

# UNOFFICIAL COPY

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Doc# 2028247021 Fee \$93.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 10/08/2020 10:45 AM PG: 1 OF 11

This instrument was prepared by ~~and~~  
~~after recording should be returned to:~~  
Michael B. Reichert  
Wooden McLaughlin LLP  
One Indiana Square  
Suite 1800  
Indianapolis, IN 46204-4208

## MODIFICATION TO MULTIFAMILY MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

**BORROWER:** Diversey Parkway Associates, LLC,  
an Illinois limited liability company

**LENDER:** X-Caliber Capital Corp.,  
a Kentucky corporation

**PROJECT NAME:** Diversey Square Apartments

**HUD PROJECT NO.:** 071-11441

**BORROWER'S ADDRESS:** 325 North Wells, 8<sup>th</sup> Floor  
Chicago, Illinois 60654

**PROJECT ADDRESS:** 3234-3242, 2737-2743, 3237-3259, 3301-3315,  
3250-3256 and 3300-3306 West Diversey Avenue  
and 2737-2743 N. Sawyer Ave.  
Chicago, Illinois 60647 (Cook County)

### PERMANENT REAL ESTATE INDEX NUMBERS:

13-26-228-038-0000  
13-26-407-003-0000  
13-26-406-001-0000  
13-26-406-002-0000  
13-26-406-003-0000  
13-26-405-002-0000  
13-26-228-035-0000  
13-26-227-038-0000

### AFTER RECORDING, RETURN TO:

TITLE SERVICES, INC.  
610 E. ROOSEVELT ROAD  
SUITE 201  
WHEATON, IL 60187

11

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CROSS REFERENCE: Document No. 1835118091

Diversey Square Apartments  
Cook County, Illinois  
FHA Project No. 071-11441

MODIFICATION TO MULTIFAMILY MORTGAGE, ASSIGNMENT OF LEASES  
AND RENTS AND SECURITY AGREEMENT

by

DIVERSEY PARKWAY ASSOCIATES, LLC,  
an Illinois limited liability company

in favor of

X-CALIBER CAPITAL CORP.  
a Kentucky corporation

dated December 1, 2018 in the original  
principal sum of \$28,600,000.00

THIS MODIFICATION TO MULTIFAMILY MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (hereinafter referred to as the "**Modification to Mortgage**") dated to be effective as of the ~~31<sup>st</sup>~~ day of July, 2020, is made by and between DIVERSEY PARKWAY ASSOCIATES, LLC, a limited liability company organized and existing under the laws of the State of Illinois, having an address at 325 North Wells, 8<sup>th</sup> Floor, Chicago, Illinois 60654 (hereinafter referred to as the "**Borrower**"), and X-CALIBER CAPITAL CORP., a corporation organized and existing under the laws of the State of Kentucky, having a mailing address at 3 West Main Street, Suite 103, Irvington, New York 10533 (hereinafter referred to as the "**Lender**").

WITNESSETH:

WHEREAS, the Borrower is the owner of certain real property located in Cook County, Illinois, on which is constructed a certain rental apartment project known as Diversey Square Apartments, FHA Project No. 071-11441 (hereinafter referred to as the "**Project**"); and

WHEREAS, the Borrower executed and delivered to Lender a Note (Multistate) (hereinafter referred to as the "**Note**") dated as of December 1, 2018, in the original amount of Twenty-Eight Million Six Hundred Thousand and 00/100 Dollars (\$28,600,000.00) (hereinafter referred to as the "**Loan**"). The Note is secured by a certain Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement (hereinafter referred to as the "**Mortgage**") dated as of December 1, 2018, which was executed by the Borrower and delivered to the Lender and recorded on December 17,

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2018, against the Project as Document Number 1835118091 in the office of the Cook County Recorder of Deeds. The Mortgage created a first lien security interest in favor of Lender in and to the Project and a security interest in various items of personal property currently or thereafter owned by the Borrower with respect to the Project; and ✓

WHEREAS, said Note has been Finally Endorsed for Insurance by the Secretary of the Department of Housing and Urban Development acting by and through the Federal Housing Commissioner (hereinafter referred to as “HUD” or the “Commissioner” as the context may require) insured under Section 207 pursuant to Section 223(f) of the National Housing Act, as amended, and the Regulations promulgated pursuant thereto; and

WHEREAS, the Note and Mortgage provide for the payment of interest at the rate of Four and 18/100 percent (4.18%) per annum over the remaining term of the Loan; and

WHEREAS, the parties have agreed to modify the terms of the Note and Mortgage to reduce the rate of interest therein provided from Four and 18/100 percent (4.18%) per annum to Three and 68/100 percent (3.68%) per annum (hereinafter referred to as the “Reduced Rate”) effective as of August 1, 2020.

NOW, THEREFORE, for and in consideration of the premises, the sum of Ten and 00/100 Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, and in further consideration of the agreements, covenants and stipulations hereinafter set forth, the parties for themselves and for their respective successors and assigns, do hereby agree and covenant as follows:

1. The foregoing recitals are hereby incorporated by reference as if set forth fully herein. All capitalized terms not otherwise defined in this Agreement shall have the same meanings ascribed thereto in the Note.
2. From and after the date hereof, paragraph 51 of the Addendum attached to the Mortgage as Exhibit B is hereby amended to provide as follows:

**INTEREST RATE.** Interest Rate specified in the Note is the annual rate of **Four and 18/100** per centum (**4.18%**) from the date hereof up to and including **July 31, 2020**, and thereafter the annual rate of **Three and 68/100** percent (**3.68%**).

3. Borrower acknowledges and affirms to Lender that, as of the date of this Modification to Mortgage, there are no defenses, set-offs or counter-claims, whether legal or equitable, to Borrower’s obligations under the Note or Mortgage, and Borrower hereby waives the right to raise or assert any such defenses, set-offs or counter-claims which Borrower may have had with respect to any suit, proceeding or foreclosure action under the Note or Mortgage that the Lender may or could have brought against Borrower prior to the date hereof. Lender acknowledges and affirms that, as of the date hereof, Borrower is not in default of any payment obligations under the Note or Mortgage.

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4. Borrower and Lender acknowledge and agree that the terms of this Modification to Mortgage are subject to the approval thereof by the Commissioner, which approval shall be evidenced by the written acknowledgement of the Commissioner affixed to that certain Modification to Note (Multistate) of even date herewith by and between Borrower and Lender (hereinafter referred to as the "**Modification Agreement**"). Borrower and Lender further acknowledge and agree that the terms of this Modification to Mortgage and the transaction evidenced by this Modification to Mortgage shall not be deemed effective unless and until the Commissioner executes the consent as aforesaid.
5. Notwithstanding any provision of this Modification to Mortgage to the contrary, Borrower and Lender hereby acknowledge and agree that the Commissioner and the Lender retain all rights and remedies arising under the Contract of Insurance under Section 207 pursuant to Section 223(f) of the National Housing Act, as amended, and all regulations and administrative guidelines promulgated by the Commissioner thereunder.
6. Nothing contained herein shall be taken or construed to create a novation or new agreement by and between Borrower and Lender; it being the intention of the parties solely: (a) to reduce the per annum rate of interest applicable to the Loan as set forth in the Mortgage to the Reduced Rate. Furthermore, nothing herein contained shall in any way impair the Note or the security now held for such indebtedness, or alter, waive, annul, vary or affect any provision, condition, covenant or agreement therein except as herein provided, nor impair any rights, powers or remedies of Lender and Borrower under the Note or Mortgage nor impair the limitations on liability of the Borrower and its partners contained in the Mortgage, it being the intent of the parties that the terms and provisions of the Mortgage shall continue in full force and effect except as modified hereby.
7. Notwithstanding anything herein contained, if any one or more of the provisions of this Modification to Mortgage shall for any reason whatsoever be held to be illegal, invalid, or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this Modification to Mortgage, but this Modification to Mortgage shall be construed as if such illegal, invalid, or unenforceable provision had never been contained herein.
8. Borrower and Lender agree to execute such other documents as may be necessary to implement the terms and provisions of this Modification to Mortgage, and the transaction evidenced thereby, including but not limited to the Modification Agreement.
9. From and after the date hereof, all references contained in the Mortgage to the Note shall hereafter be deemed to refer to and include the Note, as amended by the Modification Agreement.

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10. The Mortgage, as amended by this Modification to Mortgage, may not be further amended except by an instrument in writing executed by each of the parties hereto.
11. This Modification to Mortgage shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
12. This Modification to Mortgage may be executed in any number of counterparts and all counterparts shall be construed together and shall constitute but one agreement.
13. Nothing herein contained shall waive, compromise, impair or prejudice any right that Lender or HUD may have to seek judicial recourse for any breach by Borrower of that certain Regulatory Agreement dated as of December 1, 2018 and recorded December 17, 2018 in the Recorder's Office of Cook County, Illinois as Document Number 1835118092 (the "**Regulatory Agreement**") that may have occurred prior to or may occur subsequent to the date of this Modification to Mortgage. In the event that Lender or HUD initiates an action for breach of the Regulatory Agreement and recovers funds, either on behalf of Lender or HUD, or on behalf of the Project or Borrower, those funds may be applied, at the discretion of HUD, to payment of the delinquent amounts due under the Note and Mortgage, as amended hereby, or as a partial prepayment of the Loan.

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Cook County Clerk's Office

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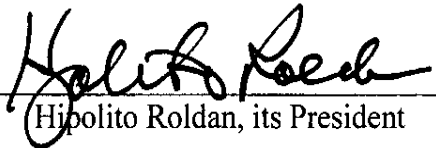
SIGNATURE PAGE OF BORROWER TO  
MODIFICATION TO MULTIFAMILY MORTGAGE ASSIGNMENT OF LEASES  
AND RENTS AND SECURITY AGREEMENT

Signed and sealed to be effective as of the date first hereinabove set forth.

BORROWER:

DIVERSEY PARKWAY ASSOCIATES, LLC,  
an Illinois limited liability company

By: Hispanic Housing Development Corporation,  
an Illinois not-for-profit corporation,  
its Member

By:   
Hipolito Roldan, its President

By: Crescent Developments Ltd.,  
an Illinois corporation,  
its Member

By: \_\_\_\_\_  
Peggy Hogan, its Treasurer

Property of Cook County Clerk's Office

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SIGNATURE PAGE OF BORROWER TO  
MODIFICATION TO MULTIFAMILY MORTGAGE ASSIGNMENT OF LEASES  
AND RENTS AND SECURITY AGREEMENT

Signed and sealed to be effective as of the date first hereinabove set forth.

BORROWER:

DIVERSEY PARKWAY ASSOCIATES, LLC,  
an Illinois limited liability company

By: Hispanic Housing Development Corporation,  
an Illinois not-for-profit corporation,  
its Member

By: \_\_\_\_\_  
Hipolito Roldan, its President

By: Crescent Developments Ltd.,  
an Illinois corporation,  
its Member

By:  \_\_\_\_\_  
Peggy Hogan, its Treasurer

Property of Cook County Clerk's Office

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## ACKNOWLEDGEMENT

STATE OF Illinois )  
 ) SS:  
 COUNTY OF Cook )

Before me, a Notary Public in and for said County and State, personally appeared Hipolito Roldan, the President of Hispanic Housing Development Corporation, an Illinois not-for-profit corporation, which is a member of Diversey Parkway Associates, LLC, an Illinois limited liability company, who, after having been duly sworn, acknowledged the execution of the foregoing Modification to Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement for and on behalf of Diversey Parkway Associates, LLC.

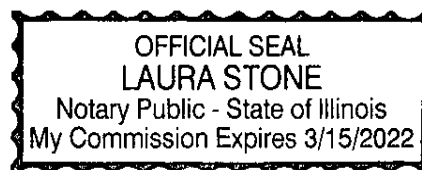
WITNESS my hand and Notarial Seal this 24<sup>th</sup> day of July, 2020.

My Commission Expires:  
3/15/2022

My County of Residence is:  
COOK

Laura Stone  
 Notary Signature

LAURA STONE  
 Notary Printed





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## ACKNOWLEDGEMENT

STATE OF Illinois )  
 ) SS:  
COUNTY OF Cook )

Before me, a Notary Public in and for said County and State, personally appeared Peggy Hogan, the Treasurer of Crescent Developments Ltd., an Illinois corporation, which is a member of Diversey Parkway Associates, LLC, an Illinois limited liability company, who, after having been duly sworn, acknowledged the execution of the foregoing Modification to Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement for and on behalf of Diversey Parkway Associates, LLC.

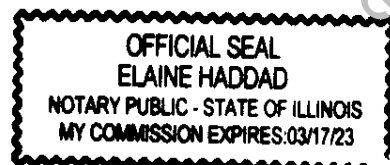
WITNESS my hand and Notarial Seal this 31 day of July, 2020.

My Commission Expires:  
3/17/23

My County of Residence is:  
Cook

Elaine Haddad  
Notary Signature

E/AIN/E H/ADD/AD  
Notary Printed





**UNOFFICIAL COPY**EXHIBIT A**Legal Description****PARCEL 1:**

LOTS 20, 21, 22, 23 AND LOT 24 (EXCEPT THE WEST 8 FEET THEREOF) IN BLOCK 2 IN HENRY WISNER'S SUBDIVISION OF LOTS 8 AND 9 OF BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. ✓

PIN: 13-26-228-038-0000 ✓

COMMON ADDRESS: 3234-3242 W. DIVERSEY AVE., CHICAGO, IL 60647

**PARCEL 2:**

BLOCK 1 (EXCEPT THE NORTH 171-1/2 FEET THEREOF AS MEASURED ON THE WEST LINE OF SAID BLOCK) IN MILWAUKEE AND DIVERSEY SUBDIVISION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. ✓

PIN: 13-26-407-003-0000 ✓

COMMON ADDRESS: 2737-2743 N. SAWYER AVE., CHICAGO, IL 60647

**PARCEL 3:**

LOT 1 IN BLOCK 3 IN MILWAUKEE AND DIVERSEY SUBDIVISION IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. ✓

PINS: 13-26-406-001-0000; 13-26-406-002-0000; 13-26-406-003-0000 ✓

COMMON ADDRESS: 3237-3259 W. DIVERSEY AVE., CHICAGO, IL 60647

**PARCEL 4:**

LOT 1 IN BLOCK 4 IN MILWAUKEE AND DIVERSEY SUBDIVISION IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 13-26-405-002-0000 ✓

COMMON ADDRESS: 3301-3315 W. DIVERSEY AVE., CHICAGO, IL 60647

**PARCEL 5:**

LOTS 27, 28, 29, AND 30 IN BLOCK 2 IN HENRY WISNER'S SUBDIVISION OF LOTS 8 AND 9 OF BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. ✓

PIN: 13-26-228-035-0000 ✓

COMMON ADDRESS: 3250-3256 W. DIVERSEY AVE., CHICAGO, IL 60647

**PARCEL 6:**

LOTS 20, 21, 22 AND THE EAST 8 FEET OF LOT 23 IN BLOCK 3 IN HENRY WISNER'S SUBDIVISION OF LOTS 8 AND 9 OF BRAND'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 26,

TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 13-26-227-038-0000 ✓

COMMON ADDRESS: 3300-3306 W. DIVERSEY AVE., CHICAGO, IL 60647