest in the common elements as set for in Exhibit D to the Declaration, all the foregoing situated upon the land described as follows: Parcel "D" being described on Plat of Survey filed November 13, 2012, and recorded in Book 14528, Page 338 in the Office of the Polk County Recorder, being a part of Lots 1 through 6 in HARDIN ROAD PLACE and part of Lots 5 through 9 in Block B of WEST & BURTON'S ADDITION to Des Moines, Polk County, Iowa.