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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



1317822014

Doc#: 1317822014 **Fee:** \$56.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 06/27/2013 09:30 AM Pg: 1 of 10

Report Mortgage Fraud
800-532-8785

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

Address:

Street: 4453-59 WEST DIVERSEY AVENUE

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60639

Lender: NORTH COMMUNITY BANK

Borrower: DIVERSEY KILBOURN L.L.C.

Loan / Mortgage Amount: \$825,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

Certificate number: 27FE2A50-8F81-44EC-B1F2-E191A855DB78

Execution date: 06/25/2013

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INSTRUMENT PREPARED BY:

NICHOLAS GEROULIS
MARTIN & KARCAZES, LTD.
161 N. Clark St.
Suite 550
Chicago, Illinois 60601

MAIL TO:

NORTH COMMUNITY BANK
3639 N. Broadway
Chicago, IL 60613

MORTGAGE

This mortgage made and entered into this 25th day of June, 2013, by and between DIVERSEY KILBOURN L.L.C., an Illinois limited liability company, ("**mortgagor**") and North Community Bank ("**mortgagee**"), which maintains an office and place of business at 3639 N. Broadway, Chicago, IL 60613.

WITNESSETH, that for the consideration hereinafter stated, receipt of which is hereby acknowledged, the mortgagor does hereby mortgage, sell, grant, assign and convey unto the mortgagee, its successors and assigns, all of the following described property situated and being in the County of **COOK**, State of **ILLINOIS**, commonly known as **4453-59 W. Diversey Ave., Chicago, Illinois 60639**, and legally described as follows: SEE ATTACHED EXHIBIT "A"; together with and including all buildings, all fixtures including but not limited to all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning apparatus, and elevators (the mortgagor hereby declaring that it is intended that the items herein enumerated shall be deemed to have been permanently installed as part of the realty), and all improvements now or hereafter existing thereon; the hereditaments and appurtenances and all other rights thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, all rights of redemption, and the rents, issues and profits of the above described property (provided, however, that the mortgagor shall be entitled to the possession of said property and to collect and retain the rents, issues, and profits until default hereunder) (collectively, "**premises**"). To have and to hold the same unto the mortgagee and the successors in interest of the mortgagee forever in fee simple or such other estate, if any, as is stated herein.

The mortgagor hereby releases and waives all rights under and by virtue of the homestead exemption laws of the State of Illinois. The property in question is not homestead property.

The mortgagor covenants that the mortgagor is lawfully seized and possessed of and has the right to sell and convey the premises, that the

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premises are free from all encumbrances except as recited below; and that the mortgagor hereby binds the mortgagor and the mortgagor's successors in interest to warrant and defend the title to the premises and every part thereof against the claims of all persons whomsoever.

This instrument is given to secure (i) the payment of a Promissory Note dated June 25, 2013, in the principal sum of \$825,000.00 ("**note**"), signed by the mortgagor (also, "**borrower**"), including the principal thereof and interest and premium, if any, thereon, and all extensions of, renewals of, modifications of, refinancings of and substitutions for the note, in whole or in part; (ii) any and all other sums or future advances made under the note; (iii) any amounts that may be due and owing or required to be paid as provided for herein, the Real Estate Tax Escrow Agreement ("**Real Estate Tax Escrow Agreement**") of even date herewith, executed and delivered to the mortgagee by the mortgagor in connection with the real estate taxes due for the premises, or the Loan Agreement of even date herewith between the borrower and the mortgagee; and (iv) any other indebtedness of the borrower, either jointly or singly, payable to the mortgagee, howsoever created, evidenced or arising, whether direct or indirect, absolute or contingent, now due or to become due, or now existing or hereafter arising, (collectively, "**Indebtedness Hereby Secured**"). At no time shall the principal amount of the Indebtedness Hereby Secured, not including the sums advanced in accordance herewith to protect the security of this mortgage, exceed the original amount of the note, plus two million (\$2,000,000.00) Dollars. The note bears interest at the fixed rate of 4.75% and has a maturity date of June 25, 2018.

1. The mortgagor covenants and agrees as follows:
 - a. The mortgagor will promptly pay the Indebtedness Hereby Secured.
 - b. The mortgagor will pay all taxes, assessments, water rates, and other governmental or municipal charges, fines, or impositions in connection with the premises, for which provision has not been made heretofore, and will promptly deliver the official receipts therefore to the mortgagee. The taxes for the premises will be paid pursuant to the Real Estate Tax Escrow Agreement.
 - c. The mortgagor will pay such expenses and fees as may be incurred by the mortgagee in the protection and maintenance of the premises, including the reasonable fees of any attorney employed by the mortgagee for the collection of any or all of the Indebtedness Hereby Secured, or foreclosure by the mortgagee's sale, or court proceedings, or in any other litigation or proceeding affecting the premises. Attorneys' fees reasonably incurred by the mortgagee in any other way will also be paid by the mortgagor.

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d. For better security of the Indebtedness Hereby Secured, upon the request of the mortgagee, its successors or assigns, mortgagor shall execute and deliver a supplemental mortgage or mortgages covering any additions, improvements, or betterments made to the premises and all property acquired by it after the date hereof (all in form satisfactory to the mortgagee). Furthermore, should the mortgagor fail to cure any default in the payment of a prior or inferior encumbrance on the property described by this instrument, the mortgagor hereby agrees to permit the mortgagee to cure such default, but the mortgagee is not obligated to do so; and such advances shall become part of the Indebtedness Hereby Secured, subject to the same terms and conditions.

e. The rights created by this conveyance shall remain in full force and effect during any postponement or extension of the time of the payment of the Indebtedness Hereby Secured.

f. The mortgagor will continuously maintain hazard insurance, of such type or types and in such amounts as the mortgagee may from time to time require on the improvements now or hereafter on the premises, and will pay promptly when due any premiums thereof. All insurance shall be carried in companies acceptable to the mortgagee and the policies and renewals thereof shall be held by the mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the mortgagee. In event of loss, the mortgagor will give immediate notice in writing to the mortgagee, and the mortgagee may make proof of loss if not made promptly by the mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the mortgagee instead of to the mortgagor and the mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by the mortgagee at its option either to the reduction of the Indebtedness Hereby Secured or to the restoration or repair of the premises damaged or destroyed. In event of foreclosure of this mortgage, or other transfer of title to said property in extinguishment of the Indebtedness Hereby Secured, all right, title, and interest of the mortgagor in and to any insurance policies then in force shall pass to the purchaser or the mortgagee or, at the option of the mortgagee, may be surrendered for a refund. **Unless the mortgagor provides the mortgagee with evidence of the insurance coverage required herein, the mortgagee may purchase insurance at the mortgagor's expense to protect the mortgagee's interest in the premises. This insurance may, but need not, protect the mortgagor's interests. The coverage that the mortgagee purchases may not pay any claim that the mortgagor makes or any claim that is made against the mortgagor in connection with the premises. The mortgagor may later cancel any insurance purchased by the mortgagee, but only after providing the mortgagee with written evidence that the mortgagor has obtained insurance as required herein. If the mortgagee purchases insurance for the property, the mortgagor will be responsible for the costs of that insurance, including interest and any other charges the mortgagee may**

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impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness Hereby Secured. The costs of the insurance may be more than the cost of insurance the mortgagor may be able to obtain on the mortgagor's own.

g. The mortgagor will keep all buildings and other improvements on the premises in good repair and condition; will permit, commit, or suffer no waste, impairment, deterioration of the premises or any part thereof; in the event of failure of the mortgagor to keep the buildings on the premises and those erected on the premises, or improvements thereon, in good repair, the mortgagee may make such repairs as in its discretion it may deem necessary for the proper preservation thereof; and the full amount of each and every such payment shall be immediately due and payable; and shall be secured by the lien of this mortgage.

h. The mortgagor will not voluntarily create or permit to be created against premises any lien or liens inferior or superior to the lien of this mortgage without the prior written consent of the mortgagee; and further, that the mortgagor will keep and maintain the premises free from the claim of all persons supplying labor or materials for construction of any and all buildings or improvements now being erected or to be erected on the premises.

i. The mortgagor will not rent or assign any part of the rent of the premises, or demolish, or remove, or substantially alter any portion of the premises without the prior written consent of the mortgagee, except that mortgagor may remodel the premises and lease the premises to tenants in the normal course of business without the prior written consent of the mortgagee. Mortgagee is aware that there are building code violations on the premises which require remediation and mortgagor shall undertake such work without the prior written consent of mortgagee.

j. All awards of damages in connection with any condemnation for public use of or injury to any of the premises are hereby assigned and shall be paid to the mortgagee, who may apply the same to payment of the installments last due under the note, and the mortgagee is hereby authorized, in the name of the mortgagor, to execute and deliver valid acquittances thereof and to appeal from any such award.

k. The mortgagee shall have the right to inspect the premises at any reasonable time.

l. The mortgagor has never received any written notice of any violations of federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture,

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refinement, handling, production or disposal of Hazardous Materials and, to the mortgagor's actual knowledge, there have been no actions commenced or threatened by any party for noncompliance;

m. The mortgagor shall keep or cause the premises to be kept free of Hazardous Materials in accordance with applicable environmental laws, and, without limiting the foregoing, the mortgagor shall not cause or permit the premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall it cause or permit, as a result of any intentional or unintentional act or omission on its part, or on the part of any tenant, subtenant or occupant, a release of Hazardous Materials onto the premises or onto any other property.

n. The mortgagor shall, subject to the contest rights provided in the Environmental Indemnity Agreement ("**Environmental Indemnity Agreement**") of even date herewith, executed and delivered to the mortgagee by the mortgagor:

(i) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, under, from or affecting the premises in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations and policies, to the reasonable satisfaction of the mortgagee, and in accordance with the orders and directives of all federal, state and local governmental authorities; and

(ii) defend, indemnify and hold harmless the mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise (excluding consequential and punitive damages except to the extent the mortgagee may be subject to the same by reason of any third party claim), arising out of, or in any way related to: (A) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from, or affecting the premises or the soil, water, vegetation, buildings, personal property, persons or animals thereon; (B) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (C) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials; and/or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the mortgagee, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorneys' and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses; provided

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that this indemnity shall not apply where the claim is attributable to acts of the mortgagee or its agents. The mortgagee shall tender defense of any claim to the mortgagor for handling with counsel of the mortgagor's selection, and the mortgagor shall control any remediation, provided the mortgagor has not defaulted under the note, mortgage or any other agreement described herein. This indemnity shall survive the release of the lien of the mortgage, foreclosure or deed in lieu thereof or by another action, and this covenant shall survive such reconveyance or extinguishment; provided, however, this indemnity shall not apply to any fact, event or circumstance occurring after the property described herein has been transferred by the mortgagor, by foreclosure, deed in lieu of foreclosure or otherwise. To the extent of any conflict between the provisions herein and the Environmental Indemnity Agreement, the Environmental Indemnity Agreement shall control.

2. Default in any of the covenants or conditions of this instrument or of the note secured hereby shall, subject to the Illinois Mortgage Foreclosure Law, terminate the mortgagor's right to possession, use, and enjoyment of the property, at the option of the mortgagee or its assigns (it being agreed that the mortgagor shall have such right until default). Upon any such default, the mortgagee shall become the owner of all of the rents and profits accruing after default as security for the indebtedness secured hereby, with the right to enter upon the premises for the purpose of collecting such rents and profits, as provided for in a separate instrument of even date herewith, entitled Assignment of Leases and Rents and executed by the mortgagor.

3. The mortgagor covenants and agrees that if the borrower shall fail to pay the Indebtedness Hereby Secured or any part thereof when due, or if the mortgagor or borrower shall fail to perform any covenant or agreement of this instrument or any note secured hereby, the entire Indebtedness Hereby Secured shall immediately become due, payable and collectible without notice, at the option of the mortgagee or assigns, regardless of the maturity, and the mortgagee or its assigns may before or after entry sell the premises without appraisalment (the mortgagor having waived and assigned to the mortgagee all rights of appraisalment) pursuant to the laws of the State of Illinois governing the disposition of the premises.

4. The proceeds of any sale of the premises in accordance with the preceding paragraph shall be applied first to pay the costs and expenses of said sale, the expenses incurred by the mortgagee for the purpose of protecting and maintaining the premises, and reasonable attorneys' fees; secondly, to pay the Indebtedness Hereby Secured; and thirdly, to pay any surplus or excess to the person or persons legally entitled thereto.

5. In the event the premises are sold at a judicial foreclosure sale, and the proceeds are not sufficient to pay the Indebtedness Hereby Secured, the

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mortgagee will be entitled to a deficiency judgment for the amount of the deficiency without regard to appraisal.

6. In the event any federal, state, or local tax assessment, income tax or other tax lien, charge, fee, or other expense charged against the premises is not paid, the mortgagee is hereby authorized at its option to pay the same. Any sums so paid by the mortgagee shall be added to and become a part of the principal amount of the Indebtedness Hereby Secured, subject to the same terms and conditions applicable under this mortgage and any note or guaranty secured hereby. If the borrower shall pay and discharge the Indebtedness Hereby Secured, and shall pay such sums and shall discharge all taxes and liens and the costs, fees, and expenses of making, enforcing and executing this mortgage, then this mortgage shall be canceled and surrendered.

7. The covenants herein contained shall bind and the benefits and advantages shall inure to the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

8. No waiver of any covenant herein or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the note secured hereby.

9. A judicial decree, order or judgment holding any provision of this instrument invalid or unenforceable shall not in any way impair or preclude the enforcement of the remaining provisions or portions of this instrument.

10. Any written notice to be issued to the mortgagor pursuant to the provisions of this instrument shall be addressed to the mortgagor at 3856 Oakton, Skokie, Illinois 60077, and any written notice to be issued to the mortgagee shall be addressed to the mortgagee at 3639 N. Broadway, Chicago, IL 60613.

11. The mortgagor, on behalf of the mortgagor and each and every person or entity claiming by, through, or under the mortgagor, hereby waives any and all rights of redemption, statutory or otherwise, without prejudice to the mortgagee's right to any remedy, legal or equitable, which the mortgagee may pursue to enforce payment or to affect collection of all or any part of the Indebtedness Hereby Secured, and without prejudice to the mortgagee's right to a deficiency judgment or any other appropriate relief in the event of foreclosure of this mortgage.

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EXHIBIT "A"

LEGAL DESCRIPTION

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.

PIN: 13-27-303-001-0000

Common Address: 4453-59 W. Diversey Ave., Chicago, IL 60639

Property of Cook County Clerk's Office

