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Doc#: 1535610097 Fee: \$72.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/22/2015 04:56 PM Pg: 1 of 18

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Citibank, N.A.
Transaction Management Group / Post Closing
390 Greenwich Street, 2nd Floor
New York, New York 10013
Attention: Tanya Jimenez
Citi Deal ID # 23120
4016836 (7 OF 17)

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this 22nd day of December, 2015 by and among (i) CITIBANK, N.A., a national banking association (“**Senior Lender**”), (ii) CITY OF CHICAGO, ILLINOIS, a municipal corporation (“**Subordinate Lender**”), and (iii) DIVERSEY LIMITED PARTNERSHIP, an Illinois limited partnership (“**Borrower**”).

Recitals

WHEREAS, Borrower is the owner of that certain 90-unit residential rental development and related commercial retail space known as “Diversey Parkway Apartments” (“**Project**”), located at 712 West Diversey Parkway, Chicago, Illinois. Senior Lender has made or is making the senior mortgage loan in the amount of Ten Million Four Hundred Thirty-five Thousand and No/100 Dollars (\$10,435,000.00) (“**Senior Indebtedness**”), as evidenced by that certain Multifamily Construction Note dated as of December 22, 2015, made by Borrower in favor of Senior Lender in the original principal amount of the Senior Indebtedness (“**Senior Note**”), and secured, *inter alia*, by that certain Multifamily Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing dated as of December 1, 2015, executed by Borrower and naming Senior Lender as mortgagee, and recorded with the Official Records of Cook County, Illinois (“**Senior Security Instrument**”).

WHEREAS, Subordinate Lender previously made a loan to Diversey Neighborhood Development Corporation (“**DNDC**”), Borrower’s predecessor-in-interest, in the amount of One Million Seventy-three Thousand Nine Hundred Fifty-five and No/100 Dollars (\$1,073,955.00) (“**Subordinate Indebtedness**”), as set forth in that certain Housing Loan Agreement executed between DNDC and Subordinate Lender and dated as of December 23, 1996, and evidenced by that certain Promissory Note made by DNDC in favor of Subordinate Lender in the original

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principal amount of \$1,073,955, dated as of December 23, 1996 (“**Subordinate Note**”), Assignment of Rents and Leases granted by DNDC to Subordinate Lender dated and recorded as of December 23, 1996 (“**ALR**”), as Document No. 96965720 of the Official Records of Cook County, Illinois (the “**Official Records**”), Junior Mortgage, Security Agreement and Financing Statement granted by DNDC to Subordinate Lender dated and recorded December 23, 1996, as Document No. 96965719, of the Official Records (with the ALR, “**Subordinate Security Instrument**”), each as amended by that certain First Amendment to City Loan Documents between DNDC and Subordinate Lender dated June 21, 2013, and recorded July 1, 2013, as Document No. 1318213070 of the Official Records, that certain Second Amendment to City Loan Documents between DNDC and Subordinate Lender dated as of the date of this Agreement and recorded in the Official Records, and that certain City Loan Assumption, Restructuring and Property Transfer Approval by and among Subordinate Lender, DNDC, and Borrower, dated as of December 22, 2015, and recorded in the Official Records.

WHEREAS, Senior Lender has agreed to permit the Subordinate Loan and to allow the Subordinate Mortgage to remain an encumbrance against the Mortgaged Property subject to all of the conditions contained in this Agreement.

NOW, THEREFORE, in order to induce Senior Lender to permit Subordinate Lender to allow the Subordinate Loan and the Subordinate Mortgage to remain against the Mortgaged Property, and in consideration thereof, Senior Lender, Subordinate Lender and Borrower agree as follows:

1. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

- (a) “**Affiliate**” is defined in 24 CFR 200.215, or any successor regulation.
- (b) “**Bankruptcy Proceeding**” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.
- (c) “**Borrower**” means all entities identified as “Borrower” in the first paragraph of this Agreement, together with any successors, heirs, and assigns (jointly and severally). Borrower shall include any entity taking title to the Mortgaged Property, whether or not such entity assumes the Senior Note, provided that the term “Borrower” shall not include Senior Lender in the event that Senior Lender may acquire title to the Mortgaged Property. Whenever the term “Borrower” is used herein, the same shall be

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deemed to include the obligor of the debt secured by the Senior Security Instrument.

- (d) **“Business Day”** means any day other than Saturday, Sunday or any other day on which Senior Lender or HUD is not open for business.
- (e) **“Covenant Event of Default”** is defined in the Senior Security Instrument.
- (f) **“Entity”** means an estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.
- (g) **“Monetary Event of Default”** is defined in the Senior Security Instrument.
- (h) **“Non-Project Sources”** means any funds that are not derived from Project Sources.
- (i) **“Person”** means any individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).
- (j) **“Project Sources”** means the Mortgaged Property (as defined in the Senior Security Instrument) any proceeds of the Senior loan, and any reserve or deposit made with Senior Lender or any other party as required by HUD in connection with the Senior loan.
- (k) **“Senior Lender”** means the Entity named as such in the first paragraph on page 1 of this Agreement, its successors and assigns and any other Person who becomes the legal holder of the Senior Loan after the date of this Agreement.
- (l) **“Senior Loan Documents”** means the Senior Note and the Senior Security Instrument, as such documents may be amended from time to time, and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Senior Indebtedness.
- (m) **“Senior Security Instrument Default”** means an “Event of Default” as defined in the Senior Security Instrument.
- (n) **“Subordinate Indebtedness”** means all present and future indebtedness, obligations, and liabilities of Borrower to Subordinate Lender under or in connection with the Subordinate Loan or the Subordinate Loan

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Documents.

- (o) **“Subordinate Lender”** means the Entity named as such in the first paragraph on page 1 of this Agreement.
- (p) **“Subordinate Loan Documents”** means the Subordinate Note, the Subordinate Mortgage, and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness.
- (q) **“Subordinate Loan Enforcement Action”** means the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker’s lien or rights of set-off or recoupment, or the taking of any other enforcement action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.
- (r) **“Subordinate Mortgage Default”** means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), Subordinate Lender to take a Subordinate Loan Enforcement Action.
- (s) **“Surplus Cash”** is defined herein to mean the same as that term is defined in the Subordinate Note.

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2. Permission to Retain Mortgage Lien Against Mortgaged Property.

Senior Lender agrees, subject to the provisions of this Agreement, to permit Subordinate Lender to retain the Subordinate Mortgage and other recorded Subordinate Loan Documents as an encumbrance against the Mortgaged Property (which are subordinate to the lien of the Senior Security Instrument) securing Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of Borrower to Subordinate Lender under and in connection with the Subordinate Loan. Such permission is subject to the condition that each of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are true and correct on the date of this Agreement and on the date on which the proceeds of the Subordinate Loan are disbursed to Borrower. If any of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are not true and correct on both of those dates, the provisions of the Senior Loan Documents applicable to unpermitted liens on the Mortgaged Property shall apply.

3. Borrower's and Subordinate Lender's Representations and Warranties.

Borrower and, with respect to subsections (a) through (d) below, Subordinate Lender each make the following representations and warranties to Senior Lender:

(a) **Subordinate Loan Documents.** The Subordinate Loan is evidenced by the Subordinate Note and is secured by the Subordinate Mortgage.

(b) **Terms of the Subordinate Loan.** The original principal amount of the Subordinate Note is \$1,073,955. Interest on the Subordinate Note accrues monthly at the rate of three percent (3%) per annum. The Subordinate Note is due and payable in full on June 23, 2046 ("Maturity"). The principal of the Subordinate Note will have a balloon principal payment of the remaining unpaid principal due at Maturity. The promissory note evidencing the Subordinate Note obligates Borrower to make annual payments of principal and interest, subject to available Surplus Cash. Any payments due from project income under the Subordinate Note shall be payable only (i) from Surplus Cash of the Project; but in no event greater than twenty-five percent (25%) of the total amount of Surplus Cash; or (ii) from monies received from Non-Project Sources.

(c) **Relationship of Borrower to Subordinate Lender.** Subordinate Lender is not an Affiliate of Borrower.

(d) **Term.** The term of the Subordinate Note does not end before the term of the Senior Note.

(e) **Subordinate Loan Documents.** The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

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4. [Intentionally Omitted.]

5. **Terms of Subordination.**

(a) **Agreement to Subordinate.** Senior Lender and Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment in full of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Security Instrument and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the Senior Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Security Instrument, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property).

(b) **Subordination of Subrogation Rights.** Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Senior Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Security Instrument.

(c) **Payments Before Senior Security Instrument Default.** Until Subordinate Lender receives a default notice of a Senior Security Instrument Default from Senior Lender, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents provided that such payments are otherwise permitted under the terms of this Agreement.

(d) **Payments After Senior Security Instrument Default.** Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Security Instrument Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without Senior Lender's prior written consent. Borrower irrevocably assigns to the Senior Lender any payment made to the Subordinate Lender after receiving notice of a Senior Security Instrument Default.

(e) [Intentionally Omitted.]

(f) **Agreement Not to Commence Bankruptcy Proceeding.** Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with

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any other creditor in commencing any Bankruptcy Proceeding with respect to Borrower, without Senior Lender's prior written consent.

6. Default Under Subordinate Loan Documents.

(a) **Notice of Default and Cure Rights.** Subordinate Lender shall deliver to Senior Lender a default notice within five Business Days in each case where Subordinate Lender has given a default notice to Borrower. Failure of Subordinate Lender to send a default notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. Senior Lender shall have the opportunity, but not the obligation, to cure any Subordinate Mortgage Default within 60 days following the date of such notice; provided, however that Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents, subject to the limitations set forth in Section 6(b) below. All amounts paid by Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by Senior Lender pursuant to, and shall be secured by, the Senior Loan Agreement and the Senior Security Instrument.

(b) **Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.** If a Subordinate Mortgage Default occurs and is continuing, Subordinate Lender agrees that it will not commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents with respect to the Mortgaged Property, including, but not limited to accelerating the Subordinate Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder without Senior Lender's prior written consent, unless it has given the Senior Lender at least 90 days' prior written notice. However, the preceding sentence shall not (i) limit Subordinate Lender's right to bring an action seeking recovery solely from Non-Project Sources or (ii) preclude Subordinate Lender from exercising or enforcing all the rights available to Subordinate Lender under the Subordinate Loan Documents and/or under applicable law to enforce covenants and agreements of Borrower relating to income, rent or affordability restrictions.

7. Default Under Senior Loan Documents.

(a) **Notice of Default and Cure Rights.** Senior Lender shall deliver to Subordinate Lender a default notice within five Business Days in each case where Senior Lender has given a default notice to Borrower (provided that Senior Lender shall have no liability to Borrower, Subordinate Lender or to any other Entity for failure to timely give such notice). Failure of Senior Lender to send a default notice to Subordinate Lender shall not prevent the exercise of Senior Lender's right and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. Borrower agrees that Subordinate Lender shall have the opportunity, but not the obligation, to cure either a Monetary Event of Default or a Covenant Event of Default within 90 days following the date of such notice. Subordinate Lender acknowledges that Senior Lender shall be

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entitled during such period described above to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender shall have the opportunity to cure a Covenant Event of Default during such period described above so long as there is no Monetary Event of Default under the Senior Loan Documents. All amounts paid by Subordinate Lender to Senior Lender to cure any default under the Senior Loan Documents shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

(b) Cross Default. Notwithstanding any term or condition to the contrary in the Subordinate Loan Documents, no failure on the part of the Borrower or its successors or assigns to comply with the covenants in the Senior Loan Documents shall serve as a basis for the Subordinate Lender, its successors or assigns, or any other party acting by or through the rights therein, to declare a default under the Subordinate Loan Documents, without the express written approval of the Senior Lender.

8. Conflict.

Borrower, Senior Lender and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of Senior Lender and Subordinate Lender in the Mortgaged Property; and (b) solely as between Senior Lender and Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which Senior Lender and Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Security Instrument Default or Subordinate Mortgage Default, as the case may be; give Borrower the right to notice of any Senior Security Instrument Default or Subordinate Mortgage Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents, as applicable; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

9. Rights and Obligations of Subordinate Lender under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

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(a) Protection of Security Interest. Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that Subordinate Lender shall have the right to advance funds to cure Senior Security Instrument Defaults pursuant to Section 7(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Loan Documents.

(b) Condemnation or Casualty. In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Mortgaged Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Mortgaged Property (collectively, a "Casualty") at any time or times when the Senior Security Instrument remains a lien on the Mortgaged Property the following provisions shall apply:

(1) Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by or with the written consent of Senior Lender;

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (to payment of the costs and expenses of repair and restoration and/or to payment of the Senior Security Instrument) in the manner determined by Senior Lender in its sole discretion; provided, however, that if Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Security Instrument, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Security Instrument shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents. Any proceeds then remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Subordinate Loan Documents shall be paid by the Subordinate Lender to Borrower; and

(3) Senior Lender agrees to (i) provide notice to Subordinate Lender of taking or casualty and (ii) consult with respect to the application of proceeds if requested to do so by the Subordinate Lender.

(c) No Modification of Subordinate Loan Documents. Borrower and Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not,

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without the prior written consent of Senior Lender in each instance, increase the amount of the Subordinate Loan (except as permitted in Section 9(a) above), increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents, unless the Subordinate Lender is required to do so by any applicable law. Any unauthorized amendment of the Subordinate Loan Documents or assignment of Subordinate Lender's interest in the Subordinate Loan to any non-governmental entity without Senior Lender's consent not so required by applicable law shall be void ab initio and of no effect whatsoever.

10. Modification of Senior Loan Documents; Refinancing of Senior Indebtedness.

Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing). Notwithstanding the foregoing, the Subordinate Lender's further consent shall be required with respect to (i) any extension of the maturity date for the permanent term of the Senior Loan as set forth in the Senior Loan Documents; (ii) any refinancing to a lender other than Citibank, N.A.; and (iii) an increase in the Senior Loan amount during the permanent term to an amount above \$3,000,000, except on account of (a) increases due to advances made by Senior Lender to protect or preserve the Mortgaged Property, the lien of the Senior Security Instrument or to cure a Junior Loan Default, or (b) a shortening of the maturity date for the Senior Loan as set forth in the Senior Loan Documents.

11. Default by Subordinate Lender or Senior Lender.

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting Lender shall have the right to all available legal and equitable relief.

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12. Notices.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as “notices” and referred to singly as a “notice”) which Senior Lender or Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating next Business Day delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by electronic delivery; or (d) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two Business Days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER: Citibank, N.A.
 390 Greenwich Street, 2nd Floor
 New York, New York 10013
 Attention: Transaction Management Group
 Re: Diversey Parkway Apartments, Deal ID # 23120

AND

Citibank, N.A.
 325 East Hillcrest Drive, Suite 160
 Thousand Oaks, California 91360
 Attention: Operations Manager/Asset Manager
 Re: Diversey Parkway Apartments, Deal ID # 23120

Prior to the Conversion Date, with a copy to: Citibank, N.A.
 390 Greenwich Street, 2nd Floor
 New York, New York 10013
 Attention: Account Specialist
 Re: Diversey Parkway Apartments, Deal ID # 23120

Following the Conversion Date, with a copy to: Citibank N.A.
 c/o Berkadia Commercial Servicing Department
 323 Norristown Road, Suite 300
 Ambler, Pennsylvania 19002
 Attention: Client Relations Manager
 Re: Diversey Parkway Apartments Deal ID # 23120

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And a copy of any notices of default sent to: Citibank, N.A.
388 Greenwich Street
New York, New York 10013
Attention: General Counsel's Office
Re: Diversey Parkway Apartments, Deal ID # 23120

SUBORDINATE LENDER:

Corporation Counsel
City of Chicago
121 North LaSalle Street, Suite 600
Chicago, Illinois 60602
Attention: Finance & Economic Development Division

BORROWER:

c/o Heartland Housing, Inc.
208 S. LaSalle Street, Suite 1818
Chicago, Illinois 60604
Attention: Michael Goldberg

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

13. [Intentionally Omitted.]

14. General.

(a) **Assignment/Successors.** This Agreement shall be binding upon Borrower, Senior Lender and Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of Senior Lender and Subordinate Lender. Borrower shall not assign any of its rights and obligations under this Agreement to any non-governmental entity without the prior written consent of Senior Lender.

(b) **No Partnership or Joint Venture.** Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute Senior Lender as a joint venturer or partner of Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of any other party hereto.

(c) **Senior Lender's and Subordinate Lender's Consent.** Wherever Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lender's consent or approval is required by any provision of this Agreement,

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such consent or approval may be granted or denied by Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) Further Assurances; UCC Financing Statements. Subordinate Lender, Senior Lender and Borrower each agree, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Loan Documents are subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement. Senior Lender is hereby authorized to file any and all UCC financing statement amendments required to reflect the priority of the Senior Indebtedness.

(e) Amendment. This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) Governing Law. This Agreement shall be governed by the laws of the State in which the Mortgaged Property is located, except as, so long as the Senior Loan is insured or held by HUD, and solely as to rights and remedies of HUD, federal requirements. The State courts, and with respect to HUD's rights and remedies, federal courts, and governmental authorities in the State in which the Mortgaged Property is located, shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Subordinate Loan Documents. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

The parties hereto each agree that it is the intent of each of the parties that the terms of the Subordinate Loan Documents comply with all applicable federal, state and local law, and any provision of this Subordination Agreement which conflicts with any such applicable law shall be of no force and effect.

(g) Severable Provisions. If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) Term. The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents; (iii) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure; or (iv) the acquisition by Subordinate Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

(i) Counterparts. This Agreement may be executed in any number of

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counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

(j) Sale of Senior Loan. Nothing in this Agreement shall limit Senior Lender's (including any assignee or transferee of Senior Lender) right to sell or transfer the Senior Loan, or any interest in the Senior Loan. The Senior Loan or a partial interest in the Senior Loan (together with this Agreement and the other Loan Documents) may be sold one or more times without prior notice to Borrower.

(k) Health and Safety. Nothing contained herein shall be construed to limit Subordinate Lender's rights or obligations as the municipal authority with jurisdiction over the Mortgaged Property to exercise any of its privileges and powers to protect and preserve the health, safety and well-being of its citizens and to prevent the occurrence and/or continuance of dangerous and hazardous conditions with respect to the Mortgaged Property.

[Remainder of page left intentionally blank.]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SENIOR LENDER:

CITIBANK, N.A.,
a national banking association

By: [Signature]
Name: Mark G. Risch
Title: Vice President

ACKNOWLEDGMENT

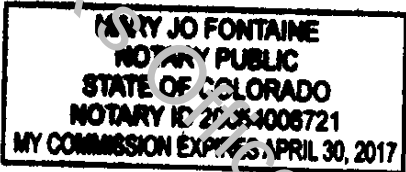
State of COLORADO
County of DENVER

On DECEMBER 4, 2015 before me, MARY JO FONTAINE

(insert name and title of the officer) personally appeared Mark G. Risch, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


Signature [Signature] (Seal)



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SUBORDINATE LENDER:

CITY OF CHICAGO,
a municipal corporation

By: 

Name: David L. Reifman

Title: Commissioner of the Department of Planning and Development

ACKNOWLEDGMENT

STATE OF ILLINOIS)
)ss
COUNTY OF COOK)

The undersigned, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that David L. Reifman, personally known to me to be the Commissioner of the Department of Planning and Development of the City of Chicago (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 she signed, sealed, and delivered said instrument pursuant to the authority given to them by the Department of Planning and Development of the City, as their free and voluntary act and as the free and voluntary act of the City, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this December 22, 2015.



Notary Public

My Commission Expires 5/7/18



UNOFFICIAL COPY

BORROWER:

DIVERSEY LIMITED PARTNERSHIP,
an Illinois limited partnership

By: Diversey GP, NFP,
an Illinois not for profit corporation
Its: General Partner

By: Michael Goldberg
Name: Michael Goldberg
Title: Secretary

ACKNOWLEDGMENT

STATE OF ILLINOIS)
)ss
COUNTY OF COOK)

The undersigned, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Michael Goldberg, personally known to me to be the Secretary of Diversey GP, NFP, the general partner ("General Partner") of Diversey Limited Partnership, an Illinois limited partnership (the "Partnership"), 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 he signed, sealed, and delivered said instrument pursuant to the authority given to him by the Board of Directors of the General Partner, as his free and voluntary act and as the free and voluntary act of the Partnership, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this December 22, 2015.

Bridget A. White

Notary Public
My Commission Expires _____



UNOFFICIAL COPY

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 IN BICKERDIKE AND STEELE'S SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY INDEX NUMBER: 14-28-115-042-0000
COMMONLY KNOWN AS 712 W. DIVERSEY, CHICAGO, ILLINOIS 60614