

# UNOFFICIAL COPY



Doc#: 1417818087 Fee: \$58.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 08/27/2014 03:11 PM Pg: 1 of 11

**THIS INSTRUMENT PREPARED BY  
AND WHEN RECORDED RETURN TO:**

Keith May, Esq.  
Assistant Corporation Counsel  
City of Chicago Department of Law  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602

61740009882(4)

## THIRD AMENDMENT TO LOAN DOCUMENTS

This Third Amendment to Loan Documents (this "**Amendment**") is made in Chicago, Illinois as of June 1, 2014 (the "**Closing Date**"), by and among the City of Chicago, an Illinois municipal corporation (the "**City**"), by and through its Department of Planning and Development ("**DPD**") as successor to the City Department of Housing ("**DOH**") and Diversey Square Associates Limited Partnership, an Illinois limited partnership (the "**Borrower**").

## RECITALS

A. The City Council, pursuant to an ordinance enacted on April 20, 1988, and published at pages 12235-12238 of the Journal of the Proceedings of the City Council (the "**Journal of Proceedings**") of that date, authorized DOH to provide to the Borrower Multi-Unit Rehabilitation Assistance Program financing to the Borrower for the project located on real property commonly known as 3212-26 W. Diversey, in Chicago, Illinois, as more fully described in Exhibit A (together, the "**Property**") in the aggregate amount of \$641,592 (the "**City Loan**").

B. The City made the City Loan to the Borrower on December 21, 1988 (the "**Junior Loan Closing Date**"). The City Loan is evidenced by that certain Promissory Note dated as of December 21, 1988, made by the Borrower in favor of the City in the original principal amount of the City Loan (the "**City Note**").

# UNOFFICIAL COPY

C. The City Loan is secured by, among other things, (i) that certain Junior Mortgage, Assignment of Rents and Security Agreement dated and recorded as of the Junior Loan Closing Date in the Office of the Recorder of Deeds of Cook County, Illinois ("**Recorder**") as Document No.88588773, made by the Borrower in favor of the City (the "**City Mortgage**"). The City Note the City Mortgage, the First Amendment to Loan Documents (as defined herein), the Second Amendment to Loan Documents (as defined herein), and any other documents executed in connection with the City Loan are collectively referred to herein as the "**Financing Documents.**"

D. The Borrower refinanced the Property on September 27, 2001, and as part of the refinancing the terms of the City Loan were amended by that certain Subordination, Amendment and Modification Agreement dated September 27, 2001 and recorded with the Recorder on September 27, 2001 as Document No. 0010902432 (the "**First Amendment to Loan Documents**").

E. The Borrower refinanced the Property a second time on October 1, 2007, and as part of the refinancing the terms of the City Loan were amended again by that certain Subordination, Amendment and Modification Agreement dated October 1, 2007 and recorded with the Recorder on October 11, 2007 as Document No. 0728460045 (the "**Second Amendment to Loan Documents**").

F. The City Loan, as amended by the Second Amendment to Loan Documents, is hereinafter referred to as the 2007 Amended City Loan.

G. The City Mortgage is currently (i) subordinate to that certain Mortgage (the "**Senior Mortgage**"), dated as of October 1, 2007 and recorded with the Recorder as of October 11, 2007 as Document No. 0728460041, securing a loan in the amount of \$1,969,800 (the "**Senior Loan**"), made by the Borrower in favor of Wells Fargo Bank, National Association ("**Wells Fargo**"); and (ii) a Regulatory Agreement dated October 1, 2007 and recorded with the Recorder on October 11, 2007 as Document No. 0728460042, made by Borrower in favor of the United States Department of Housing and Urban Development ("**HUD**").

H. As of the Closing Date, the Borrower procured a loan from Wells Fargo in an amount not to exceed \$2,972,000 (the "**New Senior Loan**") to retire the Senior Loan. The loan is to be insured by HUD under Section 207 pursuant to Section 223(f) of the National Housing Act. The Borrower has agreed to mortgage the Property in favor of Wells Fargo to secure the New Senior Loan (the "**New Senior Mortgage**"), and to execute a Regulatory Agreement in favor of HUD (the "**New Regulatory Agreement**").

I. Wells Fargo has agreed to release the Senior Mortgage upon payment to Wells Fargo or its agent by the Borrower on the Closing Date an amount stipulated by Wells Fargo to be in full satisfaction of the Senior Loan pursuant to that certain Payoff Letter issued by Wells Fargo or its agent.

J. The Borrower has requested that DPD approve a restructuring of the 2007 Amended City Loan.

# UNOFFICIAL COPY

K. The City Council, pursuant to an ordinance enacted on April 2, 2014, and published at pages 76731 through 76735 of the Journal of Proceedings, has approved a restructuring of the 2007 Amended City Loan in a manner which (1) will not alter the principal amount of the 2007 Amended City Loan, (2) will not alter the interest rate on the 2007 Amended City Loan, (3) will extend the maturity date of the 2007 Amended City Loan to or after the maturity date of the New Senior Loan, (4) will not alter the repayment terms of the 2007 Amended City Loan, and (4) will subordinate the City Mortgage to the lien securing the New Senior Loan (the “**Restructuring**”).

L. The aggregate amount of the due but unpaid principal and interest under the 2007 Amended City Loan as of December 31, 2013, was \$641,592.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter contained, the Recitals which are made a contractual part of this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## AGREEMENTS

**Section 1.** The Parties hereby agree that the aggregate amount of the due but unpaid principal and interest under the 2007 Amended City Loan as of December 31, 2013, was \$641,592 and there were zero late charges accrued on such payments as of December 31, 2013 (the “**Penalty Amount**”).

**Section 2.** The City and the Borrower agree that the Financing Documents are modified as follows:

**2.1. City Mortgage:** The first paragraph of Section 5.01 of the City Mortgage is hereby deleted in its entirety and is replaced with the following:

**Junior Mortgage.** This Mortgage is subordinate and subject (i) to the rights of Wells Fargo National Association (“Senior Lender”) under that certain Mortgage dated as of June 1, 2014, and recorded as document number 1417818084 (the “Senior Mortgage”), in the Office of the Cook County Recorder of Deeds, Illinois, securing a Note in the principal amount of \$2,972,000, to be used as a First Mortgage loan (the “Senior Loan”) and (ii) to the rights of the Secretary of HUD under the Regulatory Agreement dated as of June 1, 2014, the terms and conditions of which are hereby incorporated by reference.

**2.2. Notices:** The Notice Sections in the Loan Documents (including, without limitation, Section 4.05 of the Mortgage) are amended to reflect the current name and addresses of the City departments and Borrower, respectively, and are replaced with the following:

# UNOFFICIAL COPY

IF TO CITY/  
 HOLDER/MORTGAGEE: Department of Planning and Development  
 121 North LaSalle Street, Room 1000  
 Chicago, Illinois 60602  
 Attention: Commissioner

WITH COPIES TO: Office of the Corporation Counsel  
 City of Chicago Department of Law  
 121 North LaSalle Street, Room 600  
 Chicago, Illinois 60602  
 Attention: Finance & Economic Development Division

Department of Finance  
 City of Chicago  
 121 North LaSalle Street, Room 700  
 Chicago, Illinois 60602  
 Attention: Comptroller

IF TO MAKER:  
 MAKER/MORTGAGOR Diversey Square Associates Limited Partnership  
 325 North Wells Street, 8<sup>th</sup> Floor  
 Chicago, Illinois 60654  
 Attention: Hipolito Roldan

WITH COPIES TO: Miner, Barnhill & Galland, P.C.  
 14 West Erie Street  
 Chicago, Illinois 60654  
 Attention: Laura E. Tilly, Esq.

**2.3. Amendment Included in all Documents:** This Amendment shall be included in the definition of the term “**Loan Documents**” as set forth in the “**Financing Documents**” as set forth in this Amendment.

**2.4 Extension of Maturity of the City Loan.** The Maturity Date of the City Loan is extended to December 1, 2050.

**Section 3.** Audited financial statements shall provided by the Borrower to the City, and shall be based upon an examination of the books and records of the Property, shall be conducted by an Illinois-licensed independent certified public accountant at the Borrower’s expense, shall be prepared in accordance with the requirements of DPD, and shall be provided to DPD no later than June 1<sup>st</sup> of the following year.

**Section 4.** Except as specifically modified by this Amendment, the Borrower hereby represents, warrants and confirms to the City that:

# UNOFFICIAL COPY

**4.1.** All the Financing Documents and the obligations of the Borrower thereunder remain in full force and effect, are hereby ratified and confirmed, and may be enforced against the Borrower in accordance with their terms by the City against the Borrower and the Property;

**4.2.** All representations, warranties, certifications, statements, affidavits and other items heretofore made or furnished to the City by or on behalf of the Borrower, in connection with the Financing Documents were true, accurate and complete as of the date made or furnished to the City, and continue to be true, accurate and complete as if furnished or made by or with respect to the Borrower as of the date hereof;

**4.3.** The Borrower acknowledges and warrants to the City that they claim no defense, right of offset or counterclaim against enforcement of the Financing Documents (as modified by this Amendment) and have no other claim against the City;

**4.4.** The Borrower acknowledges and warrants to the City that no individual or entity that has been accused of any malfeasance with government funds by any regulatory agency of the United States Government, the State of Illinois or any subdivision thereof has any ownership interest in, or management control over the Project or the Borrower;

**4.5.** Any Event of Default under any of the Financing Documents will be or has been cured to the satisfaction of the City as of the date hereof; and

**4.6.** The execution, delivery and performance of this Amendment and the consummation of the transactions hereby contemplated will not conflict with any law, statute or regulation to which the Borrower, or the Property is subject.

**Section 5.** The Parties hereto acknowledge and agree that this Amendment does not constitute a novation of the existing indebtedness under the City Loan, but is intended to be an amendment and modification of the Financing Documents. Except as amended hereby, the provisions of the Financing Documents remain in full force and effect and are hereby ratified and confirmed. The Mortgage shall continue to secure repayment of all amounts due under the Note as modified by this Amendment without loss of priority. The City Mortgage, the Financing Documents and any and all renewals, modifications, extensions or advances thereunder or secured thereby (including interest thereon), unconditionally do and will remain at all times a lien, claim or charge on the Property.

**Section 6.** The Borrower : (i) is represented by independent legal counsel of their respective choice in the transactions contemplated by this Amendment; (ii) is fully aware and clearly understand all the terms contained in this Amendment; (iii) has voluntarily, with full knowledge and without coercion or duress of any kind, entered into this Amendment; (iv) is not relying on any representation, either written or oral, express or implied, made by the City other than as set forth in this Amendment; (v) on its own initiative has made proposals to the City, the terms of which are reflected by this Amendment; and (vi) has received actual and adequate consideration to enter into this Amendment.

# UNOFFICIAL COPY

**Section 7.** In the event of a conflict or inconsistency between the provisions of the City Mortgage, the Note or any of the other Financing Documents and the provisions of this Amendment, the provisions of this Amendment shall govern and control.

**Section 8.** This Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that the Borrower may not assign this Amendment or its rights and obligations under the Financing Documents without the prior written consent of the City.

**Section 9.** This Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute a single agreement.

**Section 10.** This Amendment shall be governed by and construed in accordance with the internal laws of the State of Illinois without regard to its conflict of laws principles.

**Section 11.** If any provision of this Amendment is determined by a court having jurisdiction to be illegal, invalid or unenforceable under any present or future law, the remainder of this Amendment will not be affected thereby. It is the intention of the Parties that if any provision is so held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible that is legal, valid and enforceable.

**Section 12.** Neither this Amendment nor any of the provisions hereof can be changed, waived, discharged or terminated, except by an instrument in writing signed by all Parties to this Amendment.

**Section 13.** No waiver of any action or default will be implied from the failure or delay by the City to take any action in respect of such action or default. No express waiver of any condition precedent or default will affect any other default or extend any period of time for performance other than as specified in such express waiver. One or more waivers of any default in the performance of any provision of this Amendment or of the Financing Documents will not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act or request by any party will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request.

**Section 14.** The Borrower expressly agree that no member, official, employee or agent of the City shall be individually or personally liable to the Borrower, or any of their successors or assigns, in the event of any default or breach by the City under this Amendment.


**Section 15.** This Amendment shall be recorded against the Property in the Office of the Cook County Recorder of Deeds at the expense of the Borrower.

*[The remainder of this page is intentionally left blank  
and the signature page follows.]*

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have executed this Third Amendment to Loan Documents as of the date first written above.

**CITY OF CHICAGO**, acting by and through its  
Department of Planning and Development

By:   
\_\_\_\_\_  
Andrew J. Mooney  
Commissioner

**DIVERSEY SQUARE ASSOCIATES LIMITED PARTNERSHIP**, an  
Illinois limited partnership

By: Hoga Development Corp. II, an Illinois business corporation  
its general partner

By: \_\_\_\_\_  
Name: Hipolito Roldan  
Its: President

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

**IN WITNESS WHEREOF**, the undersigned have executed this Third Amendment to Loan Documents as of the date first written above.

**CITY OF CHICAGO**, acting by and through its  
Department of Planning and Development

By: \_\_\_\_\_

Andrew J. Mooney  
Commissioner

**DIVERSEY SQUARE ASSOCIATES LIMITED PARTNERSHIP**, an  
Illinois limited partnership

By: Hogar Development Corp. II, an Illinois business corporation  
its general partner

By:  \_\_\_\_\_

Name: Napolito Roldan

Its: President

Property of Cook County Clerk's Office



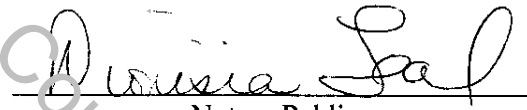
# UNOFFICIAL COPY

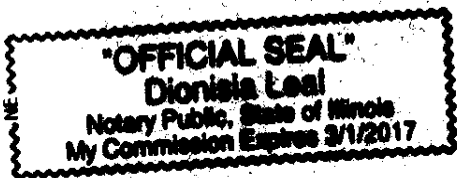
STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

I, the undersigned, a notary public in and for the County and State aforesaid, do hereby certify that Andrew J. Mooney, personally known to me to be the Commissioner of the Department of Planning and Development of the City of Chicago, Illinois (the "City") and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Commissioner, he signed and delivered the said instrument pursuant to authority, as his free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_ day of June, 2014.

(SEAL)

  
\_\_\_\_\_  
Notary Public



Property of Cook County Clerk's Office


# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Hipolito Roldan, personally known to me to be the President of Hogar Development Corp. II, an Illinois business corporation, the general partner of Diversey Square Associates Limited Partnership (the "**Borrower**"), an Illinois limited partnership, and known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such President, he signed and delivered the said instrument pursuant to authority given by the General Partner of the Borrower, and as his free and voluntary act and deed and as the free and voluntary act and deed of the Borrower for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 24<sup>th</sup> day of June, 2014.

(SEAL)

  
\_\_\_\_\_  
Notary Public



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 24 TO 30 IN BLOCK 1 IN WISNER'S SUBDIVISION OF LOTS 8 AND 9 IN BRAND'S SUBDIVISION OF THE NORTHEAST 1/4 OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address: 3212-16 West Diversey Avenue  
Chicago, IL 60647

PIN: 13-26-229-034-0000

Property of Cook County Clerk's Office