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S:/Finance/Parkway Apartments/Documents for Signature/Standstill Agreement for Purchase Option\_v4



Doc#: 1535610105 Fee: \$116.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 12/22/2015 04:59 PM Pg: 1 of 16

Final

42016836 (15 OF 17)

This document prepared by  
and when recorded return to:  
Randall Johnson  
Assistant Corporation Counsel  
City Hall, Room 600  
Chicago, Illinois 60602

## STANDSTILL AND SUBORDINATION AGREEMENT

**THIS STANDSTILL AND SUBORDINATION AGREEMENT** (the "Agreement") is entered into this 22<sup>nd</sup> day of December, 2015 by and between the City of Chicago, Illinois, an Illinois municipal corporation (the "City"), by and through its Department of Planning and Development, with offices at 121 North LaSalle Street, Chicago, Illinois 60602, Diversey GP, NFP, an Illinois not-for-profit corporation (A **General Partner**@), with offices at 208 S. LaSalle St., Suite 1300; Chicago, IL 60604, Heartland Housing, Inc., an Illinois not-for-profit corporation (A **Grantee**@), with offices at 208 S. LaSalle St., Suite 1300, Chicago, IL 60604 and Diversey Limited Partnership, an Illinois limited partnership ("**Borrower**"), with offices at 208 S. LaSalle St., Suite 1300; Chicago, IL.

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## RECITALS

**WHEREAS**, as of the 23<sup>rd</sup> day of December, 1996 (the "**City Loan Closing Date**"), the City made a loan in the principal amount of \$1,073,955 (the "**City Loan**") to Diversey Neighborhood Development Corporation, an Illinois not-for-profit corporation (the "**Original Borrower**") to finance acquisition and rehabilitation costs (including construction costs) in connection with a building located at 712 West Diversey Parkway, Chicago, Illinois 60614 (the "**Premises**"), and which contained, as of the completion of rehabilitation and construction thereof, ninety (90) multi-family residential dwelling units; the Premises are more specifically described on Exhibit A attached hereto and hereby made a part hereof (the "**Project**"); and

**WHEREAS**, in connection with the City Loan, the Original Borrower and the City executed and entered into that certain housing loan agreement (the "**Loan Agreement**") dated as of the City Loan Closing Date; and

**WHEREAS**, in connection with the City Loan, the Original Borrower has executed and delivered that certain promissory note (the "**Note**") dated as of the City Loan Closing Date in the principal amount of \$1,073,955 payable to the City; and

**WHEREAS**, in connection with the City Loan, the Original Borrower executed and delivered that certain Junior Mortgage, Security Agreement and Financing Statement ("**Mortgage**") made as of the City Loan Closing Date; and

**WHEREAS**, the City Loan Agreement, the City Mortgage, the City Note, and any other documents executed in connection with the City Loan were amended pursuant to that certain First Amendment to Loan Documents entered into on June 21, 2013 (the "**First Amendment**") and that certain Second Amendment to Loan Documents entered into on December 22, 2015 (the "**Second Amendment**") and (i) each document as individually referred to hereinafter is as so amended and (ii) all such documents as thereby amended, are collectively referred to herein as the "**Financing Documents**"; and

**WHEREAS**, after the amendment of the City Loan pursuant to the terms of the Second Amendment, the Borrower acquired the Property and assumed the City Loan (as amended by the Second Amendment, the "**Amended Loan**"), and further amended the City Loan pursuant to terms and approvals set forth in that certain City Loan Assumption, Restructuring and Property Transfer Approval (the "**City Loan Assumption**"); and

**WHEREAS**, pursuant to the City Loan Assumption, the Original Borrower and the Borrower (i) obtained City approval to sell and convey the Property from the Original Borrower to the Borrower (the "**Transfer**") of which (a) General Partner is the sole general partner and (b) Grantee is the sole member of the General Partner, (ii) obtained City approval of the assignment by the Original Borrower and the assumption by the Borrower of all rights, responsibilities and obligations of the Amended Loan; and

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**WHEREAS**, following the assignment and assumption of the Amended Loan, (i) Borrower and the City agreed to further amend the terms of the Amended Loan and (ii) the City consented to certain additional financing in connection with the Property (including (a) a new senior construction and permanent loan from Citibank, N.A. in the initial construction loan amount of Ten Million Five Hundred Twenty-Five Thousand Dollars (\$10,525,000) which shall convert to a permanent loan amount of not to exceed Three Million Dollars (\$3,000,000), (b) equity in the approximate amount of \$11,200,000 generated by the allocation of low-income housing tax credits by the Illinois Housing Development Authority), and (c) the subordination of the Amended Loan as required to accommodate the additional financing (these terms are collectively referred to herein as the "**Restructuring**"), all so that Borrower may rehabilitate and improve the Property in order to preserve it as affordable housing; and

**WHEREAS**, the Borrower has entered into that certain Amended and Restated Limited Partnership Agreement as of December 22, 2015 (the "**Partnership Agreement**") pursuant to which (i) the General Partner shall be granted a Purchase Option and Right of First Refusal (the "GP Option Agreement") in Section 14.2 thereof and (ii) the Grantee shall be granted a Purchase Option and Right of First Refusal in Section 14.3 thereof (the "Grantee Option Agreement"; collectively with the GP Option Agreement referred to as the "**Option Agreements**", copies of which sections in the Partnership Agreement are attached hereto as **Exhibit B**, which are consented to by U.S. Bancorp Community Development Corporation, a Missouri corporation, as a party to the Partnership Agreement; and

**WHEREAS**, the Borrower now requests the consent of the City to the Option Agreements and the City hereby consents to the same, subject to the terms and conditions contained herein;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, and for such other good and valuable consideration, the receipt of which is hereby acknowledged, the City and the parties hereto agree as follows:

**SECTION 1.** The above recitals are hereby incorporated as if fully set forth herein.

**SECTION 2.** The Grantee and General Partner agree that until all of the terms and provisions of that certain Regulatory Agreement dated as of the City Loan Closing Date hereof between the City and the Borrower (the "**Regulatory Agreement**") shall no longer be in effect, Grantee and General Partner will not exercise any right, power or option granted by Borrower under the Option Agreements (including without limitation any purchase option, right of first refusal or right to assign rights under the Option Agreements to any other entity) without the prior written consent of the City. Grantee and General Partner acknowledge and agree that the terms and provisions of this Agreement do not violate any terms or provisions of the Option Agreements or any other agreement, instrument or document executed by the Borrower, the General

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Partner or the Grantee, and/or in favor of the Borrower, the General Partner or the Grantee (collectively, the "**Borrower Documents**"), and that to the extent the terms and provisions of this Agreement are inconsistent with any Borrower Document, such Borrower Document shall be deemed to have been superseded by this Agreement.

**SECTION 3.** Borrower and Grantee and/or General Partner hereby agree and understand that the Option Agreements may not be modified or amended without the City's prior written consent.

**SECTION 4.** Borrower, General Partner and Grantee intentionally and unconditionally subject and subordinate any liens, interests, claims and charges of the Option Agreements in favor of the Mortgage, and any claim or charge upon the Project and understand that in reliance upon, and in consideration of this subjection and subordination, the City Loan will be made and as part and parcel thereof, specific monetary and other obligations are being entered into that would not be made or entered into but for the City's reliance upon this waiver relinquishment, subjection and subordination.

**SECTION 5.** The City hereby consents to the provisions of the Option Agreements attached hereto as Exhibit P.

**SECTION 6.** Nothing contained in this Agreement, nor any act of the City, shall be deemed or construed by any of the parties hereof or by third persons, to create any relationship of third-party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City.

**SECTION 7.** Borrower, Grantee and the General Partner hereby expressly agree that no member, official, employee or agent of the City shall be individually or personally liable to Borrower, Grantee or the General Partner, their successors or assigns in the event of any default or breach by the City under this Agreement.

**SECTION 8.** Borrower, Grantee and the General Partner agree that neither of such parties may assign or transfer this Agreement without the prior written consent of the City. Borrower, Grantee and the General Partner consent to the City's sale, assignment, transfer or other disposition of this Agreement at any time in whole or in part.

**SECTION 9.** This Agreement may not be altered, modified or amended except by a written instrument signed by all the parties hereto.

**SECTION 10.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such provision shall be deemed severed from this Agreement to the extent of such invalidity or unenforceability, and the remainder hereof will not be affected thereby, each of the provisions hereof being severable in any such instance.

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**SECTION 11.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois.

**SECTION 12.** Wherever in this Agreement provision is made for the approval or consent of the City, or any matter is to be to the City=s satisfaction, or the like, unless specifically stated to the contrary, such approval, consent, satisfaction or the like shall be made, given or determined by the City in its sole discretion subject to review by Corporation Counsel.

**SECTION 13.** This Agreement shall be in full force and effect from the date hereof and shall continue in effect so long as any of the terms or provisions of the Regulatory Agreement shall be in effect.

**SECTION 14.** This Agreement shall inure to the benefit of and shall be binding upon the City, Borrower, Grantee and the General Partner and the City=s successors and assigns. This Agreement is intended to be and is for the sole and exclusive benefit of the parties hereto and the successors and assigns of the City.

**SECTION 15.** The use of the singular form of any word herein shall also include the plural, and vice versa. The use of the masculine, feminine and neuter pronouns for any word herein shall be fully interchangeable.

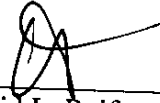
**SECTION 16.** This Agreement may be executed in several counterparts each of which shall be an original and all of which shall constitute but one and the same instrument.

[The remainder of this page is intentionally left blank.]

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**IN WITNESS WHEREOF**, the City, the Borrower, Grantee and the General Partner have executed this Agreement by their duly authorized representatives, all as of the date first written hereinabove.

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

By:   
\_\_\_\_\_  
David L. Reifman  
Commissioner

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

By: **DIVERSEY GP NFP**, an Illinois not-for-profit corporation and its sole general partner

By: \_\_\_\_\_  
Michael Goldberg  
Secretary

**DIVERSEY GP NFP**, an Illinois not-for-profit corporation

By: \_\_\_\_\_  
Michael Goldberg  
Secretary

**HEARTLAND HOUSING, INC**, an Illinois not-for-profit corporation

By: \_\_\_\_\_  
Michael Goldberg  
Executive Director

Property of Cook County Clerk's Office

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**IN WITNESS WHEREOF**, the City, the Borrower, Grantee and the General Partner have executed this Agreement by their duly authorized representatives, all as of the date first written hereinabove.

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

By: \_\_\_\_\_  
David L. Reifman  
Commissioner

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

By: **DIVERSEY GP NFP**, an Illinois not-for-profit corporation and its sole general partner

By: *Michael Goldberg*  
Michael Goldberg  
Secretary

**DIVERSEY GP NFP**, an Illinois not-for-profit corporation

By: *Michael Goldberg*  
Michael Goldberg  
Secretary

**HEARTLAND HOUSING, INC.**, an Illinois not-for-profit corporation

By: *Michael Goldberg*  
Michael Goldberg  
Executive Director

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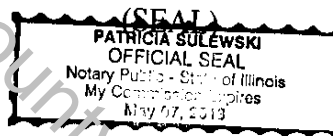
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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a notary public in and for the County and State aforesaid, DO  
HEREBY CERTIFY THAT David L. Reifman, 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 22<sup>nd</sup> day of December, 2015.

*Patricia Sulewski*  
Notary Public



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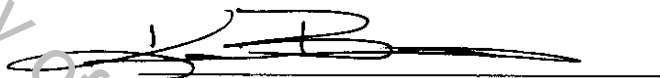


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STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Michael Goldberg, personally known to me to be the Secretary of DIVERSEY GP NFP, an Illinois not-for-profit corporation (the "Corporation") 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 Secretary, he signed and delivered the said instrument pursuant to authority given by the Board of Directors of the Corporation, and as his free and voluntary act and deed on behalf of the Corporation for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 22<sup>nd</sup> day of DECEMBER 2015.



Notary Public



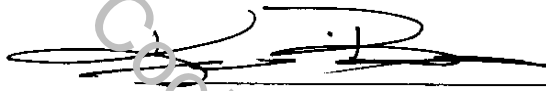
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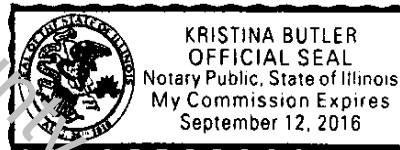
STATE OF ILLINOIS        )  
   ) SS.  
 COUNTY OF COOK         )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Michael Goldberg, personally known to me to be the Secretary of DIVERSEY GP NFP, an Illinois not-for-profit corporation (the AGeneral Partner@) and the sole general partner of DIVERSEY LIMITED PARTNERSHIP, an Illinois limited partnership (the ABorrower@) 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 Secretary, (s)he signed and delivered the said instrument pursuant to authority given by the Board of Directors of the General Partner, and as his/her free and voluntary act and deed on behalf of the General Partner and on behalf of the Borrower for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 22<sup>ND</sup> day of DECEMBER 2015.

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

(SEAL)



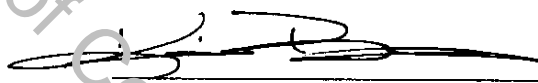
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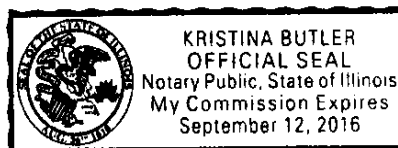
STATE OF ILLINOIS        )  
                                       ) SS.  
 COUNTY OF COOK         )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Michael Goldberg, personally known to me to be the Executive Director of HEARTLAND HOUSING, INC., an Illinois not-for-profit corporation (AGrantee@), 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 Executive Director, (s)he signed and delivered the said instrument pursuant to authority given by the Board of Directors of the Grantee, and as h/s/her free and voluntary act and deed and as the free and voluntary act and deed of the Grantee for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 22<sup>ND</sup> day of DECEMBER 2015.

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

(SEAL)



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## EXHIBIT A

### LEGAL DESCRIPTION OF PREMISES:

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

ADDRESS COMMONLY KNOWN AS: 712 W. Diversey Parkway, Chicago, Illinois  
60614

60614

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## EXHIBIT B

Purchase Option and Right of First Refusal Agreement

SEE ATTACHED

**COOK COUNTY**  
**RECORDER OF DEEDS**  
**SCANNED BY \_\_\_\_\_**

**COOK COUNTY**  
**RECORDER OF DEEDS**  
**SCANNED BY \_\_\_\_\_**

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reasonable efforts to find a third party purchaser, for the Project's fair market value, subject to all applicable land use restriction agreements to which the Project is subject, including, without limitation, continued low-income occupancy restrictions thereunder. The General Partner shall forward copies of all inquiries and purchase offers as and when received by it to the Limited Partner for its review and approval, prior to proceeding. If the General Partner finds a purchaser unrelated to the General Partner or its Affiliates pursuant to this Section and no third party broker fee is being paid in connection with the sale, it shall be entitled to receive the Sale Administration Fee. If the General Partner is unable to find a purchaser acceptable to the Limited Partner within twelve (12) months after receipt of the demand by the Limited Partner, the Limited Partner shall have the right thereafter to locate a purchaser. In any event and notwithstanding anything to the contrary, provided that the General Partner is not in default hereunder, the General Partner shall have a right of first refusal to acquire the Project on the same terms and conditions as those set forth in any bona fide offer consented to by the Limited Partner, subject to any applicable rules and regulations of the HCA. If such right of first refusal is not exercised by the General Partner by delivery of written notice to the Limited Partner within thirty (30) days after written notice to the General Partner of such proposed sale, then the General Partner shall be deemed to have consented to such purchase so long as the purchase price and other terms offered by such purchaser are at least as favorable to the Partnership as the best offer, if any, located by the General Partner.

## 14.2 Buyout Option.

(a) Provided that the General Partner is not in default hereunder, for a period of twelve (12) months following the end of the initial fifteen (15) year Compliance Period, the General Partner shall have the option, exercisable upon at least thirty (30) days and not more than ninety (90) days prior written notice to the Limited Partner, to purchase either (i) the Project (the "Project Buyout Option") or (ii) the Limited Partner's entire Interest in the Partnership (the "Interest Buyout Option").

(1) The purchase price of the Project (the "Project Buyout Price") shall be the greater of (A) the fair market value of the Project, as of the date of the closing of the Buyout at the Appraised Value (as defined below) or (B) all Credit Deficiencies, fees, loans and other amounts owed to the Limited Partner under this Agreement and all taxes imposed on the Limited Partner or the Partnership in connection with the sale. The Project Buyout Price may be payable by the General Partner by taking the Project subject to the existing debt (subject to approval of existing Lenders) and if the Project Buyout Price exceeds such debt, or if one or more Lenders did not approve assumption of such debt, then the remaining amount of the Project Buyout Price shall be payable in cash or other immediately available funds.

(2) The purchase price of the Limited Partner's Interest (the "Interest Buyout Price") shall be the greater of (A) the fair market value of the Limited Partner's Interest as of the date of the closing of the Interest Buyout Option, assuming a sale of the Project at the Appraised Value (as defined below) on such date or (B) all Credit Deficiencies, fees, loans, and other amounts owed to the Limited Partner under this Agreement and all taxes imposed on the Limited

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Partner in connection with the sale. The Interest Buyout Price shall be payable to Limited Partner at closing in cash or immediately available funds.

(b) The General Partner's notice of exercise of a specified option to the Limited Partner (the "Buyout Notice") shall include (1) an appraisal of the Project, subject to all applicable land use restriction agreements to which the Project is subject, including without limitation, continued low-income occupancy restrictions thereunder (the "Appraised Value") by an independent, MAI appraiser selected by the General Partner, having not less than five (5) years experience in appraising similar properties in the city where the Project is situated (an "MAI Appraiser"), and (2) a calculation by the Accountants of (i) in the case of the Interest Buyout Option, the fair market value of the Limited Partner's Interest, assuming a sale of the Project at the Appraised Value and (ii) the applicable Buyout Price, all calculated as of the closing date proposed by the General Partner in its Buyout Notice.

(c) The Limited Partner shall have thirty (30) days after receipt of the Buyout Notice in which either to accept the applicable Buyout Price set forth in the Buyout Notice or to notify the General Partner of its desire to appoint a second appraiser to evaluate the applicable Buyout Price. In the event that the Limited Partner fails to notify the General Partner within the aforesaid thirty (30) day period that it desires to appoint a second appraiser, it shall be deemed to have accepted such Buyout Price, in which event such Buyout Price shall be the price calculated by the Accountants or the Appraiser, as applicable, and set forth in the Buyout Notice, and the General Partner shall purchase the Interest of the Limited Partner or the Project, as applicable, on the date specified in the Buyout Notice.

(d) In the event that the Limited Partner notifies the General Partner of its election to appoint a second appraiser, the Limited Partner shall appoint an MAI Appraiser within thirty (30) days after notification of the General Partner of such election, and the two appraisers shall together appoint a third MAI Appraiser within fifteen (15) days after the appointment of the second appraiser. The three appraisers so appointed shall each determine the Appraised Value of the Project within thirty (30) days after the appointment of the third appraiser, and the Appraised Value of the Project for the purpose of determining the applicable Buyout Price shall be the average of the three appraisers' determinations; provided, that if one or more of the appraisers' determinations is more than ten percent (10%) higher or lower than the average of the three determinations, the determination(s) of such appraiser(s) shall be disregarded in determining the Appraised Value of the Project, and provided, further, that if none of the appraisers' determinations differs from the average of the three determinations by ten percent (10%) or less, the Appraised Value shall be the middle of the three determinations. The Accountants shall determine the value of the Limited Partner's Interest or its share of the Project (in either case, the "Buyout Price"), and the applicable Buyout Price in accordance with Section 14.2(a), within fifteen (15) days after the last of the three appraisers complete their determinations, and the closing of the sale of the Limited Partner's Interest to the General Partner or of the Project by the Partnership shall occur within sixty (60) days thereafter. The Limited Partner shall be responsible for the costs of the second appraiser and one-half (1/2) of the costs of the third appraiser, if any.

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The Partnership shall pay all attorneys' fees incurred in connection with the closing. All other costs of the Buyout, including the costs of the appraiser appointed by the General Partner, the Accountants' fees and any filing fees, shall be paid by the General Partner.

(e) The Limited Partner shall have the right, in connection with any sale pursuant to Section 14.2, to require such indemnities, releases and guarantees in the same form and substance as the existing indemnities, releases and guarantees (including continuation and ratification of the Credit Deficiency guarantees of the General Partner and Guarantors) as it deems necessary.

### **14.3 Right of First Refusal—42(i)(7).**

Heartland Housing, Inc. is hereby granted a right of first refusal, at any time following expiration of the Compliance Period, to purchase the Project (which will include all Reserves not previously released) at a price equal to the Refusal Price (as defined below); provided that this right may be exercised by Heartland Housing, Inc. only: (i) to the extent then permitted under applicable law, (ii) it or its permitted assignee is then a qualified nonprofit organization pursuant to Section 42(h)(5)(C) of the Code having as its charitable purpose, the development and provision of housing to low-income households, and desires to continue the low-income occupancy of the Project, and (iii) if the General Partner is at such time the General Partner of the Partnership, without an existing default hereunder. The Refusal Price shall be the sum of: (i) the then-outstanding principal indebtedness secured by the property, and all accrued and unpaid interest thereon, if any (the "*Mortgage Debt*"), (ii) all Federal, State and local taxes attributable to the sale, and (iii) any unpaid Credit Deficiency, Default Cash Flow Priority, Tax Equivalency Payments, any loans or other advances made by the Limited Partner and any and all other amounts then owing to the Limited Partner under this Agreement. The Refusal Price shall be payable in cash; provided that, with the consent of the applicable lenders, the Mortgage Debt may be assumed by Heartland Housing, Inc. or its permitted assignee (provided that the Partnership is released from liability therefor), which assumption will correspondingly reduce the cash component of the Refusal Price, dollar for dollar. Upon receipt by the General Partner of the first offer to purchase the Project following the end of said initial fifteen (15) year Compliance Period (and assuming that this right of first refusal is then applicable), Heartland Housing, Inc. shall thereupon have a period of sixty (60) days thereafter to notify the Limited Partner in writing of its intent to exercise this right of first refusal. Upon failure to timely deliver such notice, this right of first refusal shall thereupon terminate. If timely exercised, then the Project shall be sold to Heartland Housing, Inc. for the Refusal Price, on a date acceptable to the Limited Partner within sixty (60) days thereafter, pursuant to a sale contract between the Partnership and Heartland Housing, Inc. containing customary real estate transfer and closing proration requirements and otherwise reasonably acceptable to the Limited Partner. All options to purchase, all rights of first refusal of all or any part of the Property and all similar rights granted under this Agreement are hereby irrevocably and unconditionally subordinated to the mortgage liens and other liens on the Property created by the Loan Documents.

### **~~14.4 Limited Partner Put.~~**

~~At all times after the end of the Credit Period, the Limited Partner shall have the right to put its entire interest to the General Partner (or its designee) for the price of One Thousand~~