



City of Chicago



O2014-1646

Office of the City Clerk

Document Tracking Sheet

Meeting Date: 3/5/2014

Sponsor(s): Emanuel (Mayor)

Type: Ordinance

Title: Loan modification and subordination agreement for Diversey Square II for acquisition and rehabilitation of building at 3212-3226 West Diversey Ave

Committee(s) Assignment: Committee on Finance



CHICAGO April 2, 2014

To the President and Members of the City Council:

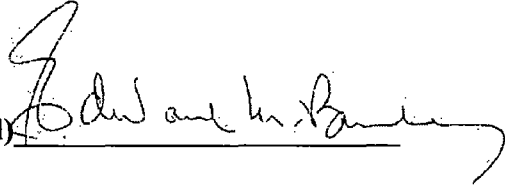
Your Committee on Finance having had under consideration

An ordinance authorizing the Commissioner of the Department of Planning and Development to modify a loan agreement with Diversey Square Associates, LLP.
O2014-1646

Having had the same under advisement, begs leave to report and recommend that your Honorable Body pass the proposed Ordinance Transmitted Herewith

This recommendation was concurred in by _____ (a viva voce vote of members of the committee with _____ dissenting vote(s).

Respectfully submitted

(signed) 

Chairman

Document No. _____

**REPORT OF THE COMMITTEE ON FINANCE
TO THE CITY COUNCIL
CITY OF CHICAGO**



FIN.

8

OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

March 5, 2014

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Planning and Development, I transmit herewith an ordinance authorizing the execution of a loan modification and subordination agreement for Diversey Square II.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

ORDINANCE

WHEREAS, the City of Chicago (the "City") is a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois and as such may legislate as to matters which pertain to its local government and affairs; and

WHEREAS, the City Council of the City (the "City Council") has determined that the continuance of a shortage of rental housing affordable to persons of low and moderate income is harmful to the health, prosperity, economic stability and general welfare of the City; and

WHEREAS, the City programmed Multi-Unit Rehabilitation Assistance Program ("Multi-Program") funds whereby acquisition and rehabilitation loans were made available to owners of rental properties containing five or more dwelling units located in low- and moderate-income areas, and the Multi-Program is administered by the City's Department of Planning and Development ("DPD"); and

WHEREAS, the City Council, pursuant to an ordinance enacted on April 20, 1988, and published at pages 12235-12238 of the Journal of the Proceedings of the City Council (the "Journal of Proceedings") of that date, authorized DPD to provide Multi-Program financing in the amount of \$641,592 for the acquisition and rehabilitation of a building (the "Building") located at 3212-3226 West Diversey Avenue, in Chicago, Illinois and of 48 residential dwelling units therein (the "Project"); and

WHEREAS, Diversey Square Associates Limited Partnership, an Illinois limited partnership ("Diversey"), owns the Building; and

WHEREAS, in connection with the Project, the City made a loan to Diversey and a land trust of which Diversey was the beneficiary (together hereinafter referred to as the "Borrower") on December 21, 1988 in the amount of \$641,592 (the "Loan") with an interest rate of three percent per annum, which Loan is secured by, among other things, that certain Junior Mortgage, Assignment of Rents and Security Agreement dated December 21, 1988, and recorded on December 21, 1988 in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office") as Document number 8858773, made by the Borrower in favor of the City (the "Mortgage"); and

WHEREAS, the Mortgage was subordinated to that certain Mortgage dated as of December 1, 1988 and recorded in the Recorder's Office as Document No. 88586702 (the "Original Senior Mortgage"), securing a loan in the amount of \$1,982,300 (the "Original Senior Loan"), made by the Borrower in favor of Reinlein/Lieser/McGee, a California general partnership (the "Original Senior Lender"); and

WHEREAS, in 2001, the Borrower refinanced and repaid the Original Senior Loan with the proceeds of a \$1,969,000 loan (the "2001 Replacement Senior Loan") to the Borrower from TRI Acceptance Corporation (the "2001 Replacement Senior Lender"), and thereby caused the release of the Original Senior Mortgage; and

WHEREAS, the 2001 Replacement Senior Loan was insured by the Secretary of Housing and Urban Development of the United States of America ("HUD") acting through the Federal Housing Commissioner under Section 221(d)4 pursuant to Section 223(a)7 of the National Housing Act, FHA Project No. 071-35666, and was secured by a certain Mortgage dated as of September 1,

2001 and recorded in the Recorder's Office as Document number 0010902429 made by the Borrower in favor of the Replacement Senior Lender (the "2001 Replacement Senior Mortgage"); and

WHEREAS, in connection with the 2001 Replacement Senior Loan, the City amended the terms of its Loan and subordinated its Mortgage and the other loan documents evidencing and securing the Loan to the 2001 Replacement Senior Mortgage and the loan documents evidencing and securing the 2001 Replacement Senior Loan, all as set forth in the Subordination, Amendment and Modification Agreement dated as of September 27, 2001 and recorded on September 27, 2001 in the Recorder's Office as document number 0010902431 (the "2001 City Subordination Agreement") (the Loan, as amended by the 2001 City Subordination Agreement, is hereafter the "2001 Amended Loan"); and

WHEREAS, after 2001, Diversey met with certain financial difficulties in the operation of the Building, and requested that DPD approve a proposed restructuring of the 2001 Amended Loan; and

WHEREAS, in 2007, Diversey refinanced and repaid the 2001 Replacement Senior Loan with the proceeds of a \$1,969,000 loan (the "2007 Replacement Senior Loan") to Diversey from Wells Fargo Bank, National Association (the "2007 Replacement Senior Lender"), thereby causing the release of the 2001 Replacement Senior Mortgage; and

WHEREAS, the 2007 Replacement Senior Loan was insured by HUD acting through the Federal Housing Commissioner under Section 221(d)4 pursuant to Section 223(a)7 of the National Housing Act, FHA Project No. 071-35666, and was secured by a certain Mortgage dated as of October 1, 2007 and recorded on October 11, 2007 in the Recorder's Office as Document number 0728460041 made by Diversey in favor of the 2007 Replacement Senior Lender (the "2007 Replacement Senior Mortgage"); and

WHEREAS, in connection with the 2007 Replacement Senior Loan, the City amended the terms of its Loan and subordinated its Mortgage and the other loan documents evidencing and securing the Loan to the 2007 Replacement Senior Mortgage and the loan documents evidencing and securing the 2007 Replacement Senior Loan, all as set forth in the Subordination, Amendment and Modification Agreement dated as of October 1, 2007 and recorded on October 11, 2007 in the Recorder's Office as document number 0728460045 (the "2007 City Subordination Agreement") (the Loan, as amended by the 2007 City Subordination Agreement, is hereafter the "2007 Amended Loan"); and

WHEREAS, since 2007, Diversey has met with certain additional financial difficulties in the operation of the Building, and has requested that DPD approve a proposed restructuring of the 2007 Amended Loan; and

WHEREAS, in order to secure the long-term viability of the Building, HUD has agreed to allow Diversey to refinance and repay the 2007 Replacement Senior Loan and to receive the proceeds of a new loan from Developer's Mortgage Corporation (the "New Senior Lender") in an amount not to exceed \$2,972,000 at a fixed interest rate not to exceed 6% per annum for a term not to exceed 40 years (the "New Senior Financing"), which New Senior Financing HUD will insure pursuant to the provisions under Section 221(d)4 pursuant to Section 223(a)7 of the National Housing Act, FHA Project No. 071-35789; and

WHEREAS, as a result of the refinance and repayment of the 2007 Replacement Senior Loan, the 2007 Replacement Senior Mortgage will be released; and

WHEREAS, the New Senior Financing will be secured by a new mortgage made by the Borrower in favor of the New Senior Lender (the "New Senior Mortgage") and will also be evidenced by, among other documents, a new Regulatory Agreement between Diversey and HUD (the "New Regulatory Agreement"); and

WHEREAS, DPD has approved a restructuring of the 2007 Amended Loan (the "Restructuring") in a manner which (1) will not alter the principal amount of the 2007 Amended Loan, (2) will not alter the interest rate on the principal balance of the 2007 Amended Loan, (3) will extend the maturity date of the 2007 Amended Loan to or after the maturity date of the New Senior Financing, (4) will not alter the repayment terms of the 2007 Amended Loan, and (5) will subordinate the Mortgage to the liens which will secure the New Senior Financing, including but not limited to the New Senior Mortgage and New Senior Regulatory Agreement (collectively, the "Material Terms"); NOW, THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated in and made a part of this ordinance as though fully set forth herein.

SECTION 2. The Restructuring is hereby approved as described above. The Commissioner of DPD (the "Commissioner") or a designee of the Commissioner, are each hereby authorized, subject to approval by the Corporation Counsel, to negotiate any and all terms and provisions in connection with the Restructuring which do not substantially modify the Material Terms as described herein. The Commissioner, or a designee of the Commissioner, are each hereby authorized, subject to approval by the Corporation Counsel, to enter into and execute such agreements and instruments, and perform any and all acts as shall be necessary or advisable in connection with the implementation of the Restructuring. The Commissioner or a designee of the Commissioner are each hereby authorized, subject to approval by the Corporation Counsel, to enter into and execute such agreements and instruments, and perform any and all acts as shall be necessary or advisable, in connection with any future restructuring of the Loan, which do not substantially modify the Material Terms.

SECTION 3. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this ordinance. Section 2-45-110 of the Municipal Code of Chicago shall not apply to the Building in connection with the Restructuring.

SECTION 4. This ordinance shall be effective as of the date of its passage and approval.

APPROVED
Michael R. Feltz
CORPORATION COUNSEL

APPROVED
Robert E. Emmons, III
MANAGER
April 7, 2014