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Revenue Tax: \$0.00  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2013-00044046

BK 14524 PG 904-939

SPACE ABOVE THIS LINE FOR RECORDER

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

## AGREEMENT

*New Construction Rental*

### CITY OF DES MOINES Community Development Department

#### Community Development Block Grant- Disaster Recovery

BORROWER: Ingersoll Square II Investments, L.L.C.  
ADDRESS OF PROPERTY 2000 High Street  
LOAN AMOUNT: \$3,000,000.00  
LOAN #: 12-DR-900-00118  
LOAN CLOSING DATE October 29, 2012

#### PROJECT AGREEMENT

Investor owner Agreement - Page 1  
CDBG-DR Funding

THIS AGREEMENT is entered into by and between the City of Des Moines, Iowa (hereinafter called "CITY") and Ingersoll Square II Investments, L.L.C. (hereinafter called "BORROWER"), effective the day of execution.

WHEREAS, by Roll Call 09-645 on April 20, 2009, the City entered into Contract 08-DRH-209 with the Iowa Department of Economic Development (Now Iowa Economic Development Authority) for use of Community Development Block Grant – Disaster Recovery (CDBG-DR) funds;

WHEREAS, by Roll Call 12- 0660 on May 3, 2012, the City submitted an application for additional CDBG-DR funds for multi-family housing projects; and

WHEREAS on July 13, 2012 the City of Des Moines was notified it would receive an allocation of \$3,000,000 for the Ingersoll Square Phase II project; and

WHEREAS, on August 27, 2012 by Roll Call 12-1349, the City of Des Moines amended Contract 08-DRH-209 between the Iowa Economic Development Authority (IEDA) and the City to accept the supplemental CDBG-DR funds; and

WHEREAS, new construction rental units and adaptive reuse of a building for rental units is consistent with the CITY's Consolidated Plan which was last amended by City Council on November 7, 2011 by Roll Call 11-1915; and

WHEREAS, the BORROWER intends to build sixty three (63) units of rental housing that consist of three (3) small one-bedroom units, thirty-six (36) large one-bedroom units and twenty-four (24) two-bedroom units with a total cost of approximately \$10 million; and

WHEREAS, the BORROWER has applied to the CITY for the use of \$3,000,000 of CDBG-DR funds,(hereinafter referred to as the "LOAN"), for construction of the rental units, for the property located at 2000 High Street Des Moines, IA 50309 and legally described as:

**A tract of land being a part of Parcel 'A' of the Plat of Survey of a part of Lots 1 – 8 of West and Burton's Addition, recorded at Book 12613 Page 296 in the office of the Polk County Recorder. Said tract of land being more particularly described as follows:**

**Beginning at the Northwest Corner of said Parcel 'A'; thence N89°33'09"E, 268.15 feet along the North Line of said Parcel 'A' and along the South Right-of-Way Line of High Street as it is presently established; thence S00°26'31"E, 19.44 feet; thence S89°33'29"W, 26.00 feet; thence S00°26'31"E, 57.00 feet; thence S89°33'29"W, 9.00 feet; thence S00°26'31"E, 145.88 feet to a non-tangent 100.38 foot radius curve concave to the Southwest; thence Northwesterly, 31.50 feet along said curve, said curve having a chord length of 31.37 feet and a chord bearing of N81°40'35"W; thence S89°32'24"W, 201.97 feet to the West Line of said Parcel 'A' and to the East Right-of-Way Line of Martin Luther King Jr. Parkway as it is presently established; thence N00°29'14"W, 217.58 feet along said West Line and East Right-of-Way Line, to the Northwest Corner of said Parcel 'A' and to the Point of Beginning.**

**Said tract of land subject to all easements of record.**

**Said tract of land contains 1.193 acres more or less.**

WHEREAS, the BORROWER has secured additional funding to provide for approximately 70% of the housing development; and

WHEREAS, the BORROWER's application and all supporting documents have been reviewed by the CITY's Community Development Department, which administers the CDBG-DR Program at the City, and it has been determined that the BORROWER and the subsequent LOAN meet all the eligibility requirements of the programs:

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

1. FUNDING. The CITY agrees to lend the BORROWER Three Million and no/100 DOLLARS (\$ 3,000,000.00) in CDBG-DR funds for the purpose of construction of multi-family housing units hereinafter referred to as the "PROJECT" and as more specifically set out in Exhibits "A", the Lien, "B-1 and B-2", the Restrictive Covenants, which are attached hereto and by this reference made a part hereof as if set out in full in this section. Also included in "PROJECT" are all designs and specifications approved by the Plan and Zoning Commission and City Permit and Development Center which are hereinafter referred to as "DEVELOPMENT PLAN" which are incorporated by reference and not attached.

2. Affordability and Rent Restrictions. The BORROWER agrees that 51% of the units, thirty-three (33) will be affordable to households at or below 80% of median income as determined by the U.S. Department of Housing and Urban Development for a period of ten years. (Referred to as the PERIOD OF AFFORDABILITY) For rental projects that contain residential units with different numbers of bedrooms, a proportional share of units from each bedroom number shall be included within the 51%.

Rent will be less or equal to the HOME program 65% rent limits for Des Moines-West Des Moines, IA MSA as determined by the U.S. Department of Housing and Urban Development. HOME program 65% rent limits include an amount for utilities based on an annual utility allowance prepared by the Des Moines Municipal Housing Agency (DMMHA). If tenants pay all or a portion of their own utilities, then rents must be reduced by the utility allowance provided by the DMMHA.

There are no rent or affordability restrictions on 49% or 30 of the units.

3. Repayments. There will be no repayments required on the \$3,000,000 if all affordability and long-term monitoring conditions are fulfilled.

4. PROJECT Requirements. This Project shall be subject to all the terms and conditions specified in and the BORROWER specifically agrees to comply with each of the following:

- a. CDBG-DR Agreement 08-DRH-209 by and between CITY and the Iowa Economic Development Authority;
- b. Attachment O Multi-Family (Rental) Unit Production – New Construction – Round 4 (Labeled Attachment 1.)
- c. The application submitted to the IEDA on May 3, 2012 on behalf of the City, as amended.

- d. All governing regulations set by CITY ordinances and code including Des Moines Building, Energy, Zoning, and Housing Code Regulations.

5. Property Standards and Insurance. The BORROWER hereby agrees to maintain the housing in compliance with local housing code requirements for the duration of the PERIOD OF AFFORDABILITY. BORROWER shall pay for and maintain insurance in an amount not less than the full insurable value of the property. BORROWER shall name the CITY as a mortgagee and/or an additional loss payee, as appropriate, and the CITY shall name the IEDA as a mortgagee and/or an additional loss payee, as appropriate, and submit copies of the policies to the IEDA.

6. Reporting and Monitoring: Hiring Practices During Construction: The BORROWER and his 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 (See Attachment #2) and **Section 3 of the Housing and Urban Development Act of 1968 as amended (12 U.S.C. 1711u)** (See Attachment #3) that requires to the greatest extent feasible, opportunities for training and employment arising from the funding provided to be offered low-income persons residing in the program service area. Also to the greatest extent feasible, contracts for work to be performed will be awarded to Certified Section 3 business concerns. The BORROWER or his contractor will be required to provide information on marketing to Section 3 certified business concerns and residents. The BORROWER or his contractor will be required to complete forms on Minority and Women Contractors and Section 3 Hiring during the construction period on forms provided by the CITY before CITY releases final payments.

**Federal (Davis-Bacon) Wage requirements are applicable to this contract.** This Act ensures that mechanics and laborers employed in construction work under federally assisted contracts are paid wages and fringe benefits equal to those that prevail in the locality. The City will work with IEDA to obtain a prevailing wage decision and on the prevailing wages to be paid and the BORROWER and its contractors must comply with those wages. CITY will monitor the wage requirements during construction and will conduct on-site interviews during construction. All wage requirements must be satisfied and information submitted to the Engineering Department or Neighborhood Conservation Services Division of Community Development before payment of funds will be disbursed.

**Contractor and Subcontractor Review.** The BORROWER agrees to submit information on each contractor and subcontractor to the City of Des Moines prior to start of construction to determine if any contractor/subcontractor has been debarred by HUD.

7. Reporting and Monitoring: Tenant Income and Rent Limitations during PERIOD OF AFFORDABILITY. Tenant Income must be verified according to Part 5 of the Section 8 income program prior to occupying an affordable unit. Should the CITY in its sole discretion determine that the subject property fails to comply with the income and rent restriction requirements during the PERIOD OF AFFORDABILITY due to meeting less than one hundred percent (100%) of its Performance Targets, the City may require full or partial grant repayment depending upon the character of the violation and history of compliance. The BORROWER will be notified of the questioned Performance Targets and given an opportunity to cure the failure to comply with affordability and rent restriction requirements. If after sixty (60) days of notice the City determines that the BORROWER is in non-compliance, the BORROWER may be required repay the Loan to the CITY within 60 days from receipt of the CITY'S Demand letter to Ingersoll Square II Investments, L.L.C. . Attention: Frank Levy.

8. Other Program Requirements. The BORROWER specifically agrees to comply with all applicable Community Development Block Grant requirements set forth in the Code of Federal Regulations. These regulations are set forth at 24 CFR Part 570 as amended from time to time. The BORROWER further agrees to comply with the following additional provisions regarding this project the CDBG-DR units Attachment O Multi-Family (Rental) Unit Production – New Construction – Round 4 (Labeled Attachment 1).

#### **I. BORROWER'S OBLIGATION TO DEVELOP AND MANAGE THE PROJECT**

a. The BORROWER represents and warrants to the CITY that the BORROWER has thoroughly reviewed and has freely and voluntarily executed the DEVELOPMENT PLAN. The BORROWER agrees to develop the PROPERTY to the extent and in the manner specified in the DEVELOPMENT PLAN and to comply with the BORROWER'S obligations, and to enforce any contractor's and/or subcontractor's obligations, under the DEVELOPMENT PLAN. **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 DEVELOPMENT PLAN.

c. Although the BORROWER is responsible to the CITY for the performance of the DEVELOPMENT 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 DEVELOPMENT PLAN and the local standards required by the CITY:

- (1) No provision of the DEVELOPMENT PLAN shall be modified, deleted, waived, or terminated without the prior written approval of the CITY's Community Development Department Director; 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 HUD-assisted work by the CITY under the standards contained in, or authorized within the regulations of the HUD funded Program.

The term "DEVELOPMENT PLAN" as used in this AGREEMENT includes any 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 PROPERTY, 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 Settlement to the date of each such disbursement, showing no mechanics' or materialsmen's liens against the PROPERTY, 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 unless lien waivers are obtained simultaneous with payment.

## 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 DEVELOPMENT 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 Settlement 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 from all projects processed by the CITY. The BORROWER agrees that the BORROWER'S LOAN proceeds may be co-mingled with other parties' funds in this Account as long as there is an accurate and detailed accounting maintained throughout the PROJECT.

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 DEVELOPMENT 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. This Section not used**

**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 DEVELOPMENT 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. At any time should the BORROWER fail to enforce each and every provision of the DEVELOPMENT PLAN, the CITY will directly advise the BORROWER of the 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 Section 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 will 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 beginning of PERIOD of AFFORDABILITY as determined by the CITY. By executing such statement, the BORROWER agrees that the IMPROVEMENTS have been completed in accordance with the DEVELOPMENT 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 or defense against the CITY, 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.

f. Funds shall be disbursed by the CITY at reasonable intervals when construction costs have been submitted and inspected. Of the funds, 10% OR \$300,000 may be retained until the beginning of the PERIOD OF AFFORDABILITY as approved by the City and all demographic and construction information has been submitted and accepted.

**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, 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 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 DEVELOPMENT PLAN;
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 CONTRACT, unless such date has been extended by the CITY in writing;
4. The BORROWER makes changes in or terminates the DEVELOPMENT PLAN or enters into another contract or subcontract for work on the PROPERTY, 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 DEVELOPMENT 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 DEVELOPMENT PLAN and/or the Neighborhood Conservation Services Handbook;
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 PROPERTY;
8. Any interest in the PROPERTY, including a beneficial interest, is sold or transferred 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 PROPERTY 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.

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 PROPERTY address, or to the BORROWER'S personal address during the construction period if different from the PROPERTY 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 LIEN; 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 LIEN to preserve and protect the CITY'S security interest in the PROPERTY;
5. To add any amounts so advanced to the principal amount due under the LIEN, and to have the amounts advanced secured by the MORTGAGE;
6. Collect from the BORROWER all amounts necessary to pay off any mechanics' and/or materialmen's liens which have been filed against the PROPERTY;

#### **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 PROPERTY 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 PROPERTY in accordance with the approved DEVELOPMENT 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 DEVELOPMENT 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 certifies that, to the extent that there are vacant rental units in properties being rehabilitated or constructed through the CDBG-DR Program, those units will be marketed in an affirmative manner to attract tenants, regardless of sex, of all minority and majority groups. In soliciting tenants, the borrower agrees:

1. AN AFFIRMATIVE MARKETING PLAN MUST BE SUBMITTED TO CITY AT THE BEGINNING OF THE LEASE PERIOD AND PRIOR TO FINAL PAYOUT OF FUNDS. The Affirmative Marketing Plan may be amended but will be monitored annually for conformance.

2. 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;
3. Where appropriate, to advertise and use media, including minority outlets, likely to reach persons of low and low-moderate income;
4. To display a Fair Housing poster in any rental office or common area of rehabilitated property, if practicable, and where there is a project sign, to display the Equal Housing Opportunity logo;
5. 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;
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 TEN years following the completion of the project as determined by the City.
8. To adhere to all regulations regarding rent restrictions and tenant placement in all units completed under the CDBG- Disaster Recovery period for a period consistent with the term of the Restrictive Covenants following completion, as specified in the current Neighborhood Conservation Services Handbook and HUD governing regulations..

**IX. PRESERVATION OF SECURITY**

The BORROWER agrees to preserve the security of the LOAN by keeping the PROPERTY 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 PROPERTY, including builder's risk insurance where applicable.

The BORROWER further agrees that he/she/they will not sell or transfer the PROPERTY without repaying the entire amount due on the LOAN, unless express written consent is received from the CITY.

**X. RECORDS**

a. For a period of five (5) years after the final IEDA audit, 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 PROPERTY and the disposition of the LOAN proceeds; where applicable; and any other records that might be required from time to time by the CITY. The City will notify the BORROWER as to the approval of the final IEDA audit.

The BORROWER shall maintain books, records, documents and other evidence pertaining to all costs and expenses incurred and revenues received under this Contract in sufficient detail to reflect all costs, direct and indirect, of labor, materials, equipment, supplies, services and other costs and expenses of whatever nature, for which payment is claimed under this Contract. The BORROWER shall maintain books, records and documents in sufficient detail to demonstrate compliance with

the Contract and shall maintain these materials for a period of five (5) years beyond the date which the final audit of the PROJECT is accepted by IEDA. Records for non-expendable property acquired under this Contract shall be retained for a five (5) year period after the final disposition of property. Records shall be retained beyond the prescribed period if any litigation or audit is begun or if a claim is instituted involving the grant or agreement covered by these records. In these instances, the records shall be retained until the litigation, audit or claim has been finally resolved.

b. For a period of five (5) years following completion of the IMPROVEMENTS and the beginning of the PERIOD OF AFFORDABILITY, the BORROWER agrees to keep the following records:

- Income and expenses related to the rental of the CDBG-DR units including
- Individual tenant income verifications for the most recent five-year period
- Information on income, race, ethnicity, gender and other characteristics of applications for tenancy for the most recent five year period
- Project rents and project inspections must be retained for the most recent five year period,

c. Information must be retained to back-up rent and utility allowance calculations. In the case of floating CDBG-DR units, the owner should keep records to show how the affordable units were replaced if a CDBG-DR unit was vacated or became over income.

d. Information 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.

e. 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 his/her/their 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 to audit, examine and make excerpts or transcripts from his/her/their 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 CDBG-DR 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 his/her/their 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

(IF APPLICABLE, fill in the name of BORROWER(s) authorized to sign)

may act for all BORROWERS 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. 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, CDBG-DR funds may not be used for materials on site which have not been installed.

10. Unallowable Costs. If CITY determines at any time, whether through inspection, monitoring, audit closeout procedures, or process that the BORROWER has expended funds which are unallowable the BORROWER will be notified of the questioned costs and given a thirty (30) day opportunity to justify questioned costs prior to final determination of the disallowance of costs. If it is CITY's final determination that the costs are unallowable under the terms of the Agreement, the expenditures will be disallowed and the BORROWER shall repay to CITY any and all disallowed costs.

11. Records and Reports. The BORROWER agrees to furnish to the CITY such statements, records, data and information pertaining to any matter covered by this Agreement upon the request of the City's Neighborhood Development Administrator or other CITY or HUD official monitoring the Project. At least annual reports will be required during the PERIOD of AFFORDABILITY.

12. Beginning of PERIOD of AFFORDABILITY The CDBG-DR Units will remain affordable for a period of ten years (10) from the time of PROJECT completion, rent-up, and provision of final demographic information and all construction reports to the City. The City will notify the developer as to the date of the beginning of the PERIOD OF AFFORDABILITY

13. Certifications. The BORROWER certifies and assures that the PROJECT will be conducted and administered in compliance with all applicable Federal and State laws, regulations and orders. Certain statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms. The BORROWER certifies and assures compliance with the applicable orders, laws and implementing regulations, including but not limited to the following, as modified by the waivers and alternative requirements published in the Federal Register on September 11, 2008:

- (i) Financial Management guidelines issued by the U.S. Office of Management and Budget, OMB Circular A-133 ("Single Audit Act Amendment of 1996"), OMB Circular A-122 ("Cost Principles for Nonprofit Organizations"), OMB Circular A-87 ("Principles for Determining Cost Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments").
- (ii) Title I of the Housing and Community Development Act of 1974 as amended (42 U.S.C. 5301 et seq.); and regulations which implement these laws as modified by the waivers and alternative requirements published in the Federal Register on September 11, 2008.
- (iii) Title VI of the Civil Rights Act of 1964 as amended (Public Law 88-352; 42 U.S.C. 2000d et seq.); Title VIII of the Civil Rights Act of 1968 as amended (Public Law 90-284; 42 U.S.C. 3601 et seq.); the Iowa Civil Rights Act of 1965; Iowa Code Section 19B.7, and Executive Order #34, dated July 22, 1988; Iowa Code Chapter 216, Presidential Executive Order 11063, as amended by Executive Order 12259; Presidential Executive Order 11246, as amended by Executive Order 11357; Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794); the Age Discrimination Act of 1975 as amended (42 U.S.C. 6101 et seq.); the Americans with Disabilities Act, as applicable, (P.L. 101-336, 42 U.S.C. 12101-12213); and related Civil Rights and Equal Opportunity statutes; and regulations which implement these laws.
- (iv) Fair Housing Act, Public Law 90-284. The Fair Housing Act is part of Title VIII of the Civil Rights Act of 1968 as amended (42 U.S.C. 3601 et seq.); Section 109 of the Title I of the Housing and Community Development Act of 1974, as amended; Section 3 of the Housing and Urban Development Act of 1968 as amended (12 U.S.C. 1701u); and regulations which implement these laws.
- (v) Department of Housing and Urban Development regulations governing the CDBG program, 24 Code of Federal Regulations, Part 570.
- (vi) Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (P.L. 101-235), and implementing regulations.
- (vii) Requirements for the Notification, Evaluation, and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Rule (24 CFR Part 35, et al.).
- (viii) Davis-Bacon Act, as amended (40 U.S.C. 276a – 276a-5) under Section 110 of the Housing and Community Development Act of 1974, as amended; Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.); the Copeland Anti-Kickback Act (18 U.S.C. 874); the Department of Defense Reauthorization Act of 1986; and regulations which implement these laws.
- (ix) National Environmental Policy Act of 1969 and implementing regulations, including Section 306 of the Clean Air Acts (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368, Executive Order 11738, EPA Regulations -40 CFR Part 32.
- (x) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA)(42 U.S.C. 4601 – 4655) and implementing regulations; Section 104(d) of the Housing and Community Development Act of 1974, as amended, governing the residential anti-displacement and relocation assistance plan; and Section 105(a)(11) of the Housing and Community Development Act of 1974, as amended, governing optional relocation assistance.

- (xi) Iowa CDBG Program Administrative rules adopted by the Iowa Economic Development Authority, 261 Iowa Administrative Code, Chapter 23.
- (xii) Financial and Program Management guidelines issued by the Iowa Economic Development Authority; the 2012 CDBG Management Guide and the IEDA Audit Guide.
- (xiii) Government-wide Restriction on Lobbying Certification [Section 319 of Public Law 101-121] and implementing regulations.
- (xiv) Fair Labor Standards Act and implementing regulations
- (xv) Hatch Act (regarding political partisan activity and federally funded activities) and implementing regulations.
- (xvi) Citizen participation, hearing and access to information requirements found under sections 104(a)(2) and 104(a)(3) of Title I of the Housing and Community Development Act of 1974, as amended and as modified by the waivers and alternative requirements published in the Federal Register on September 11, 2008.
- (xvii) Subsection 104(l) of Title I of the Housing and Community Development Act of 1974, as amended, regarding the prohibition of the use of excessive force in nonviolent civil rights demonstrations and the enforcement of state and local laws on barring entrance to or exit from facilities subject to such demonstrations.
- (xviii) Drug-Free Workplace Act.

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

15. 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 Restrictive Covenants, and Mortgage Lien, , Exhibits "A", and "B-1 and B-2",

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

17. 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.

18. 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.


19. Controlling Provisions. The terms and conditions set forth in this Agreement shall supersede and replace all terms and conditions in the DEVELOPMENT PLAN regarding the LOAN. Except for those terms and provisions regarding the LOAN, all terms and provisions of the DEVELOPMENT PLAN shall remain in full force and effect.

20. 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: Community Development Director, Community Development Department, 602 Robert D. Ray Drive, Des Moines, IA 50309
- b. For the Borrower: Frank Levy, Newbury Management Company, 3408 Woodland Avenue, Suite 504 West Des Moines, IA 50266

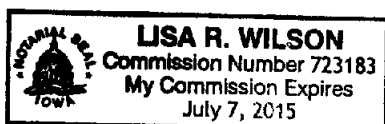
IN WITNESS WHEREOF, the parties have executed this Agreement as of the 29th day of October, 2012.

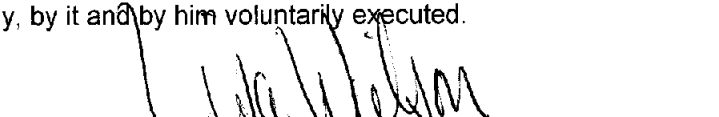
**BORROWER/OWNER By:** Ingersoll Square II Investments, L.L.C.

  
By: Robert J. Caluzzi, Manager

STATE OF IOWA )  
 ) SS:  
COUNTY OF POLK )

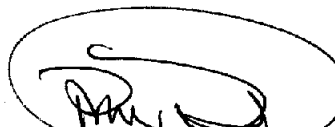
On this 29th day of October, A.D. 2012, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Robert J. Caluzzi, to me personally known, who, being by me duly sworn, did say that the person is the Manager of Ingersoll Square II Investments, LLC., an Iowa Limited Liability Company; that the instrument was signed on behalf of the limited liability company by authority of its members; and that he as such officer acknowledges execution of the instrument to be the voluntary act and deed of the limited liability company, by it and by him voluntarily executed.



  
Notary Public for the State of Iowa

My Commission Expires: 7-7-15

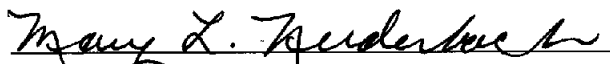
CITY OF DES MOINES, IOWA

  
Phillip Delafield Director  
Community Development Dept  
As authorized by the Des Moines City Council pursuant to  
Roll Call No. 12-1622 on October 22, 2012

STATE OF IOWA )  
 ) ss:  
COUNTY OF POLK )

On this 29 day of October, 2012, 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. 12-1622 passed on October 22, 2012 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, 2013

**Attachment O**  
**Multi-Family (Rental) Unit Production – New Construction – Round #4**

Any of the IEDA's eleven CDBG Disaster Recovery Housing Recipients and any of the following five CDBG Entitlement Cities: Ames; Council Bluffs; Davenport; Dubuque and West Des Moines, may apply for this activity on behalf of for-profit or non-profit multi-family (rental) housing developers to newly construct multi-family rental dwelling units within their jurisdictions. This activity's funding will only be allowed for projects located in one of the presidentially declared disaster recovery counties.

Funds available for this round are \$15,000,000.

Applications may qualify as either: a) Replacing units lost; or b) Impact on area recovery.

More than one application (proposed project) may be submitted under the "replacing units lost" category (see distribution discussion below), however, applications, project-by-project, need to be submitted individually. For the expanded COG regions, this activity will only be allowed in incorporated communities within your jurisdiction. All individual projects must have written concurrence and acceptance of the project from the local government entity in which the project will be located.

Submit your proposals to the IEDA by no later than May 15, 2012.

- Distribution of awards under this activity will be as follows. No more than one project per applicant will be funded under the "Impact on Area Recovery" category. Multiple projects may be funded under the "Replacing units lost" category provided they qualify (in terms of documented replacement housing need). Applications may be prioritized according to such factors as: a) affordability; b) sustainability; c) need (market); d) the project's relationship to the disasters of 2008; and e) other factors, if necessary, because of funding limitations and/or the overall goal to ensure availability of this activity across all affected areas of the State of Iowa. Otherwise, Applications will be reviewed on a date received basis and funded as they meet requirements for approval. The IEDA may require (and at our discretion) a market study to be conducted to support the claimed need for a proposed project (including such factors as location, size of rental units, number of rental units, rent structure, etc.). Required market studies will be at the applicant's expense.
- CDBG Disaster Recovery Housing Funds will be awarded on a first come/first served; most ready to proceed after evaluation of proposals.

The COGs or Cities submitting the approved proposals to IEDA will verify the readiness to proceed in their cover letter.

- This activity is limited to newly-constructed multi-family housing. This activity does not include those projects for which low income housing tax credits are also sought or that comprise any portion of the financial resources of the proposed project's budget.
- Definitions:

*"Adaptive Re-use"* For purposes of this guidance for this activity, adaptive re-use proposals (i.e., those projects converting non-residential use structures or buildings into residential use structures or buildings) will be considered as new construction, and therefore eligible under this activity.

*"Affordable Rental Units"* means those units contained in the mortgaged property and contained in the agreement for covenants and restrictions that are occupied by low and moderate income persons or households at any given time. Affordable rental units (in the appropriate number as described later in these guidelines under the CDBG National Objective criteria) are to be retained at all times as affordable rental units throughout the period of affordability through income limitations of the tenants occupying those units and through rent limitations for the tenants occupying those units.

*"Project"* - means a site or sites together with any building or buildings located on a site or sites that are under common ownership, management, and financing and are to be assisted with CDBG Supplemental funds as a single undertaking, and includes all activities associated with the site(s) and building(s).

- Applicants, prior to application submission, need to determine the development team that will be involved in each project and prior to proposal submission to the IEDA. Applicants will need to be able to convey the development team members and their respective roles and responsibilities in the proposed projects within the application submitted to the IEDA. Development team members may include, but are not limited to:
  - Owner (or eventual owner);
  - Program administrator / overseer from start to finish, including throughout the prescribed period of affordability, if different from the owner;
  - Developer(s) and/or builder(s) of the multi-family (rental) housing;
  - Architectural / Engineering (A/E) or design services, as applicable;

- Construction Lender(s);
  - Permanent Lender(s), as applicable;
  - Property Manager(s);
  - Energy Rater firm;
  - Etc.
- There is a maximum per project cap limitation of \$3,000,000 on the CDBG Disaster Recovery funds. The Recipient shall determine the per unit cost cap limitation, for each project, if any.
  - Any and all additional costs of the project above the stated CDBG Supplemental funds limitations of \$3,000,000 shall come from other financial resources. Projects should reflect a Debt Service Coverage Ratio between 1.15 and 1.35. All other necessary financial resources shall be committed and secured prior to the commitment of CDBG Supplemental funds to the rental project.
  - CDBG National Objective - All assisted multi-family (rental) new production projects shall meet the national objective of "Primarily benefits persons of low and moderate income – Housing". Effectively, this means that no less than 51% of the rental units in an assisted rental project shall be occupied by persons or households whose incomes are at or below 80% of the area median income limits (LMI) by household size as established by HUD for the jurisdiction in which the rental project is located. No mixed-use type of projects will be allowed under this activity.
    - 51% of all rental units in the project (rounded up to the nearest whole number) shall be made available to and occupied by a low and moderate (LMI) tenant (e.g., in a thirty-two unit project, seventeen units shall be made available to and occupied by LMI tenants).
    - For rental projects that contain residential units of varying bedroom sizes, to the extent possible, the 51% criteria needs to be applied (i.e., a proportional share) to all sizes (number of bedrooms) of units.

Scattered site projects accomplished as a single undertaking shall take into consideration the individual properties on the various sites when determining national objective compliance (i.e., the 51% criteria).

Following the provision of CDBG Supplemental Funds assistance to a rental project, when all work has been completed and accepted and the forgivable loan and agreement for covenants and restrictions has been recorded; the term of affordability begins. It is at this juncture (initial occupancy following the provision of assistance) that the appropriate number of units in the project needs to be occupied by the appropriate number of LMI tenants and the subsequent rents limited on those units.

- Upper Story projects constructed under this activity will likely result in mixed-income projects, in that, only a percentage of the total number of units are required to meet the activity income and rent requirements (i.e., the “assisted” units). In the design of projects under this activity, consideration needs to be given to keeping all units in the project, not just the assisted units, consistent with each other in terms of bedroom sizes, square footage, similar design features, similar amenities, etc. This will allow assisted property owners units to maintain the required percentage of assisted units within the project and at the same time be able to use any of the units in the project to meet the required percentage. If unit design is not consistent, applications may be rejected; awards reduced and/or contain other restrictions to ensure appropriate use of funds for affordable units.
- Maximum (gross) rent limits on the CDBG Supplemental Funds assisted (affordable) rental units (by bedroom size) shall not exceed the most current HOME Program 65% rent limits.
- Rental property owners of CDBG Supplemental funds assisted rental projects shall agree to a period of affordability in terms of tenant income restrictions (limitations) and through affordable rent limitations (controls) on all CDBG Supplemental funds assisted rental units (i.e., the affordable rental units) serving LMI tenants, maintaining the appropriate number of affordable rental units for the entire period of affordability.

A 10-year period of affordability will be placed on projects that contain 12 or more units. A 5-year period of affordability will be placed on projects that contain less than 12 units.

Long-term affordability requirements shall be secured through an agreement for covenants and restrictions that ride with the assisted rental property owner's land.

Throughout the period of affordability, assisted rental property owners shall ensure that the appropriate number of rental units remains affordable to, and are occupied by, income eligible and verified LMI tenants. All assisted rental units shall be subject to the maximum rent limitations (by bedroom size) applicable to all assisted rental units for the entire 5 or 10-year period of affordability. Applicants will need to identify who will be responsible for the long-term affordability requirements and oversight for all funded new construction multi-family (rental) projects.

- Throughout the period of affordability, assisted rental property owners shall agree to periodic reporting requirements and compliance monitoring

and/or inspections (for tenant incomes and rents on the affordable units, appropriate unit mix, property standards compliance, etc.).

- The CDBG Supplemental funds subsidy amount provided must be secured as a mortgage lien on the assisted multi-family property.
- The CDBG Supplemental funds forgivable loan may be recorded in junior position to the principal conventional loan (if there is one), but must be recorded in senior position to any and all other funding in the project. Additionally, recipients must maintain their assistance security agreements in the above-stated recording position throughout the 5 or 10-year period.
- Form of assistance – The form of financial assistance (CDBG funds) will be a 10-year forgivable loan (non-receding), forgiven in full at the end of the 10-year compliance period for projects with 12 or more units. For projects with less than 12 units, the form of financial assistance (CDBG funds) will be a 5-year forgivable loan (non-receding), forgiven in full at the end of the 5-year compliance period. If the assisted rental project is sold or transferred, or converted to an alternate (non-residential) use, during the compliance period following completion and acceptance, the entire amount of the CDBG forgivable loan shall be repaid.

Upon mutual agreement and consent between the IEDA and the originally assisted rental property owner; the assisted rental project may be sold or transferred, but, only if the new purchaser agrees to continue with the terms of the forgivable loan agreement and the agreement for covenants and restrictions, to complete the remainder of the affordability period (tenant income and rent limitations on 51% of the rental units).

- Newly constructed multi-family dwelling units under this activity shall not be constructed in a 100-year flood plain or within buy-out areas (those buying out properties in a 100-year flood plain), known or proposed. No adaptive re-use multi-family proposals located within the 100-year flood plain will be allowed under this activity.
- All newly constructed multi-family units shall be designed and constructed in accordance with all locally adopted and enforced building codes and standards. In the absence of any locally adopted and enforced building codes or standards, the requirements of the Iowa State Building Code shall apply.
- It is the IEDA's goal to utilize the CDBG Supplemental Funds in a manner that results in green-built, sustainable multi-family structures. All newly constructed multi-family housing shall meet the requirements of the Iowa

Green Streets Criteria. All proposals must submit a completed Green Development Plan and Checklist.

- Lots (land) on which to construct the multi-family housing proposed need to be identified and where possible site control (not ownership) obtained, prior to application submission, and be identified (property address and legal description) within the application. This is particularly important with regard to the requirements of the Iowa Green Streets Criteria.
- Recipients may be allowed general administrative funds in an amount not-to-exceed two percent (2%) of the total award (calculated by considering the total of all project-related costs as ninety-eight percent of the total award).
- The owner and/or the developer / builder of the newly constructed multi-family housing shall obtain their own construction financing.
- Developers / builders will be allowed a combined developers fee and/or builders fee (overhead and profit) not-to-exceed twelve percent of the total cost of construction.
- Program Income does not pertain to those sub-recipients of rental construction or rehabilitation that can certify that they are a for-profit entity and that they own the funded project with no portion of the project being leased to the sub-recipient by a third party. They can show for-profit status by completing the Department's Certificate of the Developer. They can show ownership of the project property by either producing a Title Guaranty Certificate or a title opinion and/or documentation from the county recorder's office or the County Assessor's office. Land ownership in Iowa must be recorded in the county that the property resides with the recorder and the county assessor's office also lists ownership of land as a way of accurately taxing property owners.

**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.

**Certification regarding government-wide restriction on lobbying.**

"The Recipient certifies, to the best of his or her knowledge and belief, that:

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee, or an employee of a Member of congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Federal Lobbying" in accordance with its instruction.
- iii. The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

"

**The following dealing with Clean Air and Water Acts must be included in any contracts over \$100,000:**

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

- (1) The CONTRACTOR will certify that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the Excluded Party Listing System pursuant to 40 CFR 32.
- (2) The CONTRACTOR agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (3) The CONTRACTOR agrees that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the Excluded Party Listing System.
- (4) The CONTRACTOR agrees that it will include or cause to be included the criteria and requirements in Paragraph (1) through (4) of this section in every nonexempt subcontract and require every subcontractor to take such action as the Government may direct as a means of enforcing such provisions.

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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  
515-283-4787

**Return to:** SAME

**EXHIBIT "A"  
MORTGAGE LIEN**

The undersigned property owner(s) participating in the City of Des Moines, Iowa CDBG-DR Program in consideration of the receipt of Three Million Dollars and no/100 DOLLARS (\$3,000,000.00) as a loan for the construction of Sixty-Three (63) rental units housing, which is locally known as, 2000 High Street Des Moines, Iowa, and legally described as:

**A tract of land being a part of Parcel 'A' of the Plat of Survey of a part of Lots 1 – 8 of West and Burton's Addition, recorded at Book 12613 Page 296 in the office of the Polk County Recorder. Said tract of land being more particularly described as follows:**

**Beginning at the Northwest Corner of said Parcel 'A'; thence N89°33'09"E, 268.15 feet along the North Line of said Parcel 'A' and along the South Right-of-Way Line of High Street as it is presently established; thence S00°26'31"E, 19.44 feet; thence S89°33'29"W, 26.00 feet; thence S00°26'31"E, 57.00 feet; thence S89°33'29"W, 9.00 feet; thence S00°26'31"E, 145.88 feet to a non-tangent 100.38 foot radius curve concave to the Southwest; thence Northwesterly, 31.50 feet along said curve, said curve having a chord length of 31.37 feet and a chord bearing of N81°40'35"W; thence S89°32'24"W, 201.97 feet to the West Line of said Parcel 'A' and to the East Right-of-Way Line of Martin Luther King Jr. Parkway as it is presently established; thence N00°29'14"W, 217.58 feet along said West Line and East Right-of-Way Line, to the Northwest Corner of said Parcel 'A' and to the Point of Beginning.**

**Said tract of land subject to all easements of record.**

**Said tract of land contains 1.193 acres more or less.**

legal or equitable title to which is held by the undersigned, hereby agree and consent to the creation and imposition of a lien upon the above described premises for the benefit of the City of Des Moines, Iowa subject to the following terms and conditions:

1)Such lien shall be in the amount of \$3,000,000.00, a portion of Loan # 12-DR-900-00118 made by the City of Des Moines to the undersigned.

2)The undersigned agree(s) that this forgivable portion of Loan # 12-DR-900-00118 is specifically conditioned upon the satisfactory fulfillment of all the terms and conditions of the PROJECT Agreement and

Restrictive Covenants; and that any default of its terms shall be a default on this lien and shall render the total original principal amount of this lien immediately due and payable.

3)The undersigned agree(s) that:

a) If the terms of affordability as defined in the PROJECT Agreement and Restrictive Covenants are not fulfilled at any time during the term of this lien, the loan is in default and the total original principal amount of this lien may be immediately due and payable depending on the character and history of compliance.

b) If the improvements of the property set forth in the DEVELOPMENT PLAN referenced in the PROJECT Agreement, as approved by the City are not completed by the owner in accordance with the contract documents, then at the sole discretion of the City, the total original principal amount of this lien shall become immediately due and payable.

4)This lien is non-receding and shall run continuously with the land beginning on the date of execution and shall continue on the land for a period of 120 months after completion of the project and beginning of the PERIOD OF AFFORDABILITY.

5) If the PROJECT is sold or transferred, or converted to a non residential use during the PERIOD OF AFFORDABILITY, the entire amount of the CDBG-DR loan shall be repaid.

6)Upon mutual agreement and consent between the City of Des Moines and BORROWER, the PROJECT may be sold or transferred, but, only if the new purchaser agrees to continue with the terms of the agreement and to complete the remainder of the PERIOD of AFFORDABILITY.

7)Upon expiration or satisfaction of the lien the undersigned shall be entitled to have a satisfaction of the lien filed for record by the City within ninety (90) days.

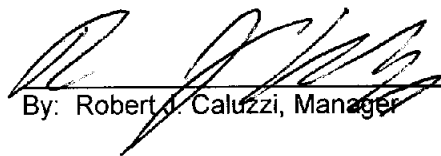
8)Payments or correspondence required by this lien for the City of Des Moines, Iowa, shall be directed to the Community Development Department or its successor.

This lien is expressly created and imposed upon the above described premises solely for the purpose of allowing the undersigned to receive a Loan from the City of Des Moines, Iowa CDBG-DR funds allocated to the City of Des Moines from the Iowa Economic Development Authority for the purpose of constructing sixty three units of rental housing and allowing the City to receive payment of such Loan upon the sale or transfer of the property, termination of occupancy, or default on Mortgage Loan as provided herein during the term of this lien.

(Rest of this page left blank intentionally)

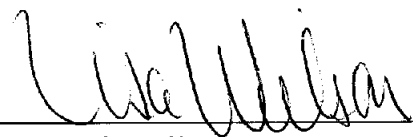
Dated the 29th day of October, 2012.

**BORROWER/OWNER By:** Ingersoll Square II Investments, L.L.C.

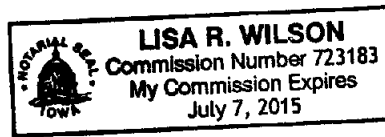
  
By: Robert J. Caluzzi, Manager

STATE OF IOWA            )  
                                      )SS:  
COUNTY OF POLK        )

On this 29th day of October, A.D. 2012, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Robert J. Caluzzi, to me personally known, who, being by me duly sworn, did say that the person is the Manager of Ingersoll Square II Investments, LLC., an Iowa Limited Liability Company; that the instrument was signed on behalf of the limited liability company by authority of its members; and that he as such officer acknowledges execution of the instrument to be the voluntary act and deed of the limited liability company, by it and by him voluntarily executed.

  
\_\_\_\_\_  
Notary Public for the State of Iowa

My Commission Expires: 7-7-15



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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

**BORROWER**

**EXHIBIT "B-1"**  
**CDBG-DR Funded**  
**RESTRICTIVE COVENANT**

The undersigned property owner(s), participating in the Community Development Block Grant-Disaster Relief (CDBG-DR) Program, in consideration of the receipt of Three Million and no/100 Dollars (\$3,000,000.00.) as a loan for the construction of Sixty-Three (63) units of rental property which is locally known as 2000 High Street Des Moines, Iowa and legally described as:

**A tract of land being a part of Parcel 'A' of the Plat of Survey of a part of Lots 1 – 8 of West and Burton's Addition, recorded at Book 12613 Page 296 in the office of the Polk County Recorder. Said tract of land being more particularly described as follows:**

**Beginning at the Northwest Corner of said Parcel 'A'; thence N89°33'09"E, 268.15 feet along the North Line of said Parcel 'A' and along the South Right-of-Way Line of High Street as it is presently established; thence S00°26'31"E, 19.44 feet; thence S89°33'29"W, 26.00 feet; thence S00°26'31"E, 57.00 feet; thence S89°33'29"W, 9.00 feet; thence S00°26'31"E, 145.88 feet to a non-tangent 100.38 foot radius curve concave to the Southwest; thence Northwesterly, 31.50 feet along said curve, said curve having a chord length of 31.37 feet and a chord bearing of N81°40'35"W; thence S89°32'24"W, 201.97 feet to the West Line of said Parcel 'A' and to the East Right-of-Way Line of Martin Luther King Jr. Parkway as it is presently established; thence N00°29'14"W, 217.58 feet along said West Line and East Right-of-Way Line, to the Northwest Corner of said Parcel 'A' and to the Point of Beginning.**

**Said tract of land subject to all easements of record.**

**Said tract of land contains 1.193 acres more or less.**

legal or equitable title to which is held by the undersigned, hereby agrees and consents to the creation and imposition of specific restrictive covenants which are hereby declared to be covenant running with the land for the benefit of the City of Des Moines, Iowa as specifically set out herein:

-1-

CDBG-DR Borrower's Covenant

1. Of the units: two (2) small 1-bedroom units, nineteen (19) large 1-bedroom units, and twelve (12) 2-bedroom units at the above-listed real estate shall remain "affordable housing" as defined from time to time by the United States Department of Housing and Urban Development and as specifically set forth in the CDBG Program regulations found at 24 CFR 570, as amended.

2. The undersigned agrees that the above covenant shall run continuously with the land beginning on the date of execution and shall continue on the land for a period of 120 months after completion of the project and beginning of the PERIOD OF AFFORDABILITY.

3. The undersigned agrees to notify the City in writing prior to any transfer of title or change in occupancy of the above-described real estate during the 120 month covenant period.

4. Release of the above covenant shall be in writing authorized by the City Council of Des Moines, Iowa and filed of record in the records of the Polk County Recorder; provided, however said release of covenant shall be filed no later than (90) days following the expiration of the covenant duration.

5. Correspondence required by this covenant for the City of Des Moines, Iowa shall be directed to the Director of the Community Development Department or its successor.

The covenants created herein and imposed upon the above-described premises are for the sole purpose of allowing the undersigned to receive a Loan from the City of Des Moines, for the purpose of construction rental property.

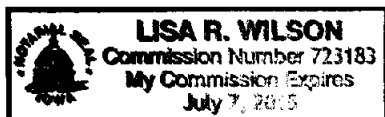
Dated this 29th day of October, 2012.

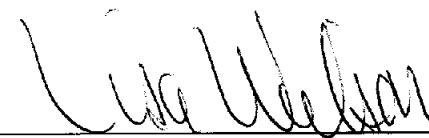
**BORROWER/OWNER By:** Ingersoll Square II Investments, L.L.C.

  
By: Robert J. Caluzzi, Manager

STATE OF IOWA           )  
  )SS:  
COUNTY OF POLK       )

On this 29th day of October, A.D. 2012, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Robert J. Caluzzi, to me personally known, who, being by me duly sworn, did say that the person is the Manager of Ingersoll Square II Investments, LLC., an Iowa Limited Liability Company; that the instrument was signed on behalf of the limited liability company by authority of its members; and that he as such officer acknowledges execution of the instrument to be the voluntary act and deed of the limited liability company, by it and by him voluntarily executed.



  
\_\_\_\_\_  
Notary Public in the State of Iowa

My Commission expires: 7-7-15

**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

SENIOR SECURITY INTEREST

**EXHIBIT "B-2"**  
**CDBG-DR Funded**  
**RESTRICTIVE COVENANT**

This Agreement is entered into by and between the City of Des Moines, Iowa (hereinafter referred to as the "CITY") and Bankers Trust (hereinafter referred to as the "SENIOR SECURITY") and concerning Ingersoll Square II Investments, L.L.C. (hereinafter referred to as "TITLEHOLDER"), effective the date of execution.

WHEREAS, TITLEHOLDER is obligated to the SENIOR SECURITY in the sum and no/100 Dollars (\$ 6,800,000.00 ) on account of a Mortgage granted on the 1 th day of November, 2012 by the SENIOR SECURITY and recorded in the Polk County Recorder's Office on at Book \_\_\_\_\_  
Page \_\_\_\_\_.

WHEREAS, said sum represents a claim or lien against real property owned by TITLEHOLDER in the State of Iowa; and

WHEREAS, TITLEHOLDER is desirous of securing from the City of Des Moines a loan pursuant to the CDBG-DR Program for real property located in Polk County, Iowa, locally known as 2000 High Street, Des Moines, Iowa, 50309 and legally described as follows:

**A tract of land being a part of Parcel 'A' of the Plat of Survey of a part of Lots 1 – 8 of West and Burton's Addition, recorded at Book 12613 Page 296 in the office of the Polk County Recorder. Said tract of land being more particularly described as follows:**

**Beginning at the Northwest Corner of said Parcel 'A'; thence N89°33'09"E, 268.15 feet along the North Line of said Parcel 'A' and along the South**

**Right-of-Way Line of High Street as it is presently established; thence S00°26'31"E, 19.44 feet; thence S89°33'29"W, 26.00 feet; thence S00°26'31"E, 57.00 feet; thence S89°33'29"W, 9.00 feet; thence S00°26'31"E, 145.88 feet to a non-tangent 100.38 foot radius curve concave to the Southwest; thence Northwesterly, 31.50 feet along said curve, said curve having a chord length of 31.37 feet and a chord bearing of N81°40'35"W; thence S89°32'24"W, 201.97 feet to the West Line of said Parcel 'A' and to the East Right-of-Way Line of Martin Luther King Jr. Parkway as it is presently established; thence N00°29'14"W, 217.58 feet along said West Line and East Right-of-Way Line, to the Northwest Corner of said Parcel 'A' and to the Point of Beginning.**

**Said tract of land subject to all easements of record.**

**Said tract of land contains 1.193 acres more or less.**

WHEREAS, in order to induce the City to make a CDBG-DR loan for the construction of the above-listed real property, the SENIOR SECURITY is willing to allow restrictive covenants to be placed against the said real property and to run with the land for the time period set forth herein.

NOW, THEREFORE, the SENIOR SECURITY, in order to induce the City to make a CDBG-DR loan to the TITLEHOLDER for the construction of the above-described real property, and in consideration of the resulting additional property value, do hereby agree that the following covenant shall run with the land beginning the date of execution of the covenant.

1. Of the units: two (2) small 1-bedroom units, nineteen (19) large 1-bedroom units, and twelve (12) 2-bedroom units at the above-listed real estate shall remain "affordable housing" as defined from time to time by the United States Department of Housing and Urban Development and as specifically set forth in the CDBG Program regulations found at 24 CFR 570, as amended.
2. The undersigned agrees that the above covenant shall run continuously with the land beginning on the date of execution and shall continue on the land for a period of 120 months after completion of the project and beginning of the PERIOD OF AFFORDABILITY.
3. Release of the above covenant shall be in writing authorized by the City Council of Des Moines, Iowa and filed of record in the records of the Polk County Recorder; provided, however said release of covenant shall be filed no later than (90) days following the expiration of the covenant duration.
4. In the event of foreclosure by SENIOR SECURITY of its Mortgage/Lien/Real Estate Contract upon the above-described real estate or other transfer in lieu of such foreclosure, this covenant shall be suspended if the foreclosure or other transfer in lieu of foreclosure recognized any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid suspension of this covenant. However, if at any time following transfer by foreclosure or transfer in lieu of foreclosure, but still during the term of this covenant, TITLEHOLDER, or those with whom the former owner has or had family or business ties, obtains an ownership interest in the real estate, this covenant shall be revived according to its original terms.

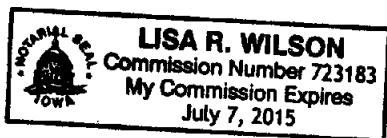
Dated this 7<sup>th</sup> day of November, 2012.

Senior Security Interest: Bankers Trust

By:

Title

JOSHUA MOORE  
Vice President



Lisa Wilson  
Notary Public in the State of Iowa

My Commission expires: 7-7-15

CITY OF DES MOINES, IOWA

Phillip Delafield

Community Development Dept., Director  
(Title)

As authorized by the Des Moines City Council pursuant to Roll Call  
No. 12-1622 on 2012 October 22, 2012

STATE OF IOWA )

) ss:

COUNTY OF POLK )

On this 29 day of October, 2012, 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 Department Director for the City of Des Moines, Iowa, and that the instrument was signed on behalf of the corporation, by authority of its City Council, as contained in the Roll Call No. 12-1622 passed on October 22, 2012 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.

Mary L. Neiderbach  
Notary Public in the State of Iowa

My Commission Expires: March 12, 2013

