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Fee Amount: \$62.00
Revenue Tax:
Polk County, Iowa
Julie M. Haggerty RECORDER
Number: 201500185942
BK: 15937 PG: 132

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1. **Title of Document:** HUD AMENDMENT TO RESTRICTIVE COVENANTS
2. **Date of Document:** AS OF MARCH 1, 2016
3. **Grantor (for indexing purposes only):** CITY OF DES MOINES, IOWA
4. **Grantee (for indexing purposes only):** INGERSOLL SQUARE PARTNERS, LLC
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 Partners, LLC
3408 Woodland Avenue, Suite 504
West Des Moines, IA 50266

6. **Legal Description:** See Exhibit A of this document for legal description on page 6
7. **Reference(s) to Book and Page(s):** Agreement – New Construction –
Community Development Block Grant – Disaster Recovery
Recorded November 9, 2012, in Book 14524 at Page 904
in the records of Polk County, Iowa

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.
714 Locust Street, St. Louis, MO 63101
(314) 621-2939

HUD AMENDMENT TO RESTRICTIVE COVENANTS

This AMENDMENT TO RESTRICTIVE COVENANTS is made as of March 1, 2016, by **Ingersoll Square Partners, LLC**, an Iowa limited liability company ("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** ("Project"), which loan is secured by an Multifamily Mortgage, Security Agreement, Assignment of Rents, and Fixture Filing (Iowa) ("Security Instrument") dated as of March 1, 2016, and recorded in the records of Polk County, Iowa ("Records") on March 25, 2016, as Document Number 201500185698, and is insured by the United States Department of Housing and Urban Development ("HUD"); * BOOK 15935 PAGE 861

WHEREAS, Borrower has received a Community Development Block Grant – Disaster Recovery funding from the Agency, which Agency has required certain restrictions be recorded against the Project; and

WHEREAS, Borrower entered into that certain Agreement (New Construction Rental) – Community Development Block Grant – Disaster Recovery ("Restrictive Covenants") with respect to the Project, as more particularly described in Exhibit A attached hereto, dated as of October 29, 2012, 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.~~ **Not Applicable.**

(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.

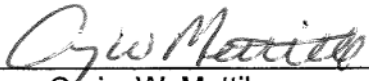
(h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, 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.

BORROWER:

INGERSOLL SQUARE PARTNERS, LLC
An Iowa limited liability company

AGENCY:

CITY OF DES MOINES, IOWA
A municipal corporation

By: 
Name: Craig W. Mettile
Title: Manager

By: _____
Name: _____
Title: _____

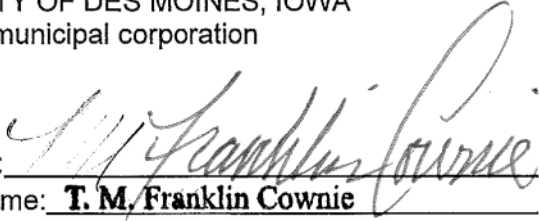
BORROWER:

INGERSOLL SQUARE PARTNERS, LLC
An Iowa limited liability company

By: _____
Name: Craig W. Mettile
Title: Manager

AGENCY:

CITY OF DES MOINES, IOWA
A municipal corporation

By: 
Name: **T. M. Franklin Cownie**
Title: **Mayor**

STATE OF IOWA
COUNTY OF POLK

On this 22nd day of March, 2016, before me, the undersigned, a Notary Public in and for said state, appeared Craig W. Mettillie, to me personally known, who, being by me duly sworn, did say that he is the Manager of Ingersoll Square Partners, LLC, an Iowa limited liability company, and that said instrument was signed in behalf of said company by authority of its Members, and said Craig W. Mettillie acknowledged said instrument to be the free act and deed of said company.

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

Rebecca Krouch

Notary Public

[SEAL]



STATE OF IOWA
COUNTY OF POLK

On this ____ day of March, 2016, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____, to me personally known, who, being by me duly sworn, did say that (s)he is the _____ 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 _____ by the City Council; and that (s)he acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

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

Notary Public

[SEAL]

STATE OF IOWA
COUNTY OF POLK

On this ____ day of March, 2016, before me, the undersigned, a Notary Public in and for said state, appeared Craig W. Mettillie, to me personally known, who, being by me duly sworn, did say that he is the Manager of Ingersoll Square Partners, LLC, an Iowa limited liability company, and that said instrument was signed in behalf of said company by authority of its Members, and said Craig W. Mettillie acknowledged said instrument to be the free act and deed of said company.

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

Notary Public

[SEAL]

STATE OF IOWA
COUNTY OF POLK

On this 22nd day of March, 2016, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared T.M. Franklin Gounier to me personally known, who, being by me duly sworn, did say that (s)he is the Mayor 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 _____ by the City Council; and that (s)he acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

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

Diane Raub
Notary Public

[SEAL]

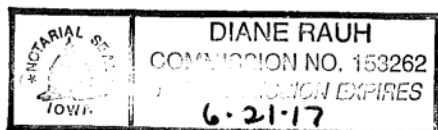


Exhibit A Legal Description

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

Parcel 1:

Parcel "A" of Lots 1-8, Block "B" of West and Burton's Addition, an Official Plat, and part of the vacated alley lying between said West and Burton's Addition and Harding Road Place, an Official Plat, now included in an forming a part of the City of Des Moines, Polk County, Iowa, as shown on the Plat of Survey recorded in Book 12613 Page 296 in the Office of the Recorder of Polk County, Iowa:

EXCEPTING therefrom the following tracts of land:

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 being more particularly described as follows:

Beginning at the Northwest corner of said Parcel "A"; thence N 89°33'09" E, 242.15 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 S 00°26'31" E, 76.44 feet; thence S 89°33'39" W, 9.00 feet; thence S 00°26'31" E, 145.88 feet to a non-tangent 100.38 feet 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 N 81°40'35" W; thence S 89°32'24" W, 201.97 feet to the West line of said Parcel "A" and the East Right-of-Way line of Martin Luther King Jr. Parkway as it is presently established; thence N 00°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.

AND EXCEPT:

An irregular shaped part of Parcel "A" in a portion of West and Burton's Addition to Des Moines, an Official Plat now included in an forming a part of the City of Des Moines, Polk County, Iowa as shown in Book 12613 at Page 296 in the Office of the Polk County Recorder described as:

Commencing at the Southwest corner of Parcel "B" in a portion of Harding Road Place and in a portion of West and Burton's Addition to Des Moines, Official Plats now included in and forming a part of the City of Des Moines, Polk County, Iowa, as shown in Book 12613 at Page 296 in the Office of the Polk County Recorder; thence N 00°29'14" W (previously recorded bearing) along the Westerly line of said Parcel "B", a distance of 147.76 feet to the Southwest Corner of said Parcel "A" and to the point of beginning; thence continuing N 00°29'14" W along the Westerly line of said Parcel "A",

a distance of 52.24 feet; thence N 89°32'24" E, a distance of 201.97 feet; thence Easterly along a 100.38 feet radius curve concave Southerly, a distance of 54.98 feet, said curve having a chord bearing of S 74°46'09" E and a chord length of 54.29 feet; thence S 00°29'14" E, a distance of 37.55 feet to the South line of Parcel "A"; thence S 89°32'24" W along the South line of said Parcel "A", a distance of 254.23 feet to the point of beginning.

Parcel 2:

Parcel "B" of Plat of Survey dated April 11, 2008 that was filed for record with the Polk County Recorder on April 11, 2008 in Book 12613 at Page 296, said Parcel "B" being legally described as follows:

A part of Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9, of Harding Road Place, an Official Plat, and part of Lots 1, 2, 3, 4, 5, 6, 7 and 8 of Block B, West and Burton's Addition an Official Plat, and including a part of the vacated alley lying between said West and Burton's Addition and said Harding Road Place, City of Des Moines, Polk County, Iowa more particularly described as follows:

Commencing at the Southeast corner of said Lot 1, West and Burton's Addition; thence S 00°18'39" E, 0.49 feet along the West Right-of-Way line of 19th Street as it is presently established, to the point of beginning; thence continuing S 00°18'39" E, 149.47 feet along said West Right-of-Way line to the North Right-of-Way line of Ingersoll Avenue as it is presently established; thence S 89°43'53" W, 508.47 feet along the said North Right-of-Way line to the East Right-of-Way line of Martin Luther King Junior Parkway as it is presently established, thence N 00°29'14" W, 147.76 feet along said East Right-of-Way line, thence N 89°32'22" E, 508.92 feet to the point of beginning,

EXCEPT excluding from the above described Parcel B, all of the following property;

Parcel "D" of Plat of Survey of Parcel "D" dated November 6, 2012 that was filed for record with the Polk County Recorder on November 13, 2012 in Book 14528 at Page 338], said Parcel "D" being legally described as follows:

An irregular shaped part of Parcel "A" in a portion of West and Burton's Addition to Des Moines, and an irregular shaped part of Parcel "B" in a portion of Harding Road Place and in a portion of West and Burton's Addition to Des Moines, Official Plats now included in and forming a part of the City of Des Moines, Polk County, Iowa as shown in Book 12613 at Page 296 in the Office of the Polk County Recorder described as:

Beginning at the Southwest corner of said Parcel "B", thence N 00°29'14" W (previously recorded bearing) along the Westerly line of said Parcels "A" and "B", a distance of 200.00 feet; thence N 89°32'24" E, a distance of 201.97 feet; thence Easterly along a 100.38 feet radius curve concave Southerly, a distance of 54.98 feet, said curve having a chord bearing of S 74°46'09" E and a chord length of 54.29 feet; thence S 00°29'14" E, a distance of 186.16 feet to the South line said Parcel "B"; thence S 89°43'53" W

along the South line of said Parcel "B", a distance of 254.23 feet to the point of beginning.

Parcel 3:

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 in Book 12613 at 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 N 89°33'09" E, 242.15 feet along the North line of said Parcel "A" and along the South Right-of-Way line of High Street presently established; thence S 00°26'31" E, 76.44 feet; thence S 89°33'29" W, 9.00 feet; thence S 00°26'31" E, 145.88 feet to a non-tangent 100.38 feet radius curve concave to the Southwest; thence Northerly 31.50 feet along said curve, said curve having a chord length of 31.37 feet and a chord bearing of N 81°40'35" W; thence S 89°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 N 00°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.

THE ABOVE THREE PARCELS ALSO KNOWN AS FOLLOWS:

A tract of land being Parcel "E" of the Plat of Survey that was recorded at Book 14524 Page 879 in the Office of the Polk County Recorder, and a part of Parcels "A" and "B" of the Plat of Survey that was recorded at Book 12613 Page 296 in the Office of the Polk County Recorder. Said tract being more particularly described as follows:

Beginning at the Northwest corner of said Parcel "E", thence N 89°33'09" E, 509.75 feet along the North line of said Parcel "E" and said Parcel "A", and along the South Right-of-Way line of High Street as it is presently established, to the Northeast corner of said Parcel "A", and to the West Right-of-Way line of 19th Street as it is presently established; thence S 00°18'39" E, 419.17 feet along the East line of said Parcel "A" and said Parcel "B" and said West Right-of-Way line, to the Southeast corner of said Parcel "B" and to the North Right-of-Way line of Ingersoll Avenue as it is presently established; thence S 89°43'53" W, 254.24 feet along the South line of said Parcel "B" and along said North Right-of-Way line, to the Southeast corner of Parcel "D" of the Plat of Survey that was recorded at Book 14528 Page 338 in the Office of the Polk County Recorder; thence N 00°29'14" W, 186.39 feet along the East line of said Parcel "D", to the Northeast corner of said Parcel "D" and to a 100.36 radius non-tangent curve concave to the Southwest; thence Northwesterly 54.91 feet along the North line of Parcel "D", the South line of said Parcel "E" and said curve, said curve has a chord length of 54.23 feet and a chord bearing of N 74°59'45" W; thence S 89°32'24" W, 201.97 feet along the North line of said Parcel "D" and the South line of said Parcel "E", to the Northwest corner of said Parcel "D", to the Southwest corner of said Parcel "E", and to the East Right-of-Way line of Martin Luther King Jr. Parkway as it is presently established; thence N 00°29'14" W, 217.58 feet along said East Right-of-Way line and

along the West line of said Parcel "E", to the Northwest corner of said Parcel "E" and to the point of beginning.

Parcel Numbers: 030/03017-058-001 030/03017-064-001
030/03017-001-002 030/03017-141-000

030/02472-002-003 030/05292-001-000
 The existing buildings located at the following properties: 1900 High Street,
 1905 Ingersoll Avenue, 2000 High Street, Polk County, Des Moines, Iowa.