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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 0824626045 Fee: \$70.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/02/2008 08:58 AM Pg: 1 of 18

Property of Cook County Clerk's Office

The property identified as: **PIN:** 13-27-303-001-0000

Address:

Street: 4453-59 W. DIVERSEY

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60639

Lender: 4453-59 W. DIVERSEY, LLC

Borrower: PMW PROPERTIES, LLC

Loan / Mortgage Amount: \$222,852.44

This property is located within Cook County and the transaction is exempt from the requirements of 765 ILCS 7770 et seq. because the application was taken by an exempt entity.

BOX 441

Certificate number: E52DEB95-3DE9-425B-987F-26347C5BB133

Execution date: 08/01/2008

1808

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THIS INSTRUMENT WAS
PREPARED BY AND AFTER
RECORDING RETURN TO:

Harry J. Fournier, Esq.
2210 Midwest Road, Suite 212
Oak Brook, Illinois 60523

144825

SECOND MORTGAGE

THIS SECOND MORTGAGE ("Mortgage"), executed the date hereinafter written, by **PMW PROPERTIES, LLC**, an Illinois limited liability company ("Borrower"), to **4453-59 W. DIVERSEY, LLC**, an Illinois limited liability company ("Lender").

W I T N E S S E T H:

WHEREAS, Borrower desires to secure repayment of the indebtedness described in Section 2 hereof by a conveyance of the Premises (hereinafter defined); and

WHEREAS, Lender accepts the benefits of this Mortgage;

NOW, THEREFORE, in consideration of the premises and for other valuable consideration, the Borrower and Lender agree as follows:

1. Premises. Borrower has this day bargained and sold, and does hereby transfer, assign and convey unto Lender, all of Borrower's right, title and interest in and to the following described property and property rights (whether now owned or hereafter acquired by Borrower) and all replacements and additions thereto (hereinafter referred to collectively as the "Premises"):

The real property more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference;

TOGETHER with all buildings, structures and other improvements now or hereafter located on all or any part of the Premises;

TOGETHER with all minerals, royalties, gas rights, water, water rights, water stock, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on, under or above all or any part of the Premises;

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TOGETHER with any and all tenements, hereditaments, easements and appurtenances, reversions and remainders pertaining to the Premises;

TOGETHER with all fixtures of every kind and nature, now or hereafter located in, on or under the Premises or any part thereof and used or usable in connection with any present or future operation of the Premises;

TOGETHER with any and all leases and contracts affecting the Premises both presently existing and hereafter arising, and all rents, income, or profits which are now due or may hereafter become due by reason of the renting, leasing or bailment of all or part of the Premises, all of which are hereby assigned to Lender as further security for the repayment of the indebtedness described in Section 2 hereof; and

TOGETHER with any and all awards or payments, including interest thereon, and the right to receive the same, as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, or (c) any other injury to, taking of, or decrease in the value of, the Premises, to the extent of all amounts which may be secured by this Mortgage at the date of any such award or payment including but not limited to the reasonable attorneys' fees, costs and disbursements incurred by the Lender in connection with the collection of such award or payment.

TO HAVE AND TO HOLD the foregoing Premises and rights hereby granted to the use and benefit of Lender, his successors and assigns forever, subject to the rights and interests of First Commercial Bank.

2. Indebtedness Defined. This conveyance is made in order to secure prompt payment in full of the following described obligations (hereinafter the Secured Indebtedness):

(a) Prompt payment when due (whether at maturity or upon the acceleration of maturity) of indebtedness for borrowed money in the original principal amount of **\$222,852.44**, together with interest thereon, as evidenced by that certain Multi-Family Note, executed of even date herewith by Borrower to the order of Lender, as such note may subsequently be amended, restated or modified. This Mortgage secures payment of the indebtedness evidenced by the above-referenced note, principal, interest and expenses, and any extensions, modifications and/or renewals thereof and any Note given in payment of any such principal and/or interest ("Note");

(b) All sums advanced by Lender to Borrower or expended by Lender in order to preserve, protect or enhance the value of the Premises pursuant to the terms of this Mortgage, or otherwise, with interest thereon at the same rate as is provided in the Note, and the faithful performance of all terms and conditions contained herein, all of which Borrower agrees to pay to Lender ON DEMAND; and

(c) The prompt payment of all court costs, expenses, interest (at the highest lawful rate) and costs of whatever kind incident to the collection of any indebtedness secured hereby and the enforcement or protection of the lien created by this conveyance (including without limitation reasonable attorneys' fees), all of which Borrower agrees to pay to Lender ON DEMAND.

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3. Assignment of Leasehold Estates Affecting Premises.

(a) As additional security hereunder and subject to the rights and interests of First Commercial Bank, Borrower hereby assigns to Lender the rents from any lease or sublease of the Premises and the proceeds of this right shall be treated as cash collateral; provided, that prior to the occurrence of an Event of Default hereunder (hereinafter defined), Lender agrees to permit Borrower to collect and retain such rents as they become due and payable.

(b) Borrower shall faithfully perform the covenants of Borrower as lessor (or, as lessee, as the case may be) under any present and future leases, affecting all or any portion of the Premises, and shall neither do nor neglect to do, nor permit to be done, anything which may cause the termination of said leases, or any of them, or which may diminish or impair their value, or the rents provided for therein, or the interest of Borrower or Lender therein or thereunder.

(c) Promptly upon a request by Lender, Borrower shall procure and deliver to Lender at the time of executing this Mortgage, or at any time within thirty (30) days after notice and demand by Lender, estoppel letters or certificates from each lessee, tenant or occupant in possession of the Premises (or from each lessor, as the case may be), in form and substance satisfactory to Lender.

(d) Each lease pertaining to the Premises, or any part thereof, shall expressly provide, or shall be deemed to provide, that in the event of the enforcement by Lender of the remedies provided for by law or by this Mortgage, the lessee or tenant thereunder will, at the option and request of Lender (or any other person or entity succeeding to the interest of Lender) as a result of such enforcement, automatically become the lessee or tenant of Lender (or said successor in interest), without change in the terms or other provisions of said lease; provided, however, that Lender (and said successor in interest) shall not be bound by (i) any payment of rental or additional rental for more than one (1) month in advance, except prepayments in the nature of security for the performance by said lessee or tenant of its obligations under said lease or (ii) any amendment or modification of said lease made without the express written consent of Lender or said successor in interest. Each lease pertaining to the Premises shall also provide that, upon request by said successor in interest, the lessee or tenant thereunder shall deliver an instrument or instruments confirming such attornment.

(e) Upon the occurrence of an Event of Default hereunder, Lender may, at its option and subject to the rights and interests of First Commercial Bank, with or without notice or demand of any kind, exercise any or all of the following remedies in addition to the other remedies provided herein:

(i) Perform any and all obligations of Borrower under any or all of the leases affecting the Premises and exercise any and all rights of Borrower thereunder as fully as Borrower itself could, including, without limiting the generality of the foregoing: enforcing, modifying, extending or terminating any or all of the leases; collecting, modifying, compromising, waiving or increasing any

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or all of the rents payable thereunder; and obtaining new tenants and entering into new leases with respect to the Premises on any terms and conditions deemed desirable by Lender, and, to the extent Lender shall incur any costs or expend any monies in connection with the performance of any obligations of Borrower, including costs of litigation (including reasonable attorneys' fees), then all such costs shall become a part of the Secured Indebtedness, shall bear interest from the incurring thereof at the maximum nonusurious rate of interest then and thereafter in effect, and shall be due and payable on demand;

(ii) In Borrower's or Lender's name, institute any legal or equitable action which Lender in its sole discretion deems desirable to collect and receive any or all of the rents, issues and profits assigned herein;

(iii) Collect the rents, issues and profits and any other sums due under the leases and/or with respect to the Premises and apply the same, as follows:

(1) First, against all costs and expenses, including reasonable attorneys' fees, incurred in connection with the operation of the Premises, the performance of Borrower's obligations under the leases and the collection of the rents thereunder;

(2) Second, to the costs and expenses, including reasonable attorneys' fees, incurred in the collection of any or all of the Secured Indebtedness;

(3) Third, to any or all unpaid principal of and interest on the Secured Indebtedness, in such order of priority as Lender shall determine, in its sole discretion; and

(4) Fourth, to Borrower, or to the person or entity lawfully entitled thereto;

(iv) Lender shall have full right to exercise any or all of the foregoing remedies without regard to the adequacy of the security for any or all of the Secured Indebtedness, and with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee.

4. Additional Representations, Covenants and Warranties of Borrower. Borrower further represents to Lender and covenants and agrees with the Lender as follows:

(a) Title. Borrower warrants that Borrower has a good title to the Premises, and is lawfully seized and possessed of the Premises and every part thereof, and has the right to convey same; that Borrower will forever warrant and defend the title to the Premises unto Lender against the claims of all persons whomsoever; and that the Premises are unencumbered except as set forth on **Exhibit "B"** hereto (the "Permitted Encumbrances").

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(b) No Liens or Assessments. Borrower will not suffer or permit any lien (other than the lien of this Mortgage), lis pendens, attachment, cloud on title or assessment (other than current taxes not delinquent) to encumber the Premises. Lender has not consented and will not consent to the performance of any work or the furnishing of any materials which might be deemed to create a lien or liens superior to the lien hereof.

(c) Insurance. Borrower shall keep the Premises insured for the benefit of Lender against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke and other such hazards, in an amount equal to one hundred percent (100%) of full insurable value of the Premises. All insurance shall be in form and substance satisfactory to and issued by insurance companies approved by Lender. Borrower hereby assigns and shall deliver to Lender, as collateral and further security for the payment of the Secured Indebtedness, all policies of insurance which insure against any loss or damage to the Premises, with loss payable to Lender, without contribution by Lender.

In the event of a foreclosure of this Mortgage, the purchaser of the Premises shall succeed to all the rights of Borrower, and to all policies of insurance hereby assigned to Lender.

Should any loss occur to the insured Premises, Lender is hereby appointed attorney-in-fact for Borrower to make proof of loss if Borrower fails to do so promptly, and to receipt for any sums collected under said policies, which sums, or any part thereof, at the option of Lender, may be applied either as payment on the Secured Indebtedness or to the restoration or repair of the Premises so damaged or destroyed. Borrower promptly will give written notice to Lender of any loss or damage to the Premises and will not adjust or settle such loss without the written consent of Lender. In the event of any default under this Mortgage or the Note, all right, title and interest of Borrower in and to any insurance policies then in force, and particularly to the unearned premiums therein and existing claims thereunder, shall pass to Lender, which, at its option and as attorney-in-fact for Borrower, may make, settle and give binding acquittances for claims under said policies and may assign and transfer said policies or cancel and surrender the same applying any unearned premiums in such manner as it may elect. In case of Borrower's failure to keep the Premises so insured, Lender or its assigns, may, at its option (but shall not be required to) effect such insurance at Borrower's expense.

(d) Preservation and Maintenance of the Premises. Borrower shall maintain the Premises in good condition and repair, shall not commit or suffer any waste, impairment or deterioration of the Premises, and shall comply with, or cause to be complied with, all statutes, ordinances and requirements of any governmental authority relating to the Premises or any part thereof. Subject to the provisions of Paragraph 4(f), Borrower shall promptly repair, restore, replace or rebuild any part of the Premises, now or hereafter encumbered by this Mortgage, which may be affected by any eminent domain or condemnation proceeding. No part of the Premises, including but not limited to, any building, structure, parking lot, driveway, landscape scheme, timber or other ground improvement, equipment or other property, now or hereafter conveyed as security pursuant to this Mortgage, shall be removed, demolished or materially altered without the

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prior written consent of Lender. Borrower shall complete within a reasonable time and pay for any building, structure or other improvement at any time in the process of construction on the Premises herein conveyed. Borrower shall not initiate, join in, or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Premises or any part thereof, without the prior written approval of Lender; provided, however, that Borrower may initiate, join in, or consent to changes in any private restrictive covenant, zoning ordinance, or other public or private restrictions without Lender's prior written consent if such change has no material, adverse affect on the Premises. Lender and any persons authorized by Lender shall have the right to enter and inspect the Premises and access thereto shall be permitted for that purpose.

(e) Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially adversely affects Lender's interest in the Premises, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a debtor under applicable bankruptcy laws, then Lender, at Lender's option, without notice to Borrower, may make such appearances, disburse such sums and take such action as is reasonably necessary to protect Lender's interest. Any amounts disbursed by Lender pursuant to this Mortgage, with interest thereon, shall become additional Secured Indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the highest contract rate permissible by applicable law at such time. Nothing contained in this Article or in this Mortgage shall require Lender to insure the Premises, maintain or renew policies of insurance, pay taxes, discharge liens, pay any expense or do any act whatsoever to protect or preserve the Premises.

(f) Eminent Domain or Condemnation. Notwithstanding any taking of any part of the Premises by eminent domain, alteration of the grade of any street or other injury to, or decrease in value of, the Premises, by any public or quasi-public authority or general partnership, Borrower shall continue to pay principal and interest on the Secured Indebtedness, and any reduction in the Secured Indebtedness resulting from the application by Lender of any award or payment for such taking, alteration, injury or decrease in value of the Premises, as hereinafter set forth, shall be deemed to take effect only on the date of such receipt; and said award or payment may, at the option of Lender, be retained and applied by Lender toward payment of the Secured Indebtedness, or be paid over, wholly or in part, to Borrower for the purpose of altering, restoring or rebuilding any part of the Premises which may have been altered, damaged or destroyed as a result of any such taking, alteration of grade, or other injury to the Premises, or for any other purpose or object satisfactory to Lender, but Lender shall not be obligated to assume the proper application of any amount paid over to Borrower. If, prior to the receipt by Lender of such award or payment, the Premises shall have been sold on foreclosure of this Mortgage, Lender shall have the right to receive said award or payment to the extent of any deficiency found to be due upon such sale, with interest thereon at the maximum nonusurious rate of interest permitted to be charged at the time,

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whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and to the extent of the reasonable counsel fees, costs and disbursements incurred by Lender in connection with the collection of such award or payment.

(g) Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Premises.

(h) Transfer of the Premises. In the absence of the Lender's prior written consent, if all or any part of the Premises or any interest therein is sold, transferred, encumbered or restricted, including, without limitation, (i) the creation of a lien, charge, restriction or encumbrance against the Premises whether or not subordinate to this Mortgage, (ii) the execution of a contract to sell, lease or otherwise dispose of all, part of, or any interest in, the Premises, (iii) the transfer or execution of a contract to transfer or otherwise dispose of all, part of, or any interest in the beneficial or equitable title to the Premises, or (iv) the filing of any tax lien, judgment lien or any other type of lien against the Premises, Lender may, at any time after Lender acquires actual knowledge of the actual or attempted sale, transfer, disposition, encumbrance or restriction, declare all Secured Indebtedness to be immediately due and payable.

(i) Discharge Liens. Borrower will promptly pay and settle or cause to be removed all claims or liens against all or any part of the Premises which affect the rights of Lender hereunder or, at Lender's option, will provide Lender with acceptable security for the satisfaction thereof, and Borrower will appear in and defend any action or proceeding purporting to affect the Premises or the lien of this Mortgage or the rights or powers of Lender hereunder, and Borrower will pay all expenses incidental thereto; and if it shall become necessary for Lender to bring or defend any action to protect or establish any of its rights hereunder, Borrower will pay (in addition to costs and expenses allowed by law), the reasonable costs of bringing or defending such action, including reasonable attorneys' fees. In the event acceleration of payment of the unpaid portion of the Secured Indebtedness hereby is declared, but no sale is made, or if Lender elects not to pursue its other remedies at law or in equity, such acceleration shall be held for naught, and the Secured Indebtedness shall be deemed to mature as originally provided in the instruments evidencing the Secured Indebtedness, but without waiving the right of Lender again to declare a default for the same or a different event of default.

(j) Rents During Insolvency Proceeding. Should the Premises be involved in any insolvency, receivership, bankruptcy, or other proceedings affecting the possession of said Premises, it is further covenanted and agreed that Lender shall be entitled to all of the rents, issues and profits realized from or during any such proceedings, whether or not there shall exist a default under this Mortgage. Such rents shall be treated as cash collateral.

(k) Payment of Secured Indebtedness. Borrower will pay to the Lender, when due, the interest, principal and other sums constituting the Secured Indebtedness.

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(l) Real Estate Taxes. Borrower shall pay or cause to be paid prior to the date the same become delinquent, all real estate taxes in respect of the Premises ("Taxes") and shall furnish to Lender, within five (5) business days of making any such payment, written evidence of the making of any real estate tax payment.

5. Events of Default and Acceleration. The occurrence of any of the following events shall constitute an Event of Default hereunder:

(a) a default shall occur in the payment of the principal of and/or interest on the Secured Indebtedness or any portion thereof when and as the same shall become due and payable;

(b) Borrower shall default in the payment and/or performance of its obligations under, or a default or event of default shall occur under, the Note, this Mortgage or any other instrument or document now or hereafter further evidencing, securing or otherwise related to the Secured Indebtedness or any portion thereof;

(c) Borrower shall abandon the Premises;

(d) Borrower shall cease to have legal existence or be liquidated, dissolved, partitioned or terminated, or its charter or certificate of authority thereof shall expire or be revoked;

(e) Borrower, or any other person or entity now or hereafter liable to pay all or any portion of the Secured Indebtedness (sometimes hereinafter referred to as an "Obligor"), shall fail to pay or admit in writing that it is generally not paying its debts as they become due, or make a general assignment for the benefit of creditors or commit any act of bankruptcy; or a receiver, trustee or other custodian shall be appointed for Borrower, any Obligor or any of the property thereof (including without limitation the Premises); or any proceedings under bankruptcy laws or other laws of general application to creditors shall be brought by or against Borrower or any Obligor; or Borrower or any Obligor shall file for any form of reorganization or arrangement under any bankruptcy law;

(f) should any representation or warranty of Borrower herein contained, or contained in any instrument, transfer, conveyance, assignment or loan agreement given with respect to the Secured Indebtedness, reasonably appear to be untrue or misleading in any material aspect;

(g) should any federal tax lien or claim of lien for labor or material be filed of record against Borrower or the Premises and not be removed by payment or bond within thirty (30) days from date of recording;

(h) subject to any applicable grace period, the Borrower fails to make any payment due on any indebtedness or security or any event shall occur or any condition shall exist in respect of any indebtedness or security of the Borrower, or under any agreement securing or relating to such indebtedness or security, the effect of which is to cause or to permit any holder of such indebtedness or other security or a trustee to cause

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(whether or not such holder or trustee elects to cause) such indebtedness or security, or a portion thereof, to become due prior to its stated maturity or prior to its regularly scheduled dates of payment.

Upon the occurrence of any Event of Default described in Subparagraph (e) hereof, the Secured Indebtedness shall be immediately due and payable in full; and upon the occurrence of any other Event of Default described above, Lender at any time thereafter may, at its option, accelerate the maturity of the Secured Indebtedness; all without notice of any kind.

6. Remedies. Upon the occurrence of any Event of Default and the acceleration of the maturity of the Secured Indebtedness, the Lender, or other agent of the Lender, may take any one or more of the following actions subject to the rights and interests of First Commercial Bank:

(a) enter upon and take possession of the Premises without applying for or obtaining the appointment of a receiver;

(b) employ a managing agent of the Premises and let the same, in the name of Lender or in the name of Borrower, and receive the rents, incomes, issues and profits of the Premises and apply the same, after payment of all necessary charges and expenses, on account of the Secured Indebtedness;

(c) pay any sums in any form or manner deemed expedient by Lender to protect the security of this Mortgage or to cure any Event of Default other than payment of interest or principal on the Secured Indebtedness;

(d) foreclose this Mortgage. Lender shall apply the proceeds from such sale - First to the payment of all costs and expenses of such sale, including attorney and Lender fees and expenses incurred in connection with the sale and Borrower's default; Second, to the payment of the Secured Indebtedness, including any and all advances made under the terms hereof with interest thereon; Third, the surplus, if any, to the parties legally entitled thereto. In the event the Lender cannot determine the person or persons to whom the surplus should be paid or a controversy exists with respect to the surplus, the Lender may pay the surplus into a court of competent jurisdiction in an interpleader action and all expenses of such action, including legal fees incurred by Lender, shall be paid from the surplus or, if the surplus is insufficient, by Borrower;

The foreclosure sale may be adjourned from time to time by Lender, or his agent or successors, at the place of sale on the date the sale is originally set, or on the date of any adjournment thereof, and may be reset at a later date or dates, by announcement without any additional publication.

Lender or Lender's designee may purchase the Premises at any sale. In the event Lender purchases the Premises at the sale, to the extent Lender's bid price exceeds the Secured Indebtedness, Lender shall pay to Borrower or to the party legally entitled to same, cash equal to such excess.

The Premises or any part thereof may be sold in one parcel, or in such parcels, manner or order as Lender in its sole discretion may elect, and one or more exercises of

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the power herein granted shall not extinguish or exhaust the power unless the entire Premises are sold or the Secured Indebtedness paid in full.

Borrower further agrees that in case of any sale hereunder, it will at once surrender possession of the Premises, and will from that moment become and be the tenant at will of the purchaser, and removable by process as upon a forcible and unlawful detainer suit, hereby agreeing to pay such purchaser the reasonable rental value of the Premises after such sale plus all expenses, including legal fees, incurred by the Purchaser.

(e) institute appropriate proceedings of foreclosure in equity or at law. Upon the institution of such proceedings, Lender shall, upon application therefor, without notice, be entitled to have a receiver appointed to take possession of the Premises, and Lender shall be entitled to all of the rents, issues and profits arising therefrom during the pendency of any such foreclosure proceedings; and

(f) take any other action it may be legally entitled to take to protect its rights.

7. Miscellaneous Provisions.

(a) Future Advances. Upon request of Borrower, and at Lender's option prior to release of this Mortgage, Lender may make future advances to Borrower. Such future advances, with interest thereon, shall be secured by this Mortgage unless the parties shall agree otherwise in writing.

(b) Marshaling Not Required. If the Secured Indebtedness, or any part thereof, is now or hereafter further secured by chattel mortgages, other deeds of trust, security interests, pledges, contracts of guaranty, endorsements, assignments of leases or other securities, Lender may, at its option, exhaust any one or more of said securities and the security hereunder either concurrently or independently, and in such order as it may determine, and Lender shall not be required to marshal assets.

(c) Sale by Foreclosure of Prior Encumbrances. In the event that this Mortgage shall now or at any time after the date hereof be subordinate to any other encumbrance on the Premises, Borrower hereby agrees that the lien of this conveyance shall extend to the entire interest of Borrower in the Premises conveyed hereby, and shall extend to the interest of Borrower in the proceeds from any sale of the Premises, whether by foreclosure of any such prior encumbrance or otherwise, to the extent any such proceeds exceed the amount necessary to satisfy such prior encumbrance(s). Any trustee or other person conducting any such sale or foreclosure is hereby directed to pay such excess proceeds to Lender to the extent necessary to pay the Secured Indebtedness in full, notwithstanding any provision to the contrary contained in any prior encumbrance.

(d) Extensions, Etc. Lender may without the consent of any other parties, agree to extend the time for payment of all or any part of the Secured Indebtedness, or reduce, rearrange or otherwise modify the terms of payment thereof, or accept a renewal note or Note therefor, without notice to or the consent of any junior lienholder or any other person having an interest in the premises subordinate to the lien of this Mortgage. No such extension, reduction, modification or renewal shall affect the priority of this

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Mortgage or impair the security hereof in any manner whatsoever, or release, discharge or otherwise affect in any manner the personal liability of Borrower to Lender or the liability of any other person now or hereafter liable for payment of the Secured Indebtedness or any part thereof.

(e) Further Assurances. Borrower agrees to furnish Lender with such further instruments, documents and certificates and to take such further actions as Lender may deem necessary or desirable in order to perfect and/or maintain the perfection and priority of the lien of this Mortgage on the Premises.

(f) Greater Estate. In the event that Borrower is the owner of a leasehold estate or any other estate less than a fee simple with respect to any portion of the Premises and, prior to the satisfaction of the Secured Indebtedness and the cancellation of this Mortgage of record, Borrower obtains any greater estate or interest in the Premises, then such greater estate shall automatically and without further action of any kind on the part of Borrower pass to Lender and be and become subject to the lien and all the terms of this Mortgage.

(g) No Merger. Acquisition of the Premises by the Lender shall not effect a merger of this Mortgage which shall not be released except by a Release of Lien executed by Lender and filed in the appropriate public register's office.

(h) Modification of Mortgage; Waiver. No amendment to or modification of this Mortgage or waiver of any of the terms hereof shall be valid or effective unless the same is in writing signed by and between Borrower and Lender.

(i) Time is of Essence. Borrower agrees that where, by the terms hereof or the Note, a day is named or a time as fixed for the payment of any sum of money or the performance of any agreement, the time stated is an important part of the consideration and is of the essence of the whole contract.

(j) Forbearance by Lender Not a Waiver. Any indulgence or departure at any time and from time to time by Lender from any of the provisions hereof, or of any obligation hereby secured, shall not modify the same or relate to the future or waive future compliance therewith by Borrower.

(k) Remedies Cumulative. The rights of Lender, granted and arising under the clauses and covenants contained in this Mortgage, shall be separate, distinct and cumulative of other powers and rights herein granted and all other rights which Lender may have under any other loan documents or at law or in equity, and none of them shall be in exclusion of the others; and all of them are cumulative to the remedies for collection of indebtedness, enforcement of rights under security deeds, and preservation of security as provided at law. No act of Lender shall be construed as an election to proceed under any one provision herein or under the Note to the exclusion of any other provisions, or an election of remedies to the bar of any other remedy allowed at law or in equity, anything herein or otherwise to the contrary notwithstanding.

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(l) Right to Bring Suit. Lender shall have the right from time to time to sue for any sums, whether interest, principal or any installment of either or both, taxes, penalties, or any other sums required to be paid under the terms of this Mortgage, as the same become due, without regard to whether or not all of the Secured Indebtedness shall be due on demand, and without prejudice to the right of Lender thereafter to enforce any appropriate remedy against Borrower, including an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

(m) Appointment of Receiver. Borrower acknowledges the propriety of, and consents to, the appointment of a receiver for the Premises in the event that any action is commenced involving the premises or to foreclose or exercise the power of sale under this Mortgage.

(n) Notice. Every provision for notice and demand or protest shall be deemed fulfilled by written notice personally served on one or more of the persons who shall at the time hold the record title to the Premises, or on their heirs or successors, or mailed by depositing it in any post office station or letter box, enclosed in a postpaid envelope addressed to such person or persons, or their heirs or successors, at his, their or its address last known to Lender, or addressed to the street address of the Premises; provided, notice of foreclosure shall be satisfied by the publication of notice of sale in the manner described in this Mortgage.

(o) Governing Law. The validity, construction and effect of this Mortgage, the Note and of any other writing executed in connection herewith or secured hereby shall be governed by the laws of the State of Illinois.

(p) Severability. If any provision(s) 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(s) to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(q) Successors and Assigns Bound; Captions; Grammatical Construction. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof. The words "Borrower" and "Lender" whenever used herein shall include all individuals, general partnerships (and if a general partnership, its officers, employees, agents or attorneys) and any and all other persons or entities, and the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and all those holding under any of them, and the pronouns used herein shall include, when appropriate, either gender and both singular and plural.

(r) Fixture Filing. This Mortgage constitutes a financing statement filed as a fixture filing with respect to any and all fixtures located on the Premises.

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8. Hazardous Materials. For purposes of this Mortgage, "Hazardous Material" means and includes any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, any "Superfund" or "Superlien" law, including without limitation the Tennessee Hazardous Waste Management Acts of 1977 and of 1983, as amended T.C.A. § 68-46-101 et seq. and § 68-46-201 et seq., or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect (collectively "Hazardous Waste Laws"). With respect to Hazardous Material, Borrower represents and warrants as follows:

(a) Neither Borrower nor, to the best knowledge of Borrower, any other person has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the Premises or any part thereof and no part of the Premises has ever been used (whether by the Borrower or, to the best knowledge of the Borrower, by any other person) as a dump site or storage site (whether permanent or temporary) for any Hazardous Material, and there are no underground storage tanks located on the Premises;

(b) Borrower's use of the Premises is and has been at all times in compliance with all Hazardous Waste Laws;

(c) Borrower hereby agrees to indemnify Lender and hold the Lender harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Lender for, with respect to or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from, the Premises of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Hazardous Waste Laws, regardless of whether or not caused by, or within the control of, Borrower;

(d) If Borrower receives any notice of (i) the happening of any event involving the use, spill, discharge or cleanup of any Hazardous Material (a "Hazardous Discharge") affecting Borrower or the Premises or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, noise emissions or any other environmental, health or safety matter affecting Borrower or the Premises (an "Environmental Complaint") from any person or entity, including, without limitation, the United States Environmental Protection Agency ("EPA") or any state administrative agency, then Borrower will give, within seven (7) business days, oral and written notice of same to Lender; and

(e) Without limitation of Lender's rights under this Mortgage, Lender shall have the right, but not the obligation, to enter onto the Premises or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Discharge or Environmental Complaint upon its receipt of any notice from any person or entity, including, without

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limitation, the EPA, asserting the existence of any Hazardous Discharge or Environmental Complaint on or pertaining to the Premises which, if true, could result in an order, suit or other action against Borrower affecting any part of the Premises by action against Borrower affecting any part of the Premises by any governmental agency or otherwise which, in the sole opinion of Lender could jeopardize Lender's security under this Mortgage. All reasonable costs and expenses incurred by Lender in the exercise of any such rights shall be secured by this Mortgage and shall be payable by Borrower upon Demand, together with interest thereon at a rate equal to the highest interest rate payable under the documents and instruments evidencing the Secured Indebtedness. Any subcontractors taken hereunder by Lender shall be taken for the sole purpose of protecting Lender's security hereunder and shall not be interpreted as evidence of any management or ownership interest on Lender's part.

9. Joint and Several Obligations. If Borrower consists of more than one person or entity, the duties, covenants, obligations, liabilities and representations and warranties of each such person hereunder are joint and several.

10. Personal Guarantee. Greg Panaligan ("Obligor"), a member of Borrower, shall also be liable for the payment of any sum or the performance of any monetary obligation pursuant to the Note, Mortgage or any other loan document. In any action commenced to enforce the obligation of the Borrower to pay principal and interest or other monetary obligations under the Note, Mortgage or any other loan document, any judgment shall be enforceable personally against him. The provisions set forth in this Mortgage are subject to the terms and conditions of the Personal Guaranty executed simultaneously by **GREG PANALIGAN**, individually.

Borrower shall, in any event, be and shall remain personally liable for each of the matters to which reference is made in the preceding paragraph and the holder of the Note may seek, obtain and enforce one (1) or more money judgments in any appropriate proceeding(s) with respect thereto. The limitation on personal liability contained in this paragraph shall become automatically null and void and shall be of no further force or effect and Borrower shall be and remain personally liable for payment of the Principal and interest thereon, in the event that Borrower, or anyone acting on behalf of Borrower, shall (A) file a petition or answer seeking any relief of any kind under the bankruptcy laws of the United States, (B) assert in writing or in any legal proceedings of any kind that any provisions of any of the Loan Documents is in whole or in part unenforceable, invalid or not legally binding, or (C) fail fully to cooperate with the holder of the Note or a receiver in said holder's or such receiver's efforts to collect rents directly from tenants after a default under the Loan Documents.

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IN WITNESS WHEREOF, Borrower and Lender have executed this Mortgage this 1ST day of August, 2008.

BORROWER:

PMW PROPERTIES, LLC
an Illinois limited liability company

By: *Greg Panaligan*
Title: *Operations Manager*

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

Before me, Jennie B. Condos, a Notary Public of said County and State, personally appeared Greg Panaligan, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the member (or other officer authorized to execute the instrument) of **PMW PROPERTIES, LLC**, an Illinois limited liability company, the within named bargainor, and that he as such _____ executed the foregoing instrument for the purposes therein contained, by signing his name as Greg Panaligan, Member of **PMW PROPERTIES, LLC**, an Illinois limited liability company.

WITNESS my hand and seal, this 1ST day of August, 2008

{SEAL}



Jennie Condos
Notary Public
My Commission Expires: 5/4/10

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Exhibit "A"

DESCRIPTION OF REAL PROPERTY

LOTS 21, 22 AND 23 IN BLOCK 1 IN S. S. HAYES' KELVYN GROVE ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS: 4453 – 59 WEST DIVERSEY AVENUE
CHICAGO, ILLINOIS 60639-1923

PIN #: 13-27-303-001-0000

Property of Cook County Clerk's Office

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Exhibit "B"

PERMITTED ENCUMBRANCES

1. Loan dated August 1, 2008, by First Commercial Bank to PMW Properties, LLC, for the amount of \$1,700,000.

Property of Cook County Clerk's Office