

Date September 22, 2014

**RESOLUTION APPROVING SUBORDINATION AGREEMENT AND
SUBORDINATION OF CITY HOME LOAN SECURITY INTERESTS TO ALLOW
REFINANCING OF THE PRIMARY LOAN FOR THE RENOVATION OF
2714 INGERSOLL AVENUE BY MEM INVESTMENT, LLC**

WHEREAS, on November 19, 2012, by Roll Call No. 12-1778, City Council approved a HOME Investments Partnership (HOME) Agreement with property owner MEM Investment, LLC, including a \$165,000 HOME loan, for the rehabilitation of a vacant 22-unit apartment building located at 2714 Ingersoll Avenue; and

WHEREAS, as approved and as required by the HOME Program, the City's HOME funds are being used for rehabilitation of eleven (11) of the twenty-two units which will be restricted to persons/families below 60% of median income for a five-year period with restricted rent limits; and

WHEREAS, of the \$165,000 of the City's HOME funds, \$25,000 is required to be repaid by MEM Investment, LLC over a five-year period and \$139,988 will be forgiven after the "five-year period of affordability" has been successfully met; and

WHEREAS, the \$165,000 HOME loan is currently subordinate to a \$514,500 Open-End Mortgage loan with First Bank, 5625 Mills Civic Parkway, West Des Moines, which bank also executed a restrictive covenant acknowledging that 11 of the units were designated for tenants at or below 60% of median income with restricted maximum rents; and

WHEREAS, owner MEM Investment, LLC is paying off and obtaining release of the aforementioned First Bank mortgage by refinancing with Lincoln Savings Bank of Clive to obtain additional funding to cover cost overruns from the rehabilitation, as based upon an August 2014 appraisal of the property estimating the fair market value of the stabilized building higher than the 2012 appraisal upon which the First Bank and HOME loan agreements were based; and

WHEREAS, owner MEM Investment, LLC and Lincoln Savings Bank have requested that the City approve and execute a Subordination Agreement, as on file in the office of the City Clerk, in order to subordinate the City's HOME agreement (Polk County Recorder's Office Book 14583, Pages 182-197), mortgage (Polk County Recorder's Office Book 14583, Pages 198-207), and property lien (Polk County Recorder's Office Book 14583, Page 208-210) securing the \$165,000 HOME loan to the refinanced mortgage with Lincoln Savings Bank as a condition of said financing; and

WHEREAS, the subordination of the City's HOME agreement, mortgage and property lien pursuant to the Subordination Agreement will not change the terms of said agreements and security interests or the obligations of MEM Investment, LLC thereunder, and Lincoln Savings Bank will be required to provide a restrictive covenant acknowledging that 11 of the units were designated for tenants at or below 60% of median income with restricted maximum rents as a condition of the City's approval of the Subordination Agreement; and

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WHEREAS, the refinancing and release of the MEM Investment, LLC mortgage with First Bank makes it necessary for the City to release the restrictive covenant given by First Bank (Polk County Recorder's Office Book 14650, Pages 446-449) upon recording of the restrictive covenant to be given by Lincoln Savings Bank.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

- 1. The Subordination Agreement between the City of Des Moines and Lincoln Savings Bank, subordinating the City's HOME agreement (Polk County Recorder's Office Book 14583, Pages 182-197), mortgage (Polk County Recorder's Office Book 14583, Pages 198-207), and property lien (Polk County Recorder's Office Book 14583, Page 208-210) to the Lincoln Savings Bank mortgage to allow refinancing of 2714 Ingersoll Avenue by MEM Investment, LLC, is hereby approved; the Mayor is authorized and directed to sign the Agreement on behalf of the City; and the City Clerk is authorized and directed to attest to his signature, subject to City staff obtaining and recording the restrictive covenant between the City of Des Moines and Lincoln Savings Bank specifying that the HOME funds are for eleven (11) units of affordable housing.
2. The restrictive covenant between First Bank and the City (Polk County Recorder's Office Book 14650, Pages 446-449) is released subject to recording of the restrictive covenant between Lincoln Savings Bank and the City, and the Community Development Director is authorized to execute and record said release on behalf of the City.

(Council Communication No. 14-468)

Form Approved:

Moved by Coleman to adopt.

Glenna K. Frank
Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GREY, HENSLEY, MAHAFFEY, MOORE, and TOTAL (7 yeas).

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

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

Y. M. Franklin Council Mayor

Diane Rauh City Clerk