

2053TB

# UNOFFICIAL COPY

88588773

This document prepared by:  
Virginia A. Smith  
Assistant Corporation Counsel  
Department of Law  
City of Chicago  
121 North LaSalle Street  
Room 511, City Hall  
Chicago, Illinois 60602

## JUNIOR MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS JUNIOR MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (the "Mortgage") is made as of this 21<sup>st</sup> day of December, 1988, by and between American National Bank and Trust of Chicago (the "Trustee"), authorized to accept and execute trusts in the State of Illinois, not personally, but solely as trustee under provisions of a deed in trust, duly recorded and delivered to said trustee in pursuance of a Trust Agreement dated April 4, 1986, and known as Trust No. 67218 (the "Borrower"); Diversey Square Associates Limited Partnership, an Illinois limited partnership which is the sole beneficiary of the aforesaid Trust No. 67218, ("the Owner" or "Beneficiary"); and the CITY OF CHICAGO, a municipal corporation and home rule government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, acting by and through its Department of Housing, the principal offices of which are at 318 South Michigan, Chicago, Illinois 60604 (the "Lender").

### W I T N E S S E T H

WHEREAS, the Owner desires that the Lender make a loan of Six Hundred Forty One Thousand Five Hundred ninety Two and No/100 Dollars (\$641,592.00) to the Borrower for the purposes of acquiring and rehabilitating property known as Diversey Square Phase II, FHA Project No. 071-35573; and

WHEREAS, the Borrower, has concurrently herewith executed and delivered to the Lender a Promissory Note ("Note") in the principal sum of Six Hundred Forty One Thousand Five Hundred Ninety Two and No/100 Dollars (\$641,592.00), made payable to the Lender, in and by which said Note, the Borrower promises to pay the said principal sum, with interest thereon, to the Lender at the address stated above, or such other place as Lender may designate, upon and subject to the terms and conditions specified in the Note, a copy of which is attached hereto and incorporated hereby as Exhibit "C;" and

WHEREAS, the Lender is desirous of securing the payment of the Note, together with interest thereon in accordance with the terms and conditions of the Note, and of any additional indebtedness accruing to the Lender on account of any future

88588773

Box  
430

# UNOFFICIAL COPY

payments, advances or expenditures made by the Lender pursuant to the Note or this Mortgage;

NOW, THEREFORE, as an inducement to the Lender to make the aforesaid loan and in order to secure the payment of the principal and interest under the Note and the performance of the covenants and agreements contained in this Mortgage, including any extensions or modifications hereto, Borrower does by these presents, subject to the terms and conditions contained herein, grant, bargain, sell, convey and mortgage unto Lender, its successors and assigns forever, and hereby represents and warrants to Lender, its successors and assigns forever, a continuing security interest in and to, all of the following rights, interests, claims and property (referred to hereinafter collectively as the "Premises"):

(A) All of the real estate, as more particularly described in Exhibit "A," attached hereto and made a part hereof, together with all easements, water rights, hereditaments, mineral rights and other rights and interests appurtenant thereto (hereinafter referred to as the "Real Estate");

(B) All buildings, structures and other improvements of every kind and description now or hereafter erected, situated or placed upon the Real Estate ("Improvements"), together with any fixtures or attachments now or hereafter owned by Borrower and located in or on, forming part of, attached to, used or intended to be used in connection with, or incorporated in any such Improvements including all extensions, additions, betterments, renewals, substitutions and replacements to any of the foregoing;

(C) Any interests, estates or other claims of every name, kind or nature, both in law and in equity, which Borrower now has or may acquire in the Real Estate and Improvements, now owned or hereafter acquired;

(D) All of Borrower's interest and rights as lessor in and to all leases, subleases and agreements, written or oral, now or hereafter affecting the Real Estate or the Improvements or any part thereof, and all income, rents, issues, proceeds and profits accruing, and to accrue, from the Real Estate and Improvements;

(E) All right, title and interest of the Borrower in and to all fixtures, personal property of any kind or character now or hereafter owned by Borrower and attached to or contained in and used or useful in connection with the Real Estate and Improvements;

(F) All of the estate, interest, right, title or other claim or demand which Borrower now has or may hereafter have or acquire with respect to (a) proceeds of insurance in effect with respect to the Real Estate and Improvements and (b) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by

88588773

# UNOFFICIAL COPY

condemnation, eminent domain or any like proceeding of the whole or any part of the Real Estate and Improvements; and

(G) All other property rights of the Borrower of any kind or character related to the Real Estate and Improvements.

IT IS FURTHER agreed, intended and declared that all the aforesaid property rights and interests shall, so far as permitted by law, be deemed to form a part and parcel of the Real Estate and Improvements and be covered by this Mortgage, and as to any of the aforesaid property which does not so form a part and parcel of the Real Estate and Improvements, this Mortgage is hereby deemed to be and is, as well, a Security Agreement under the Illinois Uniform Commercial Code for the purpose of creating a security interest in such property, which Borrower hereby grants to the Lender as a secured party (as defined in the Illinois Uniform Commercial Code).

TO HAVE AND TO HOLD the Premises unto the Lender and its successors and assigns, forever, for the purposes and uses herein set forth.

And, to protect the security of this Mortgage, the Borrower further covenants and agrees that:

## ARTICLE I

1.01 Payments of Principal and Interest. Borrower shall pay promptly when due the principal and interest and any other sums required to be paid on the Note or under this Mortgage at the times and in the manner provided herein and therein and shall pay any other indebtedness secured hereby as same becomes due, and shall perform and observe all of the covenants, agreements and provisions contained herein and therein.

1.02 Payments of Taxes and other Charges. Borrower shall be responsible for the payment, when first due and owing and before any penalty attaches, of all taxes and assessments (general or special), water charges, sewer charges, and any other charges, fees, taxes, claims, levies, expenses, liens and assessments, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, that may be asserted against the Premises or any part thereof or interest therein. Borrower shall promptly furnish to Lender duplicate receipts evidencing payment thereof. Notwithstanding anything contained herein to the contrary, Borrower may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or charges, provided that any such contest stops the enforcement of such taxes, assessments, or charges.

1.03 Insurance. (a) The Borrower shall insure and keep insured the Premises and each and every part and parcel thereof against such perils and hazards as the Lender may from time to time require, including, without limitation:

88588773

# UNOFFICIAL COPY

- (i) Insurance against loss to the Improvements caused by fire, lightning, windstorms, vandalism, malicious mischief, and risks covered by the so-called "all perils" endorsement and such other risks as the Lender may reasonably require, in amounts equal to the full replacement value of the Improvements naming the Lender as an additional named insured and mortgagee thereunder;
- (ii) Comprehensive general public liability insurance against bodily injury and property damage in any way arising in connection with the Premises, naming the Lender as an additional named insured and mortgagee thereunder;
- (iii) During the making of any alterations or improvements to the Premises insurance covering claims based on the Owner's or employer's contingent liability not covered by the insurance provided in subsection (ii) above and worker's compensation insurance covering all persons engaged in making such alterations or improvements.

(b) All policies of insurance to be maintained and provided as required herein shall be in forms, with companies, and in amounts reasonably satisfactory to the Lender, provided the Lender shall not require terms more onerous than those required by the U.S. Department of Housing and Urban Development ("HUD"), and all policies of casualty insurance shall have attached thereto waiver of subrogation and shall have endorsements in favor of the Lender or shall list the Lender as an additional named insured and mortgagee.

(c) All said insurance shall provide for thirty (30) days prior written notice of termination or cancellation to the Lender. The Borrower shall deliver all policies, or certificates thereof, including additional and renewal policies, to the Lender marked "paid," and, in case of insurance policies about to expire, the Borrower shall deliver renewal policies or certificates thereof, not less than thirty (30) days prior to the respective dates of expiration.

1.04 Proceeds of Insurance. In the event of any damage to, or destruction of, the Premises, the Borrower shall promptly give written notice to the Lender of such damage or destruction and, subject to the provisions of Article V contained herein:

(a) In case of loss covered by policies of insurance, the Lender (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree, as the case may be) is hereby

# UNOFFICIAL COPY

authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Borrower or (ii) to allow the Borrower to agree with the insurance company or companies on the amount to be paid upon the loss. The Lender shall, and is hereby authorized to, collect any such insurance proceeds and any expenses incurred by the Lender in the adjustment and collection of insurance proceeds shall be deemed additional principal indebtedness secured by this Mortgage and shall be reimbursed to the Lender upon the same terms and conditions as stated in the Note.

(b) In the event of any insured damage to, or destruction of, the Premises or any part thereof, Lender may, in its discretion, either (i) apply the proceeds of insurance payable upon the indebtedness secured hereby in such order or manner as the Lender may elect or (ii) apply the proceeds of insurance to reimburse the Borrower for the cost of restoring, repairing, replacing or rebuilding the Premises or any part thereof.

(c) In the event that proceeds of insurance, if any, shall be made available to the Borrower for the restoring, repairing, replacing or rebuilding of the Premises, the Borrower hereby covenants to restore, repair, replace or rebuild the same, to be of at least equal value, and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with plans and specifications to be submitted to and approved by HUD.

1.05 Preservation, Restoration and Use of Premises. The Borrower shall:

(a) promptly repair, restore, replace or rebuild any portion of the Premises which may become damaged, destroyed, altered, removed, severed or demolished, whether or not proceeds of insurance are available or sufficient for the purpose, with replacements at least equal in quality and condition as existed prior thereto, free from any security interest in, encumbrances on or reservation of title thereto, other than the Senior Mortgage as defined in Section 5.01 herein and except as stated in Section 3.02 (a) (i-iv) below;

(b) keep and maintain the Premises in good condition and repair, without waste, and free from mechanics' liens, materialmen's liens or like liens or claims or other liens or claims for lien of whatever nature, except the aforementioned Senior Mortgage;

(c) complete, within a reasonable time as determined by HUD, any Improvements now or hereafter in the process of erection upon the Premises;

(d) comply with all statutes, rules, regulations, orders or decrees and other requirements of any governmental body, federal, state or local, having jurisdiction over the Premises and the use



# UNOFFICIAL COPY

thereof and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions that are applicable to the Premises or its use and occupancy;

(e) make no material alterations in the Premises, except those specifically identified by the rehabilitation plans approved by HUD and the Senior Lender, as hereinafter defined, and except as required by law or municipal ordinance;

(f) suffer or permit no change in the general nature of the occupancy or use of the Premises without the Lender's prior written consent;

(g) pay when due all operating costs of the Premises;

(h) not initiate or acquiesce in any zoning reclassification with respect to the Premises, without the Lender's prior written consent;

(i) not abandon the Premises, nor do anything whatsoever to depreciate or impair the value of the Premises or the security of this Mortgage;

(j) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Premises or any portion thereof;

(k) cause the Premises to be managed in a competent and professional manner;

(l) not permit execution of any leases for a term in excess of one (1) year without the prior written consent of the Lender;

(m) not permit any unlawful use or nuisance to exist upon the Premises; and

(n) provide the Lender or its authorized representative with access to the Premises, subject to the rights of the tenants, at all reasonable times for the purpose of inspecting the Premises.

1.06 Condemnation and Eminent Domain. The Borrower shall give the Lender prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (generally "Taking"), of all or any part of the Premises or affecting any easement thereon or appurtenance thereof and shall deliver to the Lender copies of any and all papers served in connection with any such proceedings, and subject to the provisions of Article V contained herein, the Borrower hereby assigns, transfers and sets over unto the Lender the entire proceeds of any and all awards resulting from any

# UNOFFICIAL COPY

Taking. Subject to the provisions of Article V contained herein, the Lender is hereby authorized to collect and receive from the condemnation authorities said awards and is further authorized to give appropriate receipts therefor.

## ARTICLE II

2.01 Prepayment Privilege. The Borrower has the right to prepay at any time all, or any part of, the principal amount of the loan without payment of penalties or premiums; provided, however, that no prepayment shall affect the Borrower's obligation to continue to pay any balance then due. But, until the Senior Loan as defined hereinafter is paid in full, no prepayment of principal in any amount or any payment of interest shall be made except from Surplus Cash, as such term is defined by the FHA Regulatory Agreement and otherwise in accordance with the conditions prescribed in the FHA Regulatory Agreement.

2.02 Subrogation. In the event the proceeds of the loan made by Lender to Borrower, or any party thereof, or any amount paid out or advanced by Lender, are used directly or indirectly to pay off, discharge or satisfy, in whole or in part, the Senior Mortgage as defined hereinafter or any other prior lien or encumbrance upon the Premises, then Lender shall be subrogated to such other lien or encumbrance and shall have the benefit of the priority of same to the extent such funds were so used, provided that the Lender may not exercise any right of subrogation until such time as the Senior Mortgage, as defined hereinafter, is paid in full.

2.03 Transfer and Encumbrance of the Property. Subject to the provisions of Article V contained herein, the Borrower shall not create, effect, contract for, admit to, consent to, suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of the Premises or any part thereof or interest therein, except for the Senior Mortgage, as defined hereinafter, without the prior written consent of the Lender. If the Borrower shall do any of the foregoing without the prior written consent of Lender, then the Lender at its option, has the right to accelerate the maturity of the Note.

## ARTICLE III

### 3.01 Events of Default

The terms "Event of Default" or "Events of Default", wherever used in this Mortgage, shall mean any one or more of the following events which have not been cured within any applicable cure period as set forth in Section 3.02 below:

(a) Failure of Borrower to duly observe or perform any covenants, conditions, or agreements of this Mortgage, the Note, the Commitment Letter or any other documents securing the Note

88588773

# UNOFFICIAL COPY

after the expiration of all applicable Cure Periods (as hereinafter defined); or

(b) The filing by the Borrower, or any beneficiary of the Borrower ("Beneficiary") of a voluntary petition in bankruptcy; or the Borrower's or any Beneficiary's adjudication as a bankrupt or insolvent; or the filing by the Borrower or any Beneficiary of a petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or such other similar relief for itself under any present or future federal, state, or other law or regulation relating to bankruptcy, insolvency or other relief for debtors; or the Borrower's or any Beneficiary's seeking of or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of itself or any portion of its assets or of all or any part of the Premises or of any or all of the rents, issues, profits or revenues thereof; or the making of any general assignment for the benefit of creditors; or the admission in writing of its inability to pay its debts generally as they become due; or

(c) The entry by a court of competent jurisdiction of an order, judgment or decree approving a petition filed against the Borrower or Beneficiary seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other law or regulation relating to bankruptcy, insolvency or other similar relief for debtors, which order, judgment or decree remains unvacated or unstayed for an aggregate of sixty (60) days from the date of entry thereof; or the appointment of any trustee, receiver, or liquidator of the Borrower or any Beneficiary, or of all or any part of the Premises, or of any or all of the rents, issues, profits or revenues thereof, without its consent or acquiescence, which appointment shall remain unvacated or unstayed for an aggregate of sixty (60) days; or

(d) A default continuing beyond all applicable cure periods under the Senior Mortgage and permitting foreclosure thereunder;

(e) The sale, partial sale, refinancing or resyndication or other disposition of all or any part of the Premises, except as expressly permitted under the Note or this Mortgage; or

(f) The failure to pay when due and owing any sums due to the Lender pursuant to the Note; or

(g) A determination of the falsity of any material warranty, representation, certification, financial statement or other information made or furnished at any time pursuant to the terms of this Mortgage, the Note, or any other security instrument or otherwise, by the Borrower, by the Owner, its general and limited partners, or by any person or entity liable for the indebtedness secured hereby; or



# UNOFFICIAL COPY

(h) The abandonment of the Project for which the loan was made.

## 3.02 Acceleration of Maturity

(a) If a monetary Event of Default shall have occurred under this Mortgage or the Note and should continue for ten (10) days after written notice thereof by Lender, the entire indebtedness secured hereby shall at Lender's sole option become immediately due and payable without further notice or demand.

If a nonmonetary Event of Default shall have occurred under this Mortgage or the Note, Lender shall send written notice thereof to Borrower and if such default is not cured within sixty (60) days thereafter, the entire indebtedness secured hereby shall immediately become due and payable without further notice or demand; provided however, that in the event such default cannot reasonably be cured within such sixty (60) day period and Borrower has commenced reasonable efforts to cure, then the time to cure shall be extended so long as the Borrower, in the Lender's sole opinion, diligently continues to cure such default.

Subject to the provisions of Article V contained herein, if all or any part of the Premises or an interest therein is sold, refinanced, resyndicated, or otherwise transferred by Borrower without Lender's prior written consent, excluding (i) the creation of a lien or encumbrance subordinate to this Mortgage; (ii) the creation of a purchase money security interest for household appliances; (iii) a transfer by devise, descent, or operation of law; or (iv) the grant of any leasehold interest of three (3) years or less not containing an option to purchase, Lender may, at Lender's sole option, declare all the sums secured by this Mortgage to be immediately due and payable.

(b) If Lender exercises such option to accelerate under this Section 3.02, Lender shall provide Borrower written notice of acceleration in accordance with paragraph 4.06 hereof. Such notice shall provide a period of not less than thirty (30) days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by Paragraphs 3.03, 3.04 and 3.05 hereof.

(c) Acceleration of maturity, once made by Lender, may at the option of Lender be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Lender's option, be discontinued or dismissed, whereupon, in either of such events, Borrower and Lender shall be restored to their former positions, and the rights, remedies and power of Lender shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

# UNOFFICIAL COPY

## 3.03 Lender's Right to Enter and Take Possession, Manage and Apply Revenues

(a) Subject to the provisions of Article V contained herein, if an Event of Default shall have occurred and continue after notice and expiration of any cure periods as may be provided by Section 3.02 hereof, the Borrower, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession, and, if and to the extent permitted by law, the Lender itself, or such officers or agents as it may appoint, may enter and take possession of all or any part of the Premises, and may exclude the Borrower and its agents and employees wholly therefrom, and may have joint access with the Borrower to the books, papers and accounts of the Borrower relating to the Premises.

If the Borrower shall for any reason fail to surrender or deliver the Premises or any part thereof upon demand by the Lender after expiration of any cure periods as may be provided by Section 3.02 hereof, the Lender may obtain a judgment or decree conferring on the Lender the right to immediate possession or requiring the delivery of immediate possession of all or any part of the Premises to the Lender.

(b) Subject to the provisions of Article V contained herein, upon every such entering or taking of possession, the Lender may hold, store, use, manage and control the Premises and, from time to time, (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property required in connection therewith; (ii) insure or keep the Premises insured; (iii) manage the Premises and exercise all the rights and powers of the Borrower or Beneficiary to the same extent as the Borrower or Beneficiary could in its own name or otherwise with respect to the same (except that Lender shall not be entitled to operate the business in the name of the Borrower or Beneficiary); and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to the Lender, all as the Lender from time to time may reasonably determine to be to its best interest and advantage. The Lender may, upon such entering or taking of possession, collect and receive all the rents, issues, profits and revenues of the Premises, including those past due as well as those accruing thereafter, and, after deducting to the extent reasonable (aa) all expenses of taking, holding and managing the Premises (including compensation for the services of all persons employed for such purposes); (bb) the cost of all maintenance, repairs, renewals, replacement, additions, betterments, improvements and purchases or acquisitions; (cc) the cost of insurance; (dd) such taxes, assessments and other similar charges as the Lender may determine to pay; (ee) other proper charges upon the Premises or any part thereof, including without limitation debt service on the Senior Mortgage as defined

88589773

# UNOFFICIAL COPY

hereinafter; and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Lender, shall apply the remainder of the monies and proceeds so received by the Lender, first, to payment of accrued interest and, second, to the payment of principal. The balance of such funds, if any, after payment in full of all of the aforesaid amounts (including, without limitation, the entire outstanding principal balance under the Note) shall be paid to Borrower.

(c) The Lender shall have no liability to Borrower or Beneficiary for any loss, damage, injury, cost or expense resulting from any action or omission by it or its representatives which was taken or omitted in good faith in implementing these rights.

3.04 Receiver. Subject to the provisions of Article V contained herein, if an Event of Default shall have occurred and be continuing after any cure period, as may be provided in Section 3.02 hereof, has expired, the Lender, upon application to a court of competent jurisdiction, shall be entitled to the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all rights and powers to the fullest extent permitted by law.

3.05 Purchase by the Lender. Upon any foreclosure sale, the Lender may bid for and purchase all or any part of the Premises and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit to the purchase price.

3.06 Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Lender by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or, now or hereafter existing, at law, in equity or by statute. No act of the Lender shall be construed as an election to proceed under any one provision of this Mortgage to the exclusion of any other provision.

3.07 Waiver. (a) No delay or omission of the Lender or of any subsequent holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every right, power and remedy given by this Mortgage or otherwise to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender. No consent or waiver, expressed or implied, by the Lender to or of any breach or Event of Default by the Borrower, in the performance of its obligations hereunder, shall be deemed or construed to be a consent or waiver to or of any other breach or Event of Default in the performance of the same or any other obligations of the Borrower. Failure on the part of the Lender to complain of any act or failure to act

# UNOFFICIAL COPY

or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Lender of its rights hereunder or impair any rights, powers or remedies on account of any breach or Event of Default by the Borrower or its Beneficiary.

(b) Acceptance by Lender of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Lender's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest thereon, immediately due and payable without notice, or any other rights of the Lender at that time or any subsequent time, without its express written consent, except and to the extent otherwise provided by law.

(c) Borrower shall not apply for or avail itself of any appraisal, valuation, redemption, stay, extension, or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement of foreclosure of this Mortgage, but hereby waives the benefit of such laws. Borrower, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. The Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person having a beneficial interest in the Borrower, it being the intent hereof that any and all such right of redemption of the Borrower and of all other persons are and shall be deemed to be hereby waived.

**3.08 Incorporation.** Lender has issued to Borrower a certain Commitment Letter, which has been accepted by Borrower, a copy of which is attached hereto as Exhibit "B," and Borrower has executed and delivered to Lender a Note of even date with this Mortgage, a copy of which is attached hereto as Exhibit "C." Both documents are hereby incorporated for the purposes of setting forth further the terms and conditions of the Loan, the rights and remedies of the Lender, and the obligations and duties of the Borrower.

**3.09 Indemnification.** In addition to any other indemnities in favor of the Lender provided in or by this Mortgage, the Borrower shall indemnify the Lender against any liabilities, suits, obligations, fines, damages, penalties, claim costs, charges and expenses, including, without limitation, reasonable architect's, engineer's and attorney's fees, and all disbursements which may be imposed upon, incurred by or asserted against the Lender in relation to the Premises, but, until the Senior Loan as defined hereinafter is paid in full, payments for such may be made only from and to the extent of available Surplus

88588773



# UNOFFICIAL COPY

Cash, as defined by and otherwise in accordance with the HUD Regulatory Agreement, and of available insurance proceeds, if any, provided that any remainder owing shall be deemed additional principal indebtedness to be included within the terms and conditions of this Mortgage and to be paid to the Lender upon the same terms and conditions as stated in the Note.

## ARTICLE IV

4.01 Successors and Assigns. This Mortgage shall inure to the benefit of and be binding upon the Borrower and the Lender and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Mortgage to the Borrower and the Owner or to the Lender, such reference shall be deemed to include a reference to heirs, executors, legal representatives, successors and assigns of the Borrower or Owner or of the Lender, respectively.

4.02 Terminology. All personal pronouns used in this Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. The term "Borrower" shall also include "Owner," where applicable. Titles and sections are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references herein to Articles, Sections or Paragraphs shall refer to the corresponding Articles, Sections or Paragraphs of this Mortgage, unless specific reference is made to such Articles, Sections, or Paragraphs of another document or instrument.

4.03 Severability. If any provision of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the extent permitted by law.

4.04 Applicable Law. This Mortgage shall be interpreted, construed and enforced under and according to the laws of the State of Illinois.

4.05 Security Agreement. This Mortgage shall be construed as a "Security Agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of Illinois with respect to any part of the Premises which constitutes fixtures and any proceeds thereof. The Lender shall have all the rights with respect to such fixtures or proceeds afforded to it by said Uniform Commercial Code, in addition to, but not in limitation of, the other rights afforded the Lender by this Mortgage, the Note, or any other documents.

4.06 Notices. (a) All notices, certificates or other communications required or given hereunder shall be in writing,



# UNOFFICIAL COPY

and may be delivered by placing in the United States mails, first class postage prepaid, and addressed as follows:

IF TO LENDER: Department of Housing  
of the City of Chicago  
318 South Michigan Avenue  
Chicago, Illinois 60604  
Attention: Commissioner

WITH COPY TO: Corporation Counsel of the  
City of Chicago  
Room 511 - City Hall  
121 North LaSalle Street  
Chicago, Illinois 60602

IF TO BORROWER: American National Bank and Trust  
of Chicago  
33 North LaSalle  
Chicago, Illinois 60602  
Attention: Trust Department

WITH COPIES TO: Diversey Square Associates  
Limited Partnership  
65 East Wacker Place  
Suite 1800  
Chicago, Illinois 60601  
Attention: Paul Roldan

And

James Snieder, Esq.  
180 North LaSalle #2323  
Chicago, Illinois 60601

And

Reinlein/Lieser/McGee  
101 South Hanley Road  
Suite 1300  
St. Louis, MO 63105-3405  
Attention: Managing Partner

Such notice shall be deemed effective upon mailing in compliance with this Section 4.06.

(b) The parties must designate in writing any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

(c) Any such notice may be served by personal delivery thereof to the other party, which delivery shall constitute service of notice hereunder on the date of such delivery.

# UNOFFICIAL COPY

4.07 Modification. No change, amendment, modification, cancellation or discharge of this Mortgage, or any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns and with the consent of HUD.

4.08 No Merger. In order to ensure that this Mortgage and the lien created hereby do not merge in fee simple title to the Premises, it is hereby understood and agreed that, if the Lender acquires any additional or other interests in or to the Premises or the ownership thereof, then, unless the Lender manifests a contrary interest by an appropriate document duly recorded, this Mortgage and the lien created thereby shall not merge in the fee simple title. Compliance with this section 4.08 shall ensure that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

4.09 Release. Lender shall prepare and execute a release of the Mortgage and such other documents as may reasonably be necessary, and in a form sufficient to release the lien of this Mortgage, upon payment in full of the Note and the satisfaction of all interests accrued and owing thereon.

## ARTICLE V

NOTWITHSTANDING ANYTHING CONTAINED IN THIS MORTGAGE TO THE CONTRARY, THE LENDER AND EACH SUCCESSOR OR ASSIGNEE OF LENDER, SHALL BY ACCEPTANCE OF THIS MORTGAGE, AND THE NOTE WHICH IT SECURES, AGREE TO AND BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS SO LONG AS THE SENIOR MORTGAGE, AS DEFINED HEREINAFTER, AND THE NOTE SECURED THEREBY, SHALL BE OUTSTANDING OR SO LONG AS THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD") OR HIS SUCCESSORS OR ASSIGNS IS THE INSURER OR HOLDER OF THE SENIOR MORTGAGE ON THE PREMISES:

5.01 Subordination of Mortgage. This Mortgage is subordinate and subject (i) to the rights of Reinlein/Lieser/McGee ("Senior Lender") under that certain Mortgage dated as of December, 1988, and recorded as document number 8858773, ("the "Senior Mortgage"), in the Office of the Cook County Recorder of Deeds, City of Chicago, County of Cook, Illinois, securing a Note in the principal amount of \$1,982,300 to be used as a First Mortgage Loan (the "Senior Loan") and (ii) to the rights of the Secretary of HUD under the FHA Regulatory Agreement and ~~the Regulatory Agreement as to Tax Exemption~~, the terms and conditions of which are hereby incorporated by reference.

All payments shall be made in accordance with the applicable conditions prescribed by HUD. Payments due under the Note shall be payable only from Surplus Cash (or residual receipts) as defined in the FHA Regulatory Agreement and otherwise in accordance with the conditions prescribed by the FHA Regulatory Agreement. The restrictions on payment imposed by this paragraph, however, shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by the Note.

# UNOFFICIAL COPY

5.02 Assignment of Rents. So long as there exists no default by Borrower in the payment of the Note or in the performance of Borrower's obligations thereunder and hereunder, Borrower shall have the right to collect all rents, security deposits, income and profits from the Premises and to retain, use and enjoy the same.

5.03 Foreclosure. In the event the Lender fails to receive payments due on the Note in accordance with its terms, Lender shall not institute foreclosure proceedings against the Premises or take any action against or affecting the Premises without the prior written consent of the Senior Lender and the Secretary of HUD. This shall not preclude the Lender from any suit at law for funds coming into the hands of the Borrower which represent Surplus Cash (as defined in the FHA Regulatory Agreement) and which it is obligated to pay Lender under the Note.

5.04 Receiver. During any period of default under this Mortgage or the Note, Lender shall not file an application for an appointment of a receiver or become a mortgagee-in-possession of the Premises without the prior written consent of the Senior Lender and the Secretary of HUD. In the event of the appointment of a receiver or of the appointment of the Lender as mortgagee-in-possession in any action to foreclose the Mortgage by the Lender, its successors or assigns, no rents, revenue or other income of the Premises collected by the receiver or by the Lender as mortgagee-in-possession shall be used for the payment of interest, principal or any other charge due and payable under this Mortgage, except from Surplus Cash, if any. Further, the receiver or mortgagee-in-possession shall operate the project in accordance with all the provisions of the Senior Mortgage and the FHA Regulatory Agreement.

5.05 Lessees. Upon the commencement of any foreclosure in accordance with this Mortgage, no lessee of the Premises or any portion thereof will be made a party defendant in any such foreclosure action and no other action shall be taken by the Lender with respect to such lessees the affect of which would be to terminate their tenancy unless the prior written consent of the Senior Lender and the Secretary of HUD shall have been obtained.

5.06 Extension (1): In the event the Note held by Lender and secured by this Mortgage matures and there is no Surplus Cash (or residual receipts) available for repayment and the Senior Mortgage has not been retired in full, this Mortgage shall be extended at the direction of the Secretary of HUD.

5.07 Extension (2): In the event that the Secretary of HUD grants a deferment of amortization or forbearance which results in an extended maturity of the Senior Mortgage, this Mortgage may be extended at the direction of the Secretary of HUD if HUD determines that such extension is necessary.

# UNOFFICIAL COPY

5.08 Assumption of Mortgage. If the Secretary of HUD approves a purchaser for the Premises in the event of a sale or transfer of physical assets of the Premises while the FHA mortgage insurance remains in place in connection with the Senior Mortgage, this Mortgage shall be assumable by such purchaser, provided that no more than seventy percent (70%) of the net proceeds resulting from such sale or transfer shall be applied to the reduction of the Note. For the purpose of this Section 5.08, "net proceeds" are the funds available to the Senior Lender after correcting any monetary or covenant default on the Senior Mortgage, after making any necessary contributions to any FHA-required reserve funds, and after making required improvements to the Premises as evidenced by HUD annual inspection reports.

5.09 Termination of Interest. In the event the Secretary of HUD acquires title to the Project by a deed in lieu of foreclosure, the lien of this Mortgage shall automatically terminate, but all other interests shall remain in full force and effect.

5.10 Insurance. In no event shall the provisions of Section 1.03 of this Mortgage relating to insurance coverage be construed to be in conflict with or interpreted to diminish or be in derogation of those rights in favor of the Senior Lender under the Senior Loan or under applicable HUD rules and regulations.

## ARTICLE VI

6.01 This Mortgage is executed by the Borrower, not personally, but as Trustee under Trust No. 67218 as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (said Trustee in its personal and individual capacity hereby warrants that it as Trustee possesses such power and authority to execute this instrument) and it is expressly understood and agreed by the Lender and by every person now or hereafter claiming any right or security hereunder that nothing contained herein or in the Note secured by this Mortgage shall be construed as creating any monetary liability on said Trustee in its individual capacity or personally to pay the Note or any interest that may accrue thereon, or any other indebtedness accruing thereunder, or to perform any covenant, either expressed or implied, herein contained, all such liability, if any, being expressly waived; but this waiver shall in no way affect the liability of any guarantor of the Note or any other person or entity executing the Note or this Mortgage.

6.02 This Mortgage is executed by the Owner, not personally, but in its capacity as beneficiary under Trust No. 67218 as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such beneficiary and it is expressly understood and agreed by the Lender and by every person now or hereafter claiming any right or security hereunder that nothing contained herein or in the Note secured by this Mortgage shall be construed as creating any monetary liability on said

# UNOFFICIAL COPY

Owner/Beneficiary, or any partner thereof, in its individual capacity or personally, to pay the Note or any interest that may accrue thereon, or any other indebtedness accruing thereunder, or to perform personally any covenant, either expressed or implied, herein contained, all such monetary liability, if any, being expressly waived; but this waiver shall in no way affect the liability of any guarantor of the Note or any other person or entity executing the Note or this Mortgage.

6.03 The Owner is signing this Junior Mortgage, Assignment of Rents and Security Agreement solely for the purpose of giving legal effect to the City's security interests as provided for in the aforesaid Junior Mortgage, Assignment of Rents, and Security Agreement, and for no other purpose. Nothing herein contained shall be construed as a limitation on or a conflict with Paragraph 6.02 hereof.

Property of Cook County Clerk's Office

88588773



# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned have executed the foregoing instrument as of the date and year first above written.

BORROWER:

America National Bank and Trust  
of Chicago not personally but solely  
as Trustee under Trust No. 67218

By: 

Title: VP

ATTEST:

By: 

Title: Asst. Secy

OWNER:

Diversey Square Associates  
Limited Partnership

By: Hogge, Pev. Corp. II

A general partner

Attest:

By: 

Its: Secretary

By: 

Its: Pres.

City of Chicago

By: 

Title: Commissioner

Department of Housing

JrMrt-DvSq



# UNOFFICIAL COPY

## EXHIBIT "A"

Commonly known as Diversey Square Phase II, the Premises includes the following:

1. LEGAL DESCRIPTION(S):

Lots 24 to 30 in Block 1 in Wisners Subdivision to Lots 8 and 9 in Brands Subdivision of the North East 1/4 of Section 26, Township 40 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

2. STREET ADDRESS(ES):

3212 - 26 West Diversey  
Chicago, Illinois

3. PROPERTY INDEX NUMBER(S):

1326-229-034

Property of Cook County Clerk's Office

88588773

# UNOFFICIAL COPY

EXHIBIT B

## COMMITMENT LETTER

FROM: THE CITY OF CHICAGO  
STATE OF ILLINOIS

TO: Hispanic Housing Development Corporation  
65 East Wacker Place  
Suite 1800  
Chicago, Illinois 60601  
Attention: Executive Director

Re: Diversey Square Phase II  
PROJECT NO. 071-35573

THE DEPARTMENT OF HOUSING FOR THE CITY OF CHICAGO ("City"), hereby agrees to make, and by its acceptance of this commitment Hispanic Housing Development Corporation, agrees to accept, a loan in the amount of Six Hundred Forty one Thousand Five Hundred Ninety Two and no/100 Dollars (\$641,592.00) ("Loan"), subject to the terms and conditions set forth herein. The purpose of the Loan is to assure completion of Diversey Square Phase II, Federal Housing Administration ("FHA") Project No. 071-35573 ("Project" or "Properties") and to pay expenses associated with or incident to the Project. The Borrower will use the proceeds of this Loan, in conjunction with the proceeds which it receives from an FHA-insured loan, to acquire and rehabilitate the property included in the Project for occupancy by persons of low and moderate income, including families, and elderly, handicapped and disabled persons who qualify for housing assistance under Section 8 of the United States Housing Act of 1937, as amended, and the rules and regulations promulgated thereunder ("Act"). Time is of the essence regarding this commitment. If the terms and conditions set forth herein are not met within a reasonable time after the date of this commitment, the City, at its option, shall have no further obligation hereunder and this commitment shall automatically terminate, and any monies advanced shall become immediately due and payable.

88588773

# UNOFFICIAL COPY

## TERMS

Borrower: Hispanic Housing  
Development Corporation

Amount of Loan: \$641,592.00

Interest: After the Construction Period, as defined herein, the Borrower shall make annually an interest payment (the "Annual Interest Payment") in an amount equal to but not exceeding fifty per cent (50%) of the Surplus Cash, as such term is defined by and in accordance with the conditions in that certain FHA Regulatory Agreement dated as of December 1, 1988, and after such distribution as may be permitted by the Senior Lender, as defined herein, for the year in which such interest payment is due; provided, however, that, if fifty percent (50%) of the available Surplus Cash in any given year is less than \$1796.46, Borrower shall make a minimum payment of \$1796.46 (the "Minimum Payment") for such year; and provided further that, if the available Surplus Cash is less than the Minimum Payment in any given year, any balance remaining on such Minimum Payment will accumulate. At such time as fifty per cent (50%) of the available Surplus Cash in any given year exceeds the Minimum Payment, then the amount by which fifty percent (50%) of Surplus Cash exceeds the Minimum Payment shall be credited to any such accumulated balance due and owing. In addition, if the sum total of Minimum Payments made to date equal or exceed twenty-five per cent (25%) of the Maximum Interest Payable (as hereinafter defined), failure to make a Minimum Payment in future years will not result in any accumulation, and all accumulated payments will be considered satisfied if at least 50% of the Maximum Interest Payable is paid prior to the sale, resyndication or refinancing of any or all of the Project. *MS*

The first such Annual Interest Payment shall be due no later than April 1, 1991, or such earlier date as may be required by HUD rules and regulations. Succeeding payments shall be paid no later than April 1 of each year thereafter, or such earlier date as may be required by HUD rules and regulations, until the sale, resyndication or refinancing of any or all of the Properties, whichever occurs first.

All Annual Interest Payments shall be calculated for each fiscal year based upon an audit performed by a Certified Public Accountant. A copy of such audit shall be submitted to the City by the Borrower within sixty (60) days of the fiscal year end.

88588773



# UNOFFICIAL COPY

The cumulative total of all of the Annual Interest Payments made in accordance with the above provisions shall in no event exceed a sum equal to the total interest paid on a loan of \$641,592, made for 40 years at the rate of three percent (3%) per annum, simple interest and not compound, to accrue on an annual basis commencing on April 1, 1990, and continuing until the maturity of the Note or the sale, resyndication or refinancing of the Properties (the "Maximum Interest Payable").

If 50% of the Surplus Cash in any year exceeds 2% of the then outstanding balance of principal due and owing, the amount by which 50% of the Surplus Cash exceeds 2% of the then outstanding balance shall be applied to reduce the outstanding principal balance on the Loan.

In the event the Project is sold, refinanced or resyndicated, the City shall be paid a payment that, when coupled with the Annual Interest Payments made shall be equal to 50% of the Maximum Interest Payable. Additionally, the City shall be paid any and all sums remaining on the Loan that are outstanding. This sum shall be in addition to such sums as are due and owing with regard to the Annual Interest Payments. The City shall in such event have the option of renegotiating any or all of the terms and conditions of the City's Loan.

- Maturity:** 41 years from the date of the Junior Mortgage as defined herein unless the Maturity of the Note is extended at the direction of the Secretary of the United States Department of Housing and Urban Development ("HUD"), then to be at such date as extended by HUD.
- Repayment:** The Loan shall be a deferred payment loan. Subject to the provisions of Article V of the Junior Mortgage as defined hereinbelow, all payments of principal and interest are due in full either on the date of maturity of the Note or upon the sale, resyndication or refinancing of any or all of the Properties; or upon the sale of any or all of the Properties pursuant to an order or decree of foreclosure; or upon the transfer of such Properties to the mortgagee under the Senior Loan, as defined herein, by deed in lieu of foreclosure, whichever occurs first.
- Prepayment:** The Borrower has the right to prepay, at any time, all or any part of the principal amount of the loan without payment of penalties or premiums; provided, however, that no prepayment shall affect the

88588773

# UNOFFICIAL COPY

773

obligation to continue to pay any balance then due. No prepayment of principal in any amount or any payment of interest shall be made except from Surplus Cash, as such term is defined by the FHA Regulatory Agreement and otherwise in accordance with the conditions prescribed in the FHA Regulatory Agreement.

## GENERAL CONDITIONS

1. Senior Loan: It is understood that the Borrower intends to secure permanent financing through an FHA-insured mortgage loan from Reinlein/Lieser/McGee ("Senior Lender") which shall be made available from the proceeds of the issuance and sale of Construction Loan Certificates and Permanent Loan Certificates guaranteed by the Government National Mortgage Association pursuant to its mortgage-backed securities program. No disbursements of any of the Loan proceeds under this commitment shall be made until the City has received from the Borrower satisfactory evidence that the Borrower has obtained the necessary permanent financing for the completion of the rehabilitation of the properties involved in the Project.
2. City Loan: Prior to the disbursement of any Loan proceeds under this commitment, the Borrower shall be required to execute, *inter alia*, a Junior Mortgage, Assignment of Rents and Security Agreement, UCC Financing Statements and a Promissory Note. Such documents shall hereinafter be referred to as the "City Loan Documents." The City Loan Documents shall not conflict with the Senior Lender or HUD requirements.

The Loan proceeds may be used to cover only Project-related items. Any and all work performed with these loan proceeds shall be cost-certified to HUD and shall conform with Davis-Bacon requirements, including the submission of payrolls, certifications, etc. If the Act requires a ninety percent (90%) mortgage, this Loan shall not be used to reduce the Borrower's investment to less than ten percent (10%), with the exception of nonprofit nursing homes or nonprofit intermediate care facilities under Section 232.

3. Nonrecourse: This is a nonrecourse Loan. "Nonrecourse" shall mean, for the purpose of this Loan, that neither the Borrower nor any such limited partnership as the Borrower may form for the purposes of holding or managing the Project, including its general and limited partners, now admitted or hereinafter admitted, shall be personally liable for repayment of principal or interest on the City Loan. The sole recourse of the City, until the Senior Loan is paid in full and discharged, shall be against Surplus Cash or Return on Equity, as defined by the FHA Regulatory Agreement

88598773

# UNOFFICIAL COPY

and otherwise in accordance with the FHA Regulatory Agreement and, after the payment in full of the Senior Loan, at the option of the City, recourse may also be had against the Project.

4. Inspection of Records: The City shall, upon reasonable notice, have the right to review at any time, and from time to time, all documents and records relating to the Project.
5. Insurance: The Borrower shall keep all buildings and improvements now, or hereafter situated, on the Properties insured against loss or damage by fire and other hazards. The Borrower shall also maintain liability insurance within commercially reasonable amounts for personal injury, death, property damage, and such other interests as the City may require to be insured. All policies shall be satisfactory to the City with respect to form, companies, and amounts, provided the City's requirements shall not be in excess of those imposed by HUD.
6. Submission of Documents: The following documents shall be submitted to the City for its review and approval prior to the closing of this Loan:
  - (a) Executed copies of the City Loan documents.
  - (b) Copies of such applications, documents, and working plans or specifications in connection with the Project which the Borrower has submitted to the Senior Lender and HUD as of the date of this commitment. The Borrower shall submit to the City a final set of plans and specifications no less than ten (10) days after such documents have been approved by HUD.
  - (c) A completed and executed economic disclosure statement in a form that is satisfactory to the City.
  - (d) A commitment for title insurance, showing fee title to the Properties to be vested in the Borrower or its nominee, and containing a correct legal description of the Properties and securing to the City a lien position subordinated only to the interests of the Senior Lender and HUD.
  - (e) Appropriate documents evidencing the Borrower's authority to accept a loan for this Project.
  - (f) Evidence of an FHA commitment to insure the Senior Loan.
  - (g) Documents pertaining to the Senior Loan and evidence of consent by the Senior Lender to a junior mortgage securing the Loan made by the City.

88588773

# UNOFFICIAL COPY

(h) A statement by the Borrower certifying its agreement to the permitted uses of funds for the Project, as determined by the City.

(i) Such additional information and documents as may be deemed to be necessary by the City or its legal counsel.

7. Construction Period: The rehabilitation of the Project shall commence within thirty (30) days after the first disbursement of the Senior Loan and shall be completed within eleven (11) months after commencement or within such additional period of time as may be permitted or allowed by HUD. The Borrower shall deliver, or cause to be delivered, to the City performance reports to be in the form attached hereto as "Exhibit A."

8. Notice and Demands: All notices and demands required or permitted hereunder shall be in writing and shall be deemed sufficiently given three (3) days after deposit in United States Registered or Certified Mail, postage prepaid, return receipt requested, to the parties at the following addresses:

IF to the City: City of Chicago  
Department of Housing  
318 South Michigan Avenue  
Chicago, Illinois 60604  
Attention: Commissioner

With Copy to: City of Chicago  
Department of Law  
Room 511, City Hall  
121 North LaSalle Street  
Chicago, Illinois 60602  
Attention: Corporation Counsel

If to Borrower: Hispanic Housing Development Corporation  
65 East Wacker Place  
Suite 1800  
Chicago, Illinois 60602  
Attention: Executive Director

With Copies to: James Sneider, Esq.  
180 North LaSalle, #2323  
Chicago, Illinois 60601

and

Reinlein/Lieser/McGee  
101 South Hanley Road  
Suite 1300  
St. Louis, MO 63105-3406  
Attention: Managing Partner

# UNOFFICIAL COPY

or to such other address as the parties may designate in writing from time to time.

(b) The parties must designate in writing any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

(c) Any such notice may be served by personal delivery thereof to the other party, which delivery shall constitute service of notice hereunder on the date of such delivery.

9. Governing Law: This commitment, and the rights and obligations of the parties hereunder, shall be governed by the laws of the State of Illinois.
10. This commitment is subject to the accuracy, as of the date hereof, of all information, data, representations, exhibits, and other materials submitted by the Borrower, including, without limitation, the City Loan application (with such changes as may have been made from time to time) which is incorporated hereby.
11. All provisions of this commitment, where applicable, shall survive the closing of this Loan.
12. The form of the transaction and the content and the execution of all necessary legal documents executed in connection with this Loan Commitment, shall be satisfactory to the City and its legal counsel.
13. Borrower agrees to comply with all applicable federal, state, municipal and other local government laws, statutes, acts, rules and/or regulations, requirements, orders, ordinances, directions and policies. For the purposes of this Loan, which is funded, in whole or in part, under the Community Development Block Grant Program, specific citation is made to Title 24 of the Code of Federal Regulations, Part 570, Subpart K, the requirements of which are hereby incorporated by reference.
14. Disbursement of the loan proceeds shall be made in accordance with the "Lender's Certificate," which is attached hereto and incorporated by reference herein as "Exhibit B."
15. City shall reserve the right to assign all, or any part of, this commitment and/or the Loan proceeds. Borrower shall not assign all, or any part of, this Loan Commitment without the prior written consent of the City.
16. Written acceptance of this Loan Commitment shall be submitted to the City's Department of Housing within thirty (30) days of the date hereto. If not so submitted, this commitment shall be of no further force or effect.



# UNOFFICIAL COPY

DATED:

\_\_\_\_\_

CITY OF CHICAGO:

By:

*Dee Arnoldson*

Title:

*Commissioner*  
Department of Housing

ACCEPTED:

By: Hispanic Housing Development Corporation

Title:

*Wynette Rolde*

Dated:

*12/7/88*

ATTEST:

*Ana Lopez-Vasquez*  
Assistant Secretary

Property of Cook County Clerk's Office

88588773

ComLt-DvSq

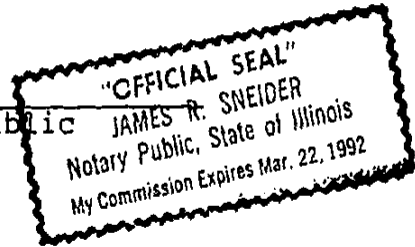
# UNOFFICIAL COPY

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 the above named Officers of the Hispanic Housing Development Corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as Officers of the corporation and as the free and voluntary act of the corporation for the uses and purposes therein set forth:

GIVEN under my hand and Notarial Seal this 7 day of September, 1988.

*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public



My commission Expires \_\_\_\_\_

Notary of Cook County Clerk's Office

88588773

UNOFFICIAL COPY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM  
GRANTEE PERFORMANCE REPORT  
DIRECT BENEFIT ACTIVITIES

NAME OF TENANT (PRINT)

Page \_\_\_\_\_ of \_\_\_\_\_  
PERIOD COVERED FROM \_\_\_\_\_ TO \_\_\_\_\_

Apt NUMBER (a)	Tenant - NAME (b)	TOTAL NUMBER OF HOUSEHOLDS/ PERSONS ASSISTED (c)	PERCENT OF TOTAL NUMBER OF HOUSEHOLDS/PERSONS ASSISTED (Column (c) THIS ARE					ASIAN OR PACIFIC ISLANDER (f)	HISPANIC (g)	AMERICAN INDIAN, ALASKAN NATIVE (h)	BLACK OR HISPANIC ORIGIN (i)	WHITE OR HISPANIC ORIGIN (j)	LOW INCOME (k)	LOW AND MODERATE- INCOME (l)
			LOW AND MODERATE- INCOME (d)	LOW INCOME (e)										

Property of Cook County Clerk's Office

88588773

88

88588773

# UNOFFICIAL COPY

## EXHIBIT B

Diversey Square Phase II  
Chicago, Illinois  
FHA Project No. 071-35573

### LENDER'S CERTIFICATE

The undersigned does hereby certify that:

(1) The loan made by the City of Chicago, acting by and through its Department of Housing, for the above-referenced Project, and secured by a certain Junior Mortgage, Assignment of Rents and Security Agreement dated as of December 21, 1988 is in the total amount of \$641,592.00

(2) The proceeds of the aforesaid Mortgage shall be disbursed at initial endorsement and are not geared for release upon the completion of specific improvements.

(3) The loan shall be deposited in an escrow, established by the Senior Lender at Title Services and known as Escrow No. 205373B; and further shall be applied in the following manner: (a) To pay for items outside of the FHA-insured mortgage, to wit land acquisition costs, \$500,000.

(b) To pay for a portion of the total cost of improvements for the above-referenced Project, \$141,592.

City of Chicago

By: *Desa Donaldson*

Title: *Commissioner*

Department of Housing

88588773

# UNOFFICIAL COPY

EXHIBIT C

## PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, American National Bank and Trust of Chicago, not personally but solely as Trustee under Trust No. 67218 ("Borrower"), whose sole beneficiary is Diversey Square Associates Limited Partnership ("Owner"), promises to pay 41 years from the date of the Junior Mortgage, as defined herein, unless the Maturity of this Note is extended at the direction of the Secretary of the United States Department of Housing and Urban Development ("HUD"), to THE CITY OF CHICAGO, DEPARTMENT OF HOUSING ("Lender"), the sum of Six Hundred Forty One Thousand Five Hundred Ninety Two and No/100 Dollars (\$641,592.00) payable at CHICAGO, ILLINOIS, with interest thereon calculated in the following manner:

After the Construction Period permitted by the Commitment Letter from Lender to Borrower, the Borrower shall make annually an interest payment (the "Annual Interest Payment") in an amount equal to but not exceeding fifty per cent (50%) of the Surplus Cash, as such term is defined by and in accordance with the conditions in that certain FHA Regulatory Agreement dated as of *1/28* Dec. 1, 1988 and after such distribution as may be permitted by the Senior Lender, as hereinafter defined, for the year in which such interest payment is due; provided, however, that, if fifty percent (50%) of the available Surplus Cash in any given year is less than \$1796.46, Borrower shall make a minimum payment of \$1796.46 (the "Minimum Payment") for such year; and provided further that, if the available Surplus Cash is less than the Minimum Payment in any given year, any balance remaining on such Minimum Payment will accumulate. At such time as fifty percent (50%) of the available Surplus Cash in any given year exceeds the Minimum Payment, that amount by which fifty percent (50%) of Surplus Cash exceeds the Minimum Payment shall be credited to any such accumulated balance due and owing. In addition, if the sum total of Minimum Payments made to date equal or exceed twenty-five per cent (25%) of the Maximum Interest Payable (as hereinafter defined), failure to make a Minimum Payment in future years will not result in any accumulation, and all accumulated payments will be considered satisfied if at least 50% of the Maximum Interest Payable is paid prior to the sale, resyndication or refinancing of any or all of the properties commonly known as Diversey Square Phase II and more fully described in the Junior Mortgage defined hereinbelow (the "Project" or the "Properties").

The first such annual interest payment shall be due no later than April 1, 1991, or such earlier date as may be required by HUD rules and regulations. Succeeding payments shall be paid no later than April 1 of each year thereafter, or such earlier date as may be required by HUD rules and regulations, until the sale, resyndication or refinancing of any or all of the Properties, whichever occurs first.

88588773



# UNOFFICIAL COPY

All Annual Interest Payments shall be calculated for each fiscal year based upon an audit performed by a Certified Public Accountant. A copy of such audit shall be submitted to the City by the Borrower within sixty (60) days of the fiscal year end.

The cumulative total of all of the Annual Interest Payments made in accordance with the above provisions shall in no event exceed a sum equal to the total interest paid on a loan of \$641,592.00 made for 40 years at the rate of three percent (3%) per annum, simple interest and not compound, to accrue on an annual basis commencing on April 1, 1990, and continuing until the maturity of this Note or the sale, resyndication or refinancing of the Properties (the "Maximum Interest Payable").

If 50% of the Surplus Cash in any year exceeds 2% of the then outstanding balance of principal due and owing, the amount by which 50% of the Surplus Cash exceeds 2% of the then outstanding balance shall be applied to reduce the outstanding principal balance on the Loan.

In the event the Project is sold, refinanced or resyndicated, and subject to the provisions of Article V of the Junior mortgage as hereinafter defined, the City shall be paid a payment that, when coupled with the Annual Interest Payments made shall be equal to 50% of the Maximum Interest Payable. Additionally, the City shall be paid any and all sums remaining on the Loan that are outstanding. This sum shall be in addition to such sums as are due and owing with regard to the Annual Interest Payments. The City shall in such event have the option of renegotiating any or all of the terms and conditions of the City's Loan.

This is a deferred payment loan. Subject to the provisions of Article V of the Junior Mortgage, as defined hereinbelow, all payments of principal and interest are due and payable in full either on the date of maturity of this Note or upon the sale, resyndication or refinancing of all or any part of the Project, FHA Project No. 071-35573; or upon the sale of such Properties pursuant to an order or decree of foreclosure; or upon the transfer of such Properties to the mortgagee under the Senior Mortgage, as defined hereinafter, by deed in lieu of foreclosure, whichever occurs first.

If any payment of principal or interest due hereunder shall not be made within ten (10) days after such payment is due, Borrower shall pay to the Lender a late charge of five percent (5.0%) of such delinquent amount, or the maximum amount permitted by law, whichever is less. The Annual Interest Payments, or any part thereof, shall not be deemed due for purposes of this late charge provision until such time as there is sufficient Surplus Cash to make such payment.

This Note may be prepaid in whole or in part without payment of penalties or premiums subject to the conditions stated in the Commitment Letter from Lender to Borrower.

# UNOFFICIAL COPY

This Note shall be nonrecourse as such term is defined in the Commitment Letter from Lender to Borrower.

This Note is secured by and entitled to the benefits of a certain Junior Mortgage given by the Borrower to the Lender and recorded in the Office of the Recorder of Deeds of Cook County, Chicago, County of Cook, State of Illinois on \_\_\_\_\_, \_\_\_\_\_, as Document No. \_\_\_\_\_ ("Junior Mortgage").

Reference is hereby made to the Junior Mortgage for a further statement of the nature and extent of the protection and security afforded the Lender and the duties and obligations of the Borrower.

If a default shall occur under the Junior Mortgage or under the Senior Mortgage to which the Junior Mortgage is subordinate, as discussed hereinafter, this Note may be declared due and payable in the manner and with the effect provided for herein and therein. All rights and remedies conferred therein and herein upon the Lender shall be cumulative and not exclusive and such remedies may be exercised concurrently or consecutively at the Lender's option as may be permitted in the Junior Mortgage. A default under the Senior Mortgage shall constitute a default under this Note.

This Note and the Junior Mortgage which secures it are subordinate and subject to the rights of Reinlein/Lieser/McGee ("Senior Lender") under a certain FHA-insured mortgage securing \$1,982,300.00 to be used as a loan for the Project ("Senior Mortgage") and under any other documents securing that debt, and to the rights of the Secretary of the United States Department of Housing and Urban Development ("HUD") under the abovementioned FHA Regulatory Agreement and the Regulatory Agreement as to Tax Exemption.

Notwithstanding anything herein to the contrary, so long as the Senior Mortgage is insured or held by the mortgagee thereunder, all payments shall be made in accordance with the applicable conditions prescribed by HUD and the Senior Lender as to allowable distributions. So long as the Secretary of HUD or his successors or assigns is the insurer or holder of the Senior Mortgage on the Project, payments due under this Note shall be payable only from Surplus Cash (or residual receipts) of said Project as the term Surplus Cash (or residual receipts) is defined in the FHA Regulatory Agreement dated as of Dec. 1, 1988. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by this Note.

The Borrower hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Note.

88588773

# UNOFFICIAL COPY

This document is executed by the Borrower, not personally, but solely as Trustee under Trust No. 67218 as aforesaid, in the exercise of the power and authority conferred upon and vested in said Trustee as such, and it is expressly understood and agreed that nothing contained in this Note shall be construed as creating any monetary liability on said Trustee personally to pay any indebtedness accruing hereunder, or any personal monetary liability on said Trustee with respect to the performance of any warranty or covenant, either expressed or implied (all such personal monetary liability, if any, being expressly waived by the parties hereto and by every person now or hereafter claiming any right of security hereunder), except that the said Trustee shall be liable for funds or property of the Project coming into its hands which, by the provisions of the abovementioned FHA Regulatory Agreement, it is not entitled to retain.

DATED at Chicago, Illinois this 21 day of December,

American National Bank and Trust of Chicago, not personally but as Trustee under a Trust Agreement dated April 4, 1986, and known as Trust Number 67218

By: 

Title: VP

ATTEST:

By: 

Title: Asst Secy

PrmNt-DvSq

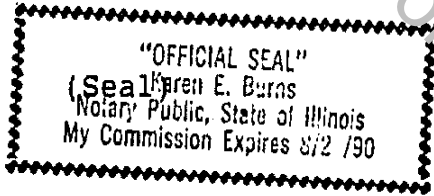
# UNOFFICIAL COPY

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 the above named Officers of the American National Bank and Trust of Chicago personally known to me to be the same people whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as Officers of the Bank and as the free and voluntary act of the Bank for the uses and purposes therein set forth:

GIVEN under my hand and Notarial Seal this 21 day of DEC 1988, 1988.

*Karen E. Burns*  
\_\_\_\_\_  
Notary Public



My commission expires \_\_\_\_\_

Property of Cook County Clerk's Office

88588773

DEPT-01 RECORDING \$46.00  
T#2222 TRAN 8916 12/21/88 16:34:00  
#6704 # B \* -88-588773  
COOK COUNTY RECORDER

88588773

*Ho-00*