



Doc#: 1535610091 Fee: \$64.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/22/2015 04:52 PM Pg: 1 of 14

Upon Recording, RETURN TO:

U. S. Department of Housing and Urban Development
Attn: Property Disposition Division, 6AHMLAT
801 CHERRY STREET, Unit #45, Ste. 2500
FORT WORTH, TX 76102
40016836 (10F17)

712 W Diversey Parkway
Chicago, IL
FHA: 071-94003

AMENDED AND RESTATED COVENANT AGREEMENT

THIS AMENDED & RESTATED COVENANT AGREEMENT (the "Agreement"), made as of the 22 day of December, 2015, by and between the SECRETARY OF HOUSING AND URBAN DEVELOPMENT (the "Grantor"), party of the first part, and Diversey Neighborhood Development Corporation (the "Grantee"), and party of the second part.

This Amended and Restated Covenant Agreement amends the Special Warranty Deed from Grantor to Grantee dated September 25, 1996, and recorded as document no. 96-743060 in the Cook County Recorder of Deeds Office on September 30, 1996 (the "Deed", by amending certain provisions of the Covenants set forth therein.

WHEREAS, Diversey Neighborhood Development Corporation has agreed to grant, bargain, sell and convey 712 W Diversey Parkway (the "Property") more particularly described below, to Diversey Limited Partnership (the date on which this sale and conveyance occurs is the "Date of Conveyance"),

WHEREAS, the parties agree that certain restrictive covenants shall continue to encumber the Property.

NOW, THEREFORE, for and in consideration of the mutual benefit to be derived and other good and valuable consideration, the receipt of which is acknowledged by each party hereby agree as follows:

THE COVENANTS SET FORTH IN THIS AGREEMENT shall run with the land conveyed by the Deed and, to the fullest extent permitted by law and equity, shall be binding for the benefit and in favor of and enforceable by the Grantor and his successors in office.

S 4
P 14
S 1
SC X
INT [Signature]

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COVENANT 1 - Enforcement Is Hereby Amended:

1. The restrictive covenants set forth in this Agreement shall run with the land conveyed by the Deed and, to the fullest extent permitted by law and equity, shall be binding for the benefit and in favor of and enforceable by the Secretary of HUD and any/all successors in office.
2. Without limiting any other rights and remedies available to HUD, the HUD shall be entitled to:
 - a. institute legal action to enforce performance and observance of these covenants,
 - b. enjoin any acts which violate these covenants,
 - c. exercise any other legal or equitable right or remedy with respect to these covenants.
3. In addition, the restrictive covenants, if any, set forth in this Amended and Restated Covenant Agreement relating to Section 8 assistance shall be enforceable by any tenant or applicant eligible for assistance under the Section 8 Program.

COVENANT 2 Project-Based Section 8 Assistance (Expired in 2011 and is therefore deleted)

Covenant 3 Affordability of Units Is Hereby Amended:

1. The Grantee covenants that 77 units in the Property shall remain as affordable housing for very low- and low-income families. Such units consist of:
 - a. 45 units which are subject to a Project-based Section 8 contract; and
 - b. 32 units which are not subject to a Project-based Section 8 contract shall remain affordable housing for 20 years, commencing September 25, 1996.
2. Units which are not subject to a Project-based Section 8 contract shall remain affordable housing for 20 years, commencing September 25, 1996.
3. Affordability of such units is defined as follows:

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- a. For low-income families, the rent does not exceed 30 percent of 80 percent of the area median income, as determined by the Secretary, and
4. The Grantee covenants that it will not unreasonably refuse to lease units to, or otherwise discriminate against, very low-income families.
5. The Grantee shall certify to HUD annually that the requirements in the above paragraphs have been fulfilled.

Covenant 4 – Equity Participation Is Hereby Amended

1. Definitions:

- Conveyance means, from and after the Date of Conveyance, any sale, assignment, transfer, creation of a leasehold estate in excess of one (1) year, or any other legal or equitable conveyance or transfer of the Project or an interest therein, or any legal or equitable transfer of an interest in the Grantee (which hereinafter includes, without limitation, any/all successors, assigns or transferee of Grantee) or any entities that may comprise the Grantee.
- HUD Approval of Conveyance includes:
 - the entity and all principals receiving prior to Conveyance approval under HUD's Previous Participation Certification process;
 - submission of a signed and satisfactory Certification of Substantial Compliance (in the form attached – Exhibit B); and
 - HUD's receipt of a signed "Agreement to Abide by the Restrictive Covenants Agreement" in recordable form;
 - evidence satisfactory to HUD that the Grantee has a minimum of five (5) years of substantive experience owning and managing properties of a similar size and nature of the Project;
 - Receipt by HUD of satisfactory written information provided by the prospective Grantee as to how the Grantee, or any subsequent Grantee will:
 - a. Implement and/or continue to comply with all existing use restrictions;
 - b. implement sound financial and physical management program;
 - c. respond to the needs of the residents and work cooperatively with resident organizations; and
 - d. provide adequate organizational staff and resources to manage the Project.
- Permitted Financing means the sources, amounts, terms and uses (e.g. interest and payment obligations) of financing for the Property, which were previously approved by HUD.

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- Proceeds means the gross revenue realized from a Conveyance or Refinance.
 - Refinance means, from and after the Date of Conveyance, the consolidation or replacement of Permitted Financing.
2. The Proceeds from a Conveyance, less expenses incurred by the Grantee, as approved by HUD and which are not funded by a grant, consisting of:
- Reasonable transaction costs;
 - Permitted Financing ;
 - Grantee's Purchaser Price previously paid to HUD and not included in Permitted Financing;
 - Costs of renovation and rehabilitation, including any funded by Low-Income Housing Tax Credits (less developer fees), excluding such costs paid with Permitted Financing and also excluding costs incurred for routine maintenance and repairs.
 - Under no circumstances may any funds be deducted or credited more than once,
- shall be assigned to HUD in the following amounts:
- a. between the date of the Deed and fifteen (15) years thereafter, one hundred (100%) percent; **and**
 - b. between fifteen (15) years, one (1) day and twenty (20) years from the date of the Deed, seventy-five percent (75%); **and**
 - c. between twenty (20) years, one (1) day and twenty-five (25) years from the date of the Deed, fifty percent (50%); **and**
 - d. between twenty-five (25) years, one (1) day and thirty (30) years from the date of the Deed, twenty-five percent (25%); **and**
 - e. Over thirty years, zero percent (0%).
3. Grantee shall not Refinance the Property or any interest therein, or encumber or Refinance any interest in the ownership entities that comprise Grantee, directly or indirectly, without the written consent of HUD. HUD may condition such consent on, among other things, the Proceeds from the Refinance being paid to HUD in the amounts provided in paragraph 2, a - e above, less expenses incurred by Grantee, as approved by HUD and which are not funded by a grant, consisting of:
- Reasonable transaction costs of the Refinance;
 - Permitted Financing paid off by the Refinance;
 - Costs of renovation and rehabilitation, including any funded by Low-Income Housing Tax Credits (less developer fees), excluding such costs paid with Permitted Financing and also excluding costs incurred for routine maintenance and repairs.
 - Under no circumstances may any funds be deducted or credited more than once.
4. Grantee shall keep or cause to be kept, accurate records of account of any Conveyance or Refinance and of the costs of renovation and rehabilitation. HUD, its agents or contractors, during Grantee's normal working hours, shall have the right to enter and have free access to

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inspect all books and records of Grantee. Upon the written request of HUD, Grantee shall retain an independent certified public accountant to prepare an accounting of any Conveyance, Refinance, and/or cost of renovation or rehabilitation.

5. From and after the Date of Conveyance, a merger, conversion, share exchange, interest exchange of corporate or partnership interest in the entity owning the Property is also a Conveyance and requires the approval of HUD, which shall not be unreasonably withheld and shall be subject to the provision of the above paragraph 2.

Notwithstanding anything to the contrary contained in the Deed, as modified by this Agreement, nothing in this paragraph is intended to prohibit or preclude the Partnership from paying outstanding deferred development fee to the Diversey Limited Partnership's developer, which fee was included in tax credit eligible basis.

6. The preceding provisions shall be applicable and in full force and effect notwithstanding that any applicable statutory law or case decision provides that any such merger or conversion or share (or interest) exchange transaction does not constitute or involve the occurrence of a "transfer" or "assignment" of a real estate interest or other assets of a constituent party to any such transaction.
7. HUD recognizes the right of the mortgage of any Permitted Financing to take appropriate action in the case of a default. In the event of a foreclosure of any Permitted Financing, the mortgagee thereof shall endeavor to provide HUD with 30 days advance notice thereof, but in any event every Conveyance remains subject to Approval of the Conveyance and HUD's entitlement to Proceeds. HUD acknowledges and agrees that the Permitted Financing to be deducted from Proceeds includes protective advances that may be made by the mortgagee thereunder and all customary, usual and reasonable costs incurred by the mortgagee as part of the foreclosure.
8. When the total sum of all payments paid to HUD pursuant to the requirements of this Covenant, reaches \$4,598,810.41, all equity participation requirements under this Covenant will be deemed to be satisfied and this Covenant shall no longer apply.

Covenant 5 – Lead-Based Paint Hazards
is hereby deleted and replaced by
ENVIRONMENTAL HAZARDS WITH DEMOLITION

Grantee covenants to:

1. Investigate and test the Property for substances, chemicals and waste (collectively "Hazardous Substances") and perform cleanup, remedial, removal or restoration work required by any governmental authority ("Inspect and Remediate Requirements").

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2. Certify to HUD (in a form acceptable to HUD) that the Inspect and Remediate Requirements have been performed in accordance with this provision.
3. Indemnify, defend, and hold HUD harmless from any liability arising from Grantee's failure to satisfactorily perform the Inspect and Remediate Requirements. Grantee acknowledges that HUD's acceptance of the work is not a warranty that all Hazardous Substances have been eliminated from the Property and does not relieve Grantee of its ongoing responsibility to comply with appropriate governmental authorities.

Covenant 6
Rental or Cooperative Use
Is hereby amended:

- (1) The Grantee covenants that the Property will be maintained as rental or cooperative housing for a period of thirty (30) years after the date of the Deed or such earlier time as the Grantor may specify in writing (the "Restricted Period").
- (2) During the Restricted Period, the Grantee may not market dwelling units for any purpose other than rental or cooperative housing without the Grantor's prior written approval.
- (3) Any change in the use or number of commercial units in the Property, from the use or number indicated as of the Date of Conveyance must receive prior written approval of the Grantor.

Covenant 7
Rehabilitation and Relocation
(Remains Unchanged)

The Grantee covenants that it will comply with paragraphs 2 through 5, below. Additionally, the Grantee covenants it will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC S4601, and the regulations thereunder, 49 CFR Part 24, when Project-based Section 8 assistance is provided by the Grantor. The Grantee is responsible for ensuing compliance with the Act and regulations, notwithstanding any contractual obligation with third parties to comply with the Act and regulations.

- (1) The Grantee covenants the Property will be rehabilitated within twenty four (24) months from the date of this Amendment, with extensions approved by Grantor, in accordance with all applicable State and local laws, codes, ordinances and regulations, and for units receiving project-based Section 8, Section 8 Housing Quality Standards pursuant to 24

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CFR Part 886, Subpart C, in addition to requirements set forth in any Post-Closing Repair Requirements sheet, Form HUD 9552 and its exhibits.

- (2) If temporary or permanent relocation is necessary because of such rehabilitation, Grantee covenants that it will provide advance written notice of the expected displacement. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
- (3) If temporary relocation is necessary because of such rehabilitation, Grantee covenants that it will provide assistance to tenants in locating a decent, safe and sanitary dwelling/housing unit which, to the extent feasible, shall be in a location not generally less desirable than the Property, and reimburse tenants for:
- (a) Expenses of moving and any new increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period.
 - (b) Expenses of returning to a repaired unit on the Property.
- (4) If permanent relocation is necessary because of such rehabilitation, Grantee covenants that it will provide assistance, as described below, to tenants, as may be appropriate:
- (a) Advisory services, necessary to locate decent, safe, and sanitary and affordable replacement housing which, to the extent feasible, shall be in a location not generally less desirable than the Property.
 - (b) Reimbursement for reasonable moving expenses, which need not to exceed an amount determining by Grantor to be reasonable considering the size of the household size and the circumstances surrounding the move.

Covenant 8
Post Closing Repairs
Is Hereby Deleted

Covenant 9
Asbestos Inspect and Mitigate
Is Hereby Amended:

The Grantee covenants that the Property will be inspected and tested for asbestos containing materials (ACM). If ACM is found to be present, the ACM must be abated by city, county or State licensed/certified asbestos removal contractors and such abatement must

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be in compliance with State, OSHA and EPA requirements or if abatement is not required the ACM shall be monitored in accordance with an Operations and Maintenance Plan. The Grantee must submit evidence substantiating the abatement and disposal of ACM and the adoption and implementation of an Operations and Maintenance Plan. The Grantee must take appropriate action to protect the health and safety of residents and workers from hazards which may be associated with testing and abatement procedures.

[Signature Pages to Follow]

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IN WITNESS WHEREOF, the parties have executed this Amended and Restated Covenant Agreement

WITNESS:

FOR: SECRETARY OF HOUSING AND URBAN DEVELOPMENT

Dorothea Kelly
Louise L. Gregg

BY: Holly C. Malloy
Holly C. Malloy, Acting Director
Property Disposition Division

STATE OF TEXAS)
COUNTY OF TARRANT)

On this 11 day of November, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared Holly C. Malloy, personally known to me or proved to me on the basis of satisfactory evidence, to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity and that by her signature on the instrument, the individual or the person on behalf of which the individual acted, executed the instrument.

L Fawn Barrington
Notary Public

My Commission Expires: 04/08/2017

(NOTARY SEAL)



[Signature Pages Continue]

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FOR: Diversey Neighborhood Development Corporation

By: Michael Goldberg
 Name: Michael Goldberg
 Title: Secretary
 Address: 208 S. LaSalle
Chicago, IL 60604

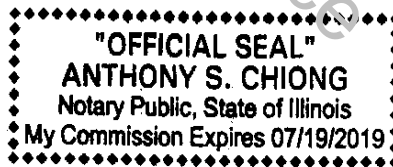
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STATE OF ILLINOIS)
 COUNTY OF COOK)

On the 22 day of November, 2015, before me, the undersigned, a notary public in and for said state, personally appeared Michael Goldberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

[Signature]
 Notary Public
 Commission expires: 7/19/19

(NOTARY SEAL)



Initials: [Signature]

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EXHIBIT "A"
Legal Description

THE EAST ONE FOOT OF LOT 20 AND ALL OF LOTS 21, 22 AND 23 IN WARNERS SUBDIVISION OF LOTS 17 AND 18 BICKERDIKE AND STEELE'S SUBDIVISION OF THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

14-28-115-042-000 (VOL.486)

Commonly known as 712 W. Diversey Parkway, Chicago, Illinois 60614

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Certification of Substantial Compliance

TO: The United States Department of Housing and Urban Development

FROM: _____

I Certify to HUD that any and all project(s) that are owned by

_____, or his affiliates, and located in

_____ (City or Town where project being purchased is

located) is/are in substantial compliance with applicable State

and/or local housing statutes, regulations, ordinances and codes

and are listed on Schedule A attached hereto.

WARNING: It is a crime to knowingly make false statements to the United States in this document or any other document related to this sale. Penalties upon conviction can include a fine or imprisonment. For details see Title 18 U.S. Code, Section 1001 and Section 1010.

By: _____

Address

Telephone Number

Date

Initials:



EXHIBIT B

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STATE OF:)
COUNTY OF:)

Came before me this _____ day of _____, 20__.

Schedule A: All projects owned by _____ or affiliates.

| List each project name | List name of principal or affiliate with ownership of project. | List project address |
|------------------------|--|----------------------|
| | | |

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| | | |
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COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

Initials: _____