

UNOFFICIAL COPY



RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Transaction Management Group/ Post Closing
390 Greenwich Street, 2nd Floor
New York, New York 10013
Attn: Tanya Jimenez
10016836 (130F17)
Citi Deal ID# 23120

Doc#: 1535610103 Fee: \$80.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/22/2015 04:58 PM Pg: 1 of 7

REGULATORY AND USE AGREEMENT
BETWEEN
DIVERSEY LIMITED PARTNERSHIP
AND
CITIBANK, N.A.

Dated: December 22, 2015

Development Name: Parkway Apartments

Development Location: 712 W. Diversey Parkway
Chicago, Illinois 60614

S ✓
P 7
S 7
SC 7
INT 7

UNOFFICIAL COPY

REGULATORY AND USE AGREEMENT

This **REGULATORY AND USE AGREEMENT** ("Agreement") is made by and between **DIVERSEY LIMITED PARTNERSHIP**, an Illinois limited partnership ("Owner"), the Owner of the fee interest in that certain real property located in the City of Chicago, Cook County, State of Illinois, more particularly described on "Exhibit A" ("Real Estate"), and **CITIBANK, N.A.** ("Citi") and collectively with the Owner, the "Parties".

I. RECITALS

- A. Substantially concurrently herewith, Owner and Citi have entered into that certain Subordinate Loan Agreement of even date herewith ("Subordinate Citi Loan Agreement") pursuant to which Owner is borrowing from Citi and Citi is making a loan to Owner in the maximum principal amount of \$1,080,000 secured by a subordinate lien on the Property (the "Subordinate Citi Loan").
- B. The Real Estate currently includes, or upon completion of construction will include, the following unit mix:

66 studio apartments

24 one bedroom apartments

0 two bedroom apartments

0 three bedroom apartments

0 four bedroom apartments

At least 36 units at the Real Estate are leased, or upon completion of construction will be leased, to Qualifying Tenants.

- C. Citi would not have executed such Subordinate Citi Loan Agreement or made the Subordinate Loan to Owner without Owner's execution of this Agreement.

II. COVENANTS AND OBLIGATIONS

The Parties agree that the closing and funding of the Subordinate Citi Loan to Owner constitutes adequate consideration for the obligations undertaken by Owner in this Agreement. As of the date hereof, Owner hereby imposes the following use restrictions upon the Real Estate. In consideration of these mutual undertakings and covenants, the Parties further agree as follows:

- A. As a condition precedent to the funding of the Subordinate Citi Loan to Owner, Owner shall record this Agreement and its attachments with the Office of the Recorder for Cook County, Illinois in which the Real Estate is located, to create a restrictive covenant running with the land upon which the Real Estate is situated. Owner agrees that all requirements under applicable law that must be satisfied so that the provisions of this Agreement constitute valid and binding deed restrictions and covenants running with the Real Estate. Throughout the term of this Agreement, the covenants and restrictions shall survive and be effective regardless of whether any contract, deed or other instrument subsequently executed conveying all or part of the Real Estate provides that such conveyance is subject to this Agreement.
- B. Owner shall comply with the following occupancy restrictions with respect to the improvements currently existing or to be constructed or rehabilitated on the Real Estate (the "Project"):
1. Owner shall either (i) lease not less than 20% of the units in the Project to individuals or families whose income is 50% or less of area median gross income ("50% Tenants") (including

UNOFFICIAL COPY

- adjustments for family size) announced from time to time by the United States Department of Housing and Urban Development, ("AMI") or (ii) lease not less than 40% of the units in the Project to individuals or families whose income is 60% or less of AMI ("60% Tenants" and together with the 50% Tenants, "Qualifying Tenants").
2. The tenant portion of rent charged to all Qualifying Tenants at the Project shall not exceed 30% of the AMI limit for the unit occupied by such Qualifying Tenant.
 3. Owner shall not refuse to lease to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.
 4. It is the intention of the Parties hereto that the use and rent restrictions and income and rent calculations set forth in this paragraph be interpreted to be consistent with the restrictions, limitations and calculations applied from time to time under Section 42 of the Internal Revenue Code of 1986, as amended and the interpretations thereof by the Internal Revenue Service and the Illinois Housing Development Authority.
- C. Owner agrees that for the term of this Agreement Owner shall agree to accept Housing Choice Vouchers if and to the extent offered to the Project by HUD and shall execute all use agreements required by HUD to encumber the Real Estate in connection therewith.
- D. Owner shall during the term of this Agreement comply in all material respects with the affirmative marketing standards set forth in 24 CFR Part 200.620. There shall be no restriction on residency based on age.
- E. Citi and Qualifying Tenant(s) (or either or all of them) are entitled, for any breach of this Agreement, to enforce specific performance by Owner of its obligations under this Agreement in a state court of competent jurisdiction, in addition to all other remedies provided by law or in equity. Owner unconditionally agrees that the beneficiaries of Owner's obligations under this Agreement cannot adequately be compensated by monetary damages in the event of any such breach.
- F. Owner shall indemnify, save and hold harmless Citi, its directors, officers, employees and agents from any and all claims, losses, damages or expenses (including reasonable attorneys' fees) arising out of or in any way related to failure or alleged failure of the Owner to strictly and timely perform its obligations under this Agreement.
- G. An Event of Default shall be deemed to have occurred hereunder if Owner shall be in breach of any its obligations under this Agreement and such breach is not be cured within thirty (30) days following the date written notice of such breach is delivered by Citi to Owner in accordance with Section III.E. hereof; provided, however, such thirty (30) day cure period may be extended by Citi if Owner, during such thirty (30) day period, has commenced prosecuting a cure of such breach and thereafter continues to prosecute such cure to completion. Upon the occurrence of an Event of Default hereunder, Citi shall have all remedies afforded Citi under applicable law on account of such Event of Default including, without limitation, injunctive relief. Citi shall endeavor to provide Owner's limited partner with a copy of any written notice it has delivered to Owner of any alleged breach by Owner of the terms and conditions of this Agreement. Citi shall accept any cure tendered by Owner's limited partner on the same terms and conditions as if the cure had been tendered by the Owner during the initial 15-year compliance period established per 26 U.S.C. Section 42(i) (1).

III. TERM, TERMINATION, MISCELLANEOUS

- A. The terms, conditions, covenants and restrictions of this Agreement commence upon the first disbursement of proceeds of the Subordinate Citi Loan and end on the date which is thirty (30) years from such date. Upon Owner's written request and at Owner's expense, the Parties will record in the Cook

UNOFFICIAL COPY

County Recorder's Office a notice identifying the date of first disbursement of the Subordinate Citi Loan proceeds in order to identify more precisely the term of this Agreement.

- B. This Agreement may be foreclosed upon and the restrictive covenants contained herein shall terminate on the date the Project is acquired by foreclosure in accordance with applicable law, or by instrument in lieu of foreclosure, provided that Citi has received notice of such transaction. The foregoing termination shall not be effective if the Internal Revenue Service or, if the Project has qualified for low income housing tax credits, the state authority allocating or monitoring compliance with such tax credit regulations, determines any such acquisition of the Project is part of an arrangement with the Owner, or its successors or assigns, a purpose of which is to terminate the affordability restriction contained in the extended use agreement executed in connection with such tax credits.
- C. This Agreement shall be binding upon the Project and shall constitute covenants running with the land. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, representatives, successors, and assigns.
- D. This Agreement may be amended only with the prior written approval of the Parties hereto and no amendment shall be effective without such prior written approval. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof. All notices to be given pursuant to this Agreement shall be in writing and given in accordance with Section III.E. hereof.
- E. Notices shall be given to the Parties in accordance with and to the addresses set forth in the Subordinate Citi Loan Agreement.
- F. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF OWNER AND CITI (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.
- G. This Agreement shall be governed by the laws of the State of Illinois.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

UNOFFICIAL COPY

IN WITNESS WHEREOF, Owner and Citi have caused this Agreement to be signed by duly authorized representatives, on the day and year first written above.

OWNER:

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

Address: c/o Heartland Housing, Inc
208 S. LaSalle Street, Suite 1300
Chicago, Illinois 60604

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

Before me, a Notary Public for said County and State personally appeared Michael Goldberg, Secretary of Diversey GP, NFP, an Illinois not for profit corporation, the General Partner of Diversey Limited Partnership, an Illinois limited partnership, and acknowledged execution of the foregoing Regulatory and Use Agreement for and on behalf of said Illinois limited partnership, and who, having been first duly sworn, stated that the representations contained therein are true.

WITNESS my hand and Seal this 22ND day of December, 2015.

Bridget A. White
Notary Public
BRIDGET A. WHITE
Printed

My Commission Expires:
7/22/2016

My County of Residence:
COOK

UNOFFICIAL COPY

CITI:
CITIBANK, N.A.

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

Address: 390 Greenwich Street, 2nd Floor
New York, New York 10013

STATE OF COLORADO)
) ss:
COUNTY OF DENVER)

Before me, a Notary Public for said County and State, personally appeared Mark G. Risch, Vice President of Citibank, N.A., a national banking association, and acknowledged execution of the foregoing Regulatory and Use Agreement for and on behalf of said national banking association, and who, having been first duly sworn, stated that the representations contained therein are true.

WITNESS my hand and Seal this 4th day of December, 2015.

[Signature]
Notary Public

MARY JO FONTAINE
Printed

My Commission Expires:
April 30, 2017

My County of Residence:
ADAMS

MARY JO FONTAINE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20084006721
MY COMMISSION EXPIRES APRIL 30, 2017

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 ½ of the Northwest ¼ of Section 28, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 14-28-115-042

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

Property of Cook County Clerk's Office