

UNOFFICIAL COPY

Illinois Anti-Predatory
Lending Database
Program

Certificate of Exemption



Doc#: 1226517022 Fee: \$90.25
Eugene "Gene" Moore RHP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/21/2012 10:26 AM Pg: 1 of 26

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 16-12-419-026-0000

Address:

Street: 2564 WEST WASHINGTON BOULEVARD

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60612

Lender: FIRST SECURITY TRUST & SAVINGS BANK

Borrower: KRZYSZTOF DOLIWA AND DOLYVA PROPERTIES, LLC

Loan / Mortgage Amount: \$244,875.44

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.

S Y
P 26
S N
M N
SC Y
E W
INT 91

Certificate number: 2995D1EB-C534-4FD5-99F0-2847A9F2AD35

Execution date: 05/18/2012

UNOFFICIAL COPY

This instrument prepared by, and
please return after recording to:

Law Office of
LOUIS MICHAEL BELL, P.C.
2500 Simpson Street
Evanston, Illinois 60201
Attention: Louis Michael Bell, Esq.

MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING
AND FINANCING STATEMENT

THIS MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT (this
“*Mortgage*”) is dated May 17, 2012 and is made by

KRZYSZTOF DOLIWA, individually and as sole Member of DOLYVA PROPERTIES, LLC
—2564 W. WASHINGTON BLVD. SERIES, an Illinois limited liability company
(jointly and severally “*Mortgagor*”).

in favor of

FIRST SECURITY TRUST AND SAVINGS BANK, an Illinois state savings bank
 (“*Mortgagee*”).

RECITALS

A. Mortgagor is the record owner of the real estate located at 2564 West Washington Boulevard, County of Cook, City of Chicago, Illinois 60612, as more fully described in EXHIBIT A to this Assignment (the “*Real Estate*”), improved by a three story building comprising approximately _____ square feet (with the Real Estate, the “*Property*”).

B. Mortgagor has entered into a Credit Agreement dated as of May 18, 2012 (the “*Credit Agreement*”; capitalized terms defined in the Credit Agreement and used but not otherwise defined in this Assignment have the meanings given in the Credit Agreement), pursuant to which Mortgagee has agreed to extend to Mortgagor (as defined in the Credit Agreement, the “*Credit*”) a mortgage term loan in the amount of \$244,875.44 the “*Loan*”) in renewal of existing indebtedness of Mortgagor to the Bank. The Loan is evidenced by the Mortgage Term Loan Promissory Note dated an even date of Mortgagor payable to the order of Mortgagee in the principal amount of \$244,875.44 (the “*Note*”).

C. Mortgagor has agreed to secure the Credit, the Note and the payment of the Loan by, among other things, granting to Mortgagee a lien on the Property and its proceeds and is concurrently executing and delivering to Mortgagee an Assignment of Rents and Leases dated an even date with respect to the Property (the “*Assignment*”).

D. Mortgagor is concurrently executing and delivering an Environmental Indemnity Agreement dated an even date (the “*Environmental Indemnity*”) and, together with this Mortgage, the Assignment

MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT FOR 2564 W.
WASHINGTON BOULEVARD, CHICAGO, ILLINOIS TO FIRST SECURITY TRUST AND SAVINGS BANK

UNOFFICIAL COPY

and other documents now or hereafter securing the Loan, each a "*Security Document*" and collectively "*Security Documents*") indemnifying Mortgagee against environmental liability resulting from Mortgagee's security interest in the Property securing the Loan.

F. It is a condition precedent to Mortgagee's entering into the Credit Agreement and extending the Loan that Mortgagor execute and deliver this Mortgagee to Mortgagee as security for the payment and performance of Mortgagor's obligations under the Credit Agreement, the Note, the Assignment and the other Security Documents.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AND IN ORDER TO SECURE

- I. the payment and/or reimbursement by Mortgagor to Mortgagee, when due, of
 - A. the Loan, as evidenced by the Note, together with all interest thereon, late charges and other indebtedness evidenced by the Note and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof;
 - B. any and all sums expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under the Credit Agreement and the Security Documents, together with interest thereon as provided herein or therein;
 - C. any and all costs and expenses paid or incurred by Mortgagee in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees; and
 - D. any and all other indebtedness and obligations, whether constituting principal, thereon, late charges, reimbursements or otherwise, that may be due and owing by Mortgagor to Mortgagee with respect to the Loan, whether absolute or contingent, howsoever arising and evidenced, and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof,

(all of the foregoing monetary obligations of Mortgagor to Mortgagee collectively the "*Indebtedness*"); and

- II. the performance and observance by Mortgagor of all agreements, conditions, covenants, representations, warranties, duties, liabilities and other non-monetary obligations of Mortgagor, or any guarantor or obligor on behalf of or for the benefit of Mortgagor to Mortgagee, whether now existing or hereafter arising, direct or indirect, contingent or absolute, due or to become due (collectively the "*Covenants*") and, together with the Indebtedness, collectively the "*Obligations*"), that are evidenced or secured by or otherwise provided for in the Credit Agreement, the Note, the Security Documents and any other instrument, agreement or other document pursuant thereto or in connection therewith or evidenced or secured by or otherwise provided for in any other instrument, agreement or other document executed and delivered by Mortgagor, or any other obligor or guarantor on behalf of or for the benefit of Mortgagor to Mortgagee, whether now existing or hereafter arising, together with any and all renewals, extensions, replacements, amendments and modifications thereof (each a "*Credit Document*" and all of the foregoing collectively the "*Credit Documents*"; the term "*Credit Document*", and each of the terms "*Credit Agreement*", "*Note*", "*Mortgage*", "*Assignment*", "*Security Document*" and "*Environmental Indemnity*" shall in all cases include all renewals, extensions, replacements, amendments and modifications of such Credit Documents),

MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT FOR 2564 W. WASHINGTON BOULEVARD, CHICAGO, ILLINOIS TO FIRST SECURITY TRUST AND SAVINGS BANK

UNOFFICIAL COPY

AND FOR OTHER VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged;

MORTGAGOR HEREBY SELLS, MORTGAGES, GRANTS, ASSIGNS, REMISES, RELEASES, WARRANTS AND CONVEYS TO MORTGAGEE, its successors and assigns, the real estate legally described on EXHIBIT A attached hereto (the "*Real Estate*"), together with the Property and the other property described in the following paragraph (the Real Estate and property collectively hereinafter referred to as the "*Premises*");

THE REAL ESTATE, comprising all of and located on the Premises (collectively, the "*Land*");

TOGETHER WITH all improvements and fixtures of every kind now or later situated on or used or intended to be used on or in connection with the Land or the improvements, or in their construction, including all extensions, additions, improvements, betterments, renewals, substitutions, and replacements to any of the improvements and fixtures and the benefit of any deposits or payments now or hereafter made with third parties, whether owned by Mortgagor or any other (the "*Improvements*");

IT BEING AGREED that "*fixtures*" include, without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposal, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings and wiring attached to the Land or the Improvements so that they cannot be removed without causing material damage to the Land or the Improvements and (2) all fixtures owned by Mortgagor and placed on the Land or the Improvements thereon are and will be, as far as permitted by law, deemed fixtures and form a part of the real property included in the Mortgaged Premises subject to this Mortgage, *provided, however*, as to any of the property aforesaid which does not so form a part and parcel of the Real Estate, this Mortgage is hereby deemed also to be a security agreement under the Uniform Commercial Code of the State of Illinois (the "*Code*") for purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee, as secured party (as defined in the Code);

AND TOGETHER WITH all easements, rights of way, and rights to gores of land, streets, ways, alleys and passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or later belonging, relating or appertaining to the Land, and the reversions, remainders, issues and profits of the foregoing ("*Other Property Rights*");

AND TOGETHER WITH all proceeds of the Land, Improvements and Other Property Rights, including, without limitation, judgments, awards, damages and settlements arising after the date of this Mortgage as a result of condemnation or taking of all or any portion of the Land by eminent domain, proceeds of policies of insurance with respect to the Premises or proceeds of any sale, option or contract to sell all or any portion of the Premises;

TO HAVE AND TO HOLD the Premises, together with all privileges, hereditaments hereunto now or hereafter belonging, or in any way appertaining and the products and proceeds thereof, unto Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, together with all right to retain possession of the Premises after any Event of Default (as hereinafter defined).

MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT FOR 2564 W. WASHINGTON BOULEVARD, CHICAGO, ILLINOIS TO FIRST SECURITY TRUST AND SAVINGS BANK

UNOFFICIAL COPY

MORTGAGOR FURTHER UNDERSTANDS, AND AGREES AND COVENANTS UNTO MORTGAGEE THAT:

1. Title. Mortgagor represents, warrants and covenants that
 - a. Mortgagor is holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those easements and other liens and encumbrances of record existing on the date of this Mortgage, and
 - b. Mortgagor has legal power and authority to mortgage and convey the Premises.
2. Maintenance. Repair and Restoration of Improvements, Payment of Prior Liens, etc. Mortgagor shall:
 - a. subject to Section 5 and 6 below, promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises that may become damaged or be destroyed;
 - b. keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Mortgagor shall have the right to contest by appropriate proceedings the validity or amount of any such lien; if Mortgagee in its discretion deems that the amount of such lien is material to its ability to obtain payment of the Indebtedness by exercising its rights under this Mortgage, Mortgagee may require Mortgagor, within thirty (30) days after the filing of the lien to place a bond with Mortgagee in an amount, form, content and issued by a surety reasonably acceptable to Mortgagee for the payment of any such lien or cause the title company which has issued the title policy of title insurance to Mortgagee insuring the lien of this Mortgage to issue an endorsement thereto insuring against loss or damage on account of any such lien;
 - c. immediately pay when due any Indebtedness that may be secured by a lien or charge on the Premises superior or inferior to or at parity with the lien hereof (no such superior, inferior or parity lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of any such lien to Mortgagee; complete within a reasonable time any buildings or any other improvements now or at any time in process of construction upon the Premises;
 - d. comply in all material aspects, with all requirements of law, municipal ordinances and restrictions of record with respect to the Premises and the use thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety;
 - e. make no material alterations to the Premises or any buildings or other improvements now or hereafter constructed thereon without the prior written consent of Mortgagee (which shall not be unreasonably withheld, conditioned or delayed);
 - f. not suffer or permit any change in the general nature of the occupancy of the Premises without the prior written consent of Mortgagee (which shall not be unreasonably withheld, conditioned or delayed);
 - g. not initiate or acquiesce in any zoning reclassification without the prior written consent of Mortgagee;
 - h. pay each item of Indebtedness secured by this Mortgage when due according to the terms of the Note and the other Credit Documents; and

MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT FOR 2564 W. WASHINGTON BOULEVARD, CHICAGO, ILLINOIS TO FIRST SECURITY TRUST AND SAVINGS BANK

UNOFFICIAL COPY

i. duly perform and observe all of the covenants, terms, provisions and agreements herein, in the Note and in the other Credit Documents on the part of Mortgagor to be performed and observed.

3. Payment of Taxes and Assessments.

a. Mortgagor shall pay all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Premises, or any interest therein, of any nature whatsoever when due and before any penalty or interest is assessed, and, at the request of Mortgagee, shall furnish to Mortgagee duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to penalty or interest being assessed. Notwithstanding anything contained herein to the contrary, Mortgagor shall have the right to protest any taxes assessed against the Premises, so long as such protest is conducted in good faith by appropriate legal proceedings diligently prosecuted and Mortgagor shall furnish to the title insurer such reasonable security or indemnity as said insurer requires to induce it to issue an endorsement, in form and substance reasonably acceptable to Mortgagee, insuring over any exception created by such protest.

b. Mortgagor shall deposit with Mortgagee, together with each monthly payment due under the Note, an amount equal to one twelfth ($1/12$) of the estimated annual amount of such taxes (estimated on the basis of 110% of the real estate taxes for the Property due during the prior calendar year) and such other sums as Mortgagee may from time to time require as a reasonable reserve against Mortgagor's failure timely to make such deposits; such deposits shall be held in a non-interest bearing escrow account.

4. **Mortgagee's Interest In and Use of Deposits.** Upon the occurrence and during the continuance of an Event of Default (as defined in Paragraphs 13), Mortgagee may, at its option, apply any moneys at the time on deposit toward any of the Indebtedness secured hereby in such order and manner as Mortgagee may reasonably elect. When such Indebtedness has been fully paid, any remaining deposits shall be returned to Mortgagor. Such deposits are hereby pledged as additional security for the Indebtedness hereunder and shall not be subject to the direction or control of Mortgagor. Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Mortgagor, before the occurrence of an Event of Default, shall have requested Mortgagee in writing to make application of such funds to the payment of such amounts accompanied by the bills for such taxes, assessments and insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any applicable party.

5. Insurance.

a. Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee, including without limitation (the following shall collectively be referred to as "*Hazard Insurance*");

i. all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises, with agreed upon amount and inflation protection endorsements;

UNOFFICIAL COPY

ii. if there are tenants under leases at the Premises, rent and rental value or business loss insurance for the same perils described in clause i above payable at the rate per month and for the period reasonably specified from time to time by Mortgagee;

iii. broad form boiler and sprinkler damage insurance in an amount reasonably satisfactory to Mortgagee, if and so long as the Premises shall contain a boiler and/or sprinkler system, respectively;

iv. if the Premises are located in a flood hazard area, flood insurance in the maximum amount obtainable up to the amount of the Indebtedness hereby secured; and

v. such other insurance as Mortgagee may from time to time reasonably require.

b. Mortgagor shall deposit with Mortgagee, together with each monthly payment due under the Note, an amount equal to one twelfth ($1/12$) of the estimated cost of Hazard Insurance and, from time to time, such sums as Mortgagee may from time to time require as a reasonable reserve against Mortgagor's failure to timely make such deposits; such deposits shall be held in a non-interest bearing escrow account.

c. Mortgagor also shall at all times maintain comprehensive public liability, property damage and workmen's compensation insurance (if applicable) covering the Premises and any employees thereof, with such limits to personal injury, death and property damage as Mortgagee may require. Mortgagor shall be the named insured under such policies and Mortgagee shall be identified as an additional insured party. All policies of insurance to be furnished hereunder shall be on form Acord 27, with companies, in amounts and with deductibles reasonably satisfactory to Mortgagee, with mortgagee clauses attached to all policies in favor of and in form reasonably satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or modified without thirty (30) days' prior written notice to Mortgagee and shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days before their respective dates of expiration.

d. Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss unless Mortgagee is included thereon as the loss payee or an additional insured as applicable, under a standard mortgagee clause acceptable to Mortgagee and such separate insurance is otherwise reasonably acceptable to Mortgagee.

e. In the event of loss, Mortgagor shall give immediate notice thereof to Mortgagee, who shall have the sole and absolute right to make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee (rather than to Mortgagor and Mortgagee jointly). Mortgagee shall have the right, at its option and in its reasonable discretion, to apply any insurance proceeds so received after the payment of all of Mortgagee's expenses, either

UNOFFICIAL COPY

i. on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable, whereupon Mortgagee may declare the whole of the balance of Indebtedness hereby secured to be due and payable, or

ii. to the restoration or repair of the property damaged as provided in Paragraph 21 hereof.

f. If insurance proceeds are delivered to Mortgagor by Mortgagee as herein provided, Mortgagor shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises before being damaged or destroyed. If Mortgagee permits the application of such insurance proceeds to the cost of restoration and repair of the Premises, any surplus that may remain out of said insurance proceeds after payment of such costs shall be applied on account of the unpaid principal balance of the Note, whether or not such principal balance is then due and payable. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. At the request of Mortgagee, from time to time, Mortgagor shall furnish Mortgagee, without cost to Mortgagee, evidence of the replacement value of the Premises.

6. Condemnation. If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Indebtedness secured by this Mortgage, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee. Mortgagee shall have the right, at its option and in its reasonable discretion, to apply the proceeds of any award so received after the payment of all of Mortgagee's expenses, either

a. on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable, whereupon Mortgagee may declare the whole of the balance of Indebtedness hereby secured to be due and payable, or,

b. if only a portion of the Premises are affected by such condemnation proceeding or the damage, taking or acquisition of the Premises is only temporary, to the restoration or repair of the remaining portions of the Premises as provided in Paragraph 21 hereof.

7. Stamp Tax. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Note or any of the other Credit Documents, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee.

8. Lease Assignment. Mortgagor acknowledges that, concurrently herewith, Mortgagor is delivering to Mortgagee, as additional security for the repayment of the Indebtedness, an Assignment of Rents and Leases (the "Assignment") pursuant to which Mortgagor has assigned to Mortgagee interests in the leases of the Premises and the rents and income from the Premises. All of the provisions

UNOFFICIAL COPY

of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. Mortgagor agrees to abide by all of the provisions of the Assignment.

9. **Effect of Extensions of Time.** If the payment of the Indebtedness secured hereby or any part thereof is extended or varied or if any part of any security for the payment of the Indebtedness is released, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Mortgagor, shall be held to assent to such extension, variation or release, and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

10. **Effect of Changes in Laws Regarding Taxation.** If any law is enacted after the date hereof requiring

- a. the deduction of any lien on the Premises from the value thereof for the purpose of taxation or
- b. the imposition upon Mortgagee of the payment of the whole or any part of the taxes or assessments, charges or liens herein required to be paid by Mortgagor, or
- c. a change in the method of taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness secured hereby or the holders thereof,

then Mortgagor, upon written demand by Mortgagee, shall promptly pay such taxes or assessments, or reimburse Mortgagee therefor; *provided, however*, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee. Notwithstanding the foregoing, if in the opinion of counsel for Mortgagee it may be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may declare all of the Indebtedness secured hereby to be immediately due and payable.

11. **Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee.** If an Event of Default (as defined in Paragraph 13) has occurred and is continuing, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other moneys advanced by Mortgagee in regard to any tax referred to in Paragraph 7 above or to protect the Premises or the lien hereof, shall be so much additional Indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee, upon written demand, and with interest thereon at the Default Rate (as defined in the Note) then in effect. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Mortgagee in connection with

- a. sustaining the lien of this Mortgage or its priority,
- b. protecting or enforcing any of Mortgagee's rights hereunder,

MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT FOR 2564 W. WASHINGTON BOULEVARD, CHICAGO, ILLINOIS TO FIRST SECURITY TRUST AND SAVINGS BANK

UNOFFICIAL COPY

- c. recovering any Indebtedness secured hereby,
- d. any litigation or proceedings affecting the Note, this Mortgage, the Assignment, any of the other Credit Documents or the Premises, including without limitation, foreclosure, bankruptcy and probate proceedings, or
- e. preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, the Credit Agreement, this Mortgage, any of the other Credit Documents or the Premises, shall be so much additional Indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee, upon written demand, and with interest thereon at the Default Rate. The interest accruing under this Paragraph 11 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional Indebtedness evidenced by the Note and secured by this Mortgage. Mortgagee's failure to act shall never be considered as a waiver of any right accruing to Mortgagee on account of any Event of Default. Should any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and Indebtedness, regardless of whether said liens, charges and Indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

12. Mortgagee's Reliance on Tax Bills and Claims for Liens. Mortgagee, in making any payment hereby authorized:

- a. relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or
- b. for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

13. Event of Default; Acceleration. Each of the following shall constitute an "*Event of Default*" for purposes of this Mortgage:

- a. Mortgagor fails to pay on the date when due (after giving effect to any applicable notice or cure or grace period or both)
 - i. any installment of principal or interest payable pursuant to the Note, or
 - ii. any other amount payable pursuant to the Note, the Credit Agreement, this Mortgage or any of the other Credit Documents; or
- b. a sale, transfer, lease, assignment, conveyance, financing, lien or encumbrance is made in violation of Paragraph 26 of this Mortgage; or
- c. Mortgagor fails to perform any of its other material obligations under this Mortgage or the Assignment and such failure continues for a period of thirty (30) days after Mortgagee has given Mortgagor written notice thereof; provided, however, that if Mortgagor is not able to reasonably cure such failure within thirty (30) days, Mortgagor shall have an additional sixty (60)

MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT FOR 2564 W. WASHINGTON BOULEVARD, CHICAGO, ILLINOIS TO FIRST SECURITY TRUST AND SAVINGS BANK

UNOFFICIAL COPY

day period to cure such failure provided that Mortgagor commenced its cure promptly after receiving Mortgagee's written notice and Mortgagor continues to promptly and diligently pursue such cure; or

d. there exists any other event of default or Default, after giving effect to any applicable notice or cure or grace period or both, under (and as defined in) the Credit Agreement, Guaranty, Environmental Indemnity or any of the other Credit Documents or Credit Documents.

e. there exists any other event of default or Default, after giving effect to any applicable notice or cure or grace period or both, under (and as defined in) the Chicago Flameproof Loan Agreement.

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the Indebtedness hereby secured to be immediately due and payable without further notice to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate.

14. Foreclosure; Expense of Litigation.

a. When all or any part of the Indebtedness hereby secured shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Credit Documents.

b. It is further agreed that if an Event of Default occurs in the payment of any part of the secured Indebtedness, as an alternative to the right of foreclosure for the full secured Indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said Indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured Indebtedness due (such proceeding being hereinafter referred to as a "*partial foreclosure*"), and provided that if foreclosure sale is made because of default of a part of the secured Indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured Indebtedness. It is further agreed that such sale pursuant to a partial foreclosure shall not in any manner affect the unmatured part of the secured Indebtedness, but as to such unmatured part, the lien hereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Paragraph. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale in connection therewith, Mortgagee may elect at any time before a foreclosure sale pursuant to such decree to discontinue such partial foreclosure and to accelerate the entire secured Indebtedness by reason of any uncured Event of Default upon which such partial foreclosure was predicated or by reason of any other Event of Default and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured Indebtedness.

c. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

UNOFFICIAL COPY

d. In any suit to foreclose entirely or partially the lien hereof, there shall be allowed and included as additional Indebtedness in the decree for sale all expenditures and expenses that may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees in connection with the preparation, filing or prosecution of the foreclosure suite and appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale that may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Assignment, the Environmental Indemnity, the Note, the Credit Agreement, the Guaranty, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be additional Indebtedness immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

15. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure (or partial foreclosure) sale of the Premises shall be distributed and applied in the following order of priority:

- a. *first*, to all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 14 above;
- b. *second*, to all other items that may under the terms hereof constitute secured Indebtedness additional to that evidenced by either the Note, with interest thereon as provided herein or in the other Credit Documents as allocated by Mortgagee in its sole and absolute discretion;
- c. *third*, to all principal and interest remaining unpaid on the Note; and
- d. *fourth and finally*, any surplus to Mortgagor, its successors or assigns, as their rights may appear or to any other party legally entitled thereto.

16. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose, entirely or partially, this Mortgage, the court in which such complaint is filed shall, upon petition by Mortgagee, appoint a receiver for the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises

- a. during the pendency of such foreclosure suit,
- b. in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and

UNOFFICIAL COPY

c. during any further times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits.

Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of

- i. the Indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made before foreclosure sale, and
- ii. any deficiency upon a sale and deficiency.

17. **Mortgagee's Right of Possession in Case of Default.** At any time after an Event of Default has occurred, Mortgagor shall, upon written demand of Mortgagee, surrender to Mortgagee possession of the Premises. Mortgagee, in its reasonable discretion, but in accordance with all applicable law, may, with or without process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor and its employees, agents or servants therefrom, and Mortgagee may then hold, operate, manage and control the Premises, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Mortgagee shall have full power to:

- a. cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;
- b. elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- c. extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage Indebtedness, any purchaser;
- d. make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Mortgagee deems are reasonably necessary;
- e. insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management thereof; and to receive all of such avails, rents, issues and profits.

UNOFFICIAL COPY

18. **Application of Income Received by Mortgagee.** Mortgagee, in the exercise of the rights and powers herein above conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may reasonably determine:

- a. to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;
- b. to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and
- c. to the payment of any Indebtedness secured hereby, including any deficiency that may result from any foreclosure sale, allocated as Mortgagee may determine in its sole and absolute discretion.

19. **Rights Cumulative.** Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Credit Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed reasonably expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

20. **Mortgagee's Right of Inspection.** Upon reasonable prior notice to Mortgagor, Mortgagee and its representatives and agents shall have the right, at all reasonable times, to

- a. inspect the Premises and the books and records with respect thereto,
- b. perform and obtain one (1) appraisal of the Premises per calendar year (except in the Event of a Default, in such case Mortgagee may perform and obtain appraisals of the Premises from time to time), and
- c. perform such other investigations of the Premises, or obtain such other reports with respect to the Premises, as Mortgagee may, in its discretion, deem reasonably necessary, advisable or appropriate. All fees and expenses incurred by Mortgagee in connection with such inspections, appraisals, investigations and reports shall be deemed additional Indebtedness evidenced by the Note, as reasonably determined by Mortgagee in its discretion, and secured by this Mortgage and the other Credit Documents, and shall be payable by Mortgagor within ten (10) days after written demand. Mortgagor agrees to grant Mortgagee, its representatives and agents access to the Premises for the purposes described in this Section.

21. **Disbursement of Insurance or Eminent Domain Proceeds.** If Mortgagee determines in its reasonable discretion that the Premises are to be repaired, restored or rebuilt with the proceeds of

UNOFFICIAL COPY

insurance or of any award in a condemnation proceeding, such repairs, restoration and/or rebuilding shall be carried out on the following terms and provisions:

a. Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty, Mortgagor shall obtain from Mortgagee its approval (which shall not be unreasonably withheld, conditioned or delayed) of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

b. Before each payment or application of any insurance proceeds or proceeds of a condemnation award to the repair or restoration of the improvements upon the Premises to the extent permitted in Paragraph 5 above (which payment or application may be made, at Mortgagee's option, through an escrow, the terms and conditions of which are satisfactory to Mortgagee and the cost of which is to be borne by Mortgagor), Mortgagee shall be entitled to be satisfied as to the following:

i. an Event of Default has not occurred nor continuing;

ii. either

A. such improvements have been fully restored, or

B. the expenditure of such moneys as may be received from such insurance proceeds or condemnation award are sufficient, either alone or, if insufficient therefor alone, together with such additional moneys as Mortgagor has deposited with Mortgagee for such purposes, to repair, restore or rebuild the Premises, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage; and

iii. before each disbursement of any such proceeds held by Mortgagee in accordance with the terms of this Paragraph 21 for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of Mortgagee's architect (the cost of which shall be borne by Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

c. Before the payment or application of insurance or condemnation proceeds to the repair, restoration or rebuilding of the improvements upon the Premises to the extent permitted in Paragraph 5 above, there shall have been delivered to Mortgagee the following:

i. a waiver of subrogation from any insurer with respect to Mortgagor or the then owner or other insured under the policy of insurance in question;

ii. such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are required by Mortgagee.

d. If Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a time deemed reasonably satisfactory by Mortgagee, then Mortgagee, at its option,

UNOFFICIAL COPY

may commence and perform all necessary acts to restore, repair or rebuild the said improvements for or on behalf of Mortgagor. If insurance or condemnation proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Premises, such excess shall be applied on account of the unpaid principal balance of the Loan irrespective of whether such balance is then due and payable.

e. If Mortgagor commences the repair or rebuilding of the improvements located on the Premises, but fails to comply with the conditions precedent to the payment or application of insurance proceeds set forth in this Paragraph 21, or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a time deemed reasonably satisfactory by Mortgagee, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph 21.d above, then such failure shall constitute an Event of Default.

22. Release upon Payment and Discharge of Mortgagor's Obligations. Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness secured hereby, including payment of all reasonable expenses incurred by Mortgagee in connection with the execution of such release.

23. Notices. Any notices, communications and waivers under this Mortgage shall be in writing and shall be delivered in person, by messenger or by overnight express carrier or mailed, postage prepaid, either by registered or certified mail, return receipt requested, addressed in each case as follows:

If to Mortgagor:	With a copy to:
Mr. Krzysztof Doliwa, Member Dolyva Properties, LLC—2564 W. Washington Blvd. Series 235 East Avenue Park Ridge, Illinois 60068 Phone: 312.816.3566 Fax: 773.202.9819 e-mail:	Attention: Phone: Fax: e-mail:
If to Mortgagee:	With a copy to:
First Security Trust and Savings Bank 7315 West Grand Avenue Elmwood Park, Illinois 60707-1996 Attention: John M. Sullivan, Senior Vice President Phone: 708.453.3131 Fax: 773.625.3331 e-mail: Sullivan.John.M@aol.com	Louis Michael Bell, P.C. P.O. Box 5590 Evanston, Illinois 60204-5590 Attention: Louis Michael Bell, Esq. Phone: 312.320.5812 Fax: e-mail: lawbell1978@gmail.com

UNOFFICIAL COPY

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received,

a. if delivered personally, by messenger or by overnight express carrier, on the date of delivery or

b. if deposited with the United States Postal Service, on the earlier of the day when actually received or the third federal banking day following the day so deposited in the mails.

24. **Waiver of Defenses.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense that would not be good and available to the party interposing the same in an action at law upon of the Note.

25. **Waiver of Rights.** Mortgagor hereby covenants and agrees that Mortgagor shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. To the fullest extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any claims based on allegations that Mortgagee has failed to act in a commercially reasonable manner (except as otherwise expressly provided in this Mortgage or the other Credit Documents) and any and all rights to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien hereof and further agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

26. **Transfer of Premises; Further Encumbrance.**

a. Neither all nor any portion of

i. the Premises or

ii. any interest of Mortgagor in the Premises

shall be sold, conveyed, assigned, encumbered or otherwise transferred (nor shall any agreement be entered into to sell, convey, assign, encumber or otherwise transfer same) without, in each instance, the prior written consent of Mortgagee, which consent may not be unreasonably withheld. Mortgagee may condition consent to sale or conveyance of a material portion of the Premises upon payment of the Indebtedness in an amount not to exceed the proceeds of any such sale or conveyance, and may require payment in full of the Indebtedness as a condition to any sale or conveyance of the entire Premises. Any violation or attempted violation of the provisions of this Paragraph 26.a shall be an Event of Default for purposes of the Note and all of the Credit Documents.

b. No portion of the shares of Mortgagor in excess of TEN PERCENT (10%) thereof may be encumbered, transferred, sold, conveyed or assigned to or in favor of any person or entity other than those persons or entities which, as of the date hereof, are shareholders of Mortgagor or its shareholders or guarantors to Mortgagee of the Note (or any replacement or substitute instrument evidencing the Loan) (nor shall any agreement be entered into to encumber, transfer, sell, convey or assign same) without, in each instance, the prior written consent of Mortgagee, which consent

UNOFFICIAL COPY

may be given or withheld in Mortgagee's reasonable discretion, and may be conditioned in any manner that Mortgagee reasonably requests. Any violation or attempted violation of the provisions of this Paragraph 26.b shall be an Event of Default under this Mortgage, the Note and all of the Credit Documents.

c. Any consent by Mortgagee, or any waiver by Mortgagee of an Event of Default under this Paragraph 26 shall not constitute a consent to or waiver of any right, remedy or power of Mortgagee upon a continuing or subsequent Event of Default under this Paragraph 26. Mortgagor acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Paragraph 26 shall be void and of no force or effect. Mortgagor agrees that, if any provision of this Paragraph 26 is deemed a restraint on alienation, that such restraint is a reasonable one.

27. Expenses Relating to Note and Mortgage.

a. Mortgagor will pay all out-of-pocket expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Credit Agreement, Note, this Mortgage, the Assignment, the Environmental Indemnity, the Guaranty or any of the other Credit Documents, including without limitation, Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Credit Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (*provided* Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note, and this Mortgage. Mortgagor recognizes that, during the term of this Mortgage, Mortgagee:

i. may be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Credit Documents or in which the Credit Documents or the Premises are involved directly or indirectly;

ii. may make preparations following the occurrence and during the continuance of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

iii. may make preparations following the occurrence and during the continuance of an Event of Default hereunder for, and do work in connection with, Mortgagee's taking possession of and managing the Premises, which event may or may not actually occur;

iv. may make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

v. may enter into negotiations with Mortgagor, any guarantor, or any of their agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the

UNOFFICIAL COPY

Indebtedness represented by the Note or the transfer of the Premises in lieu of foreclosure;
or

vi. may enter into negotiations with Mortgagor or any of its agents, employees or attorneys pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor which approval is required by the terms of this Mortgage.

b. All expenses, charges, costs and fees described in this Paragraph 27 shall be so much additional Indebtedness secured hereby, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

28. Financial Statements. Mortgagor hereby reaffirms each and all of its representations, warranties, agreements, covenants and undertakings in the Credit Agreement with respect to its financial condition and financial statements and those of the Guarantor (as defined in the Credit Agreement).

29. Statement of Indebtedness. Mortgagor, within seven (7) days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the Indebtedness secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

30. Further Instruments. Upon reasonable request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Credit Documents.

31. Additional Indebtedness Secured. All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures all Obligations of the Co-Borrower, including, without limitation, any and all other amounts which may become due under the Note, the Revolving Note, the Credit Agreement, the Guaranty, the Assignment, the Environmental Indemnity and any of the other Credit Documents, including, without limitation, any and all advances made or obligations owed by Mortgagee to Mortgagor after the date of this Mortgage and any and all additional amounts expended by Mortgagee to operate, manage or maintain the Premises (including, without limitation, payments of all amounts due for Hazard Insurance) or otherwise to protect the Premises or the lien of this Mortgage. NOTWITHSTANDING THE FOREGOING, THE MAXIMUM AMOUNT OF INDEBTEDNESS SECURED BY THIS MORTGAGE SHALL BE LIMITED TO THREE HUNDRED THOUSAND DOLLARS (\$300,000).

32. Indemnity. Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs; collectively, the "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from:

MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT FOR 2564 W. WASHINGTON BOULEVARD, CHICAGO, ILLINOIS TO FIRST SECURITY TRUST AND SAVINGS BANK

UNOFFICIAL COPY

- a. any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage;
- b. the offer for sale or sale of all or any portion of the Premises; and
- c. the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken before the surrender of possession of the Premises to Mortgagee in accordance with the terms of this Mortgage; *provided, however*, that Mortgagor shall not be obligated to indemnify or hold Mortgagee harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Mortgagee.

All costs provided for herein and paid for by Mortgagee shall be so much additional Indebtedness secured hereby and shall become immediately due and payable upon written notice and with interest at the Default Rate.

33. **Waiver of Rights of Redemption and Reinstatement.** Mortgagor hereby releases and waives, if and only to the extent permitted by law, any and all rights of reinstatement and redemption provided under the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 et seq., including any subsequent amendments, replacements or similar applicable laws (the "Act"). To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Bank, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof will be subject to any defense which would not be good and valid in an action at law upon the Note. Mortgagor acknowledges that the Premises do not constitute agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.

34. **Subordination of Property Manager's Lien.** Any property management agreement for the Premises entered into hereafter with a property manager shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have and shall provide that Mortgagee may terminate such agreement at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, at Mortgagee's written request, shall be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, if the property management agreement in existence as of the date hereof does not contain a "no lien" provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Mortgagee, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

35. **Fixture Filing.** Mortgagor and Mortgagee agree that this Mortgage shall constitute a financing statement and fixture filing under the Code with respect to all "fixtures" (as defined in the Code) attached to or otherwise forming a part of the Premises and that a security interest in and to such fixtures is hereby granted to Mortgagee. For purposes of the foregoing, Mortgagee is the secured party and Mortgagor is the debtor and the collateral covered by this financing statement shall be all items of

UNOFFICIAL COPY

property contained within the definition of the "*Premises*" which is or becomes a fixture on the Real Estate or any other real estate contained within the definition of the Premises.

36. **Compliance with Environmental Laws.** In addition to all other provisions of this Mortgage, Mortgagor, at its cost and expense, shall comply with all laws, and all rules and regulations of any governmental authority ("*Agency*") having jurisdiction, concerning environmental matters, including, but not limited to, any discharge (whether before or after the date of this Mortgage) into the air, waterways, sewers, soil or ground water or any substance or "pollutant." Mortgagee and its agents and representatives shall have access to the Premises and to the books and records of Mortgagor and any occupant of the Premises claiming by, through or under Mortgagor for the purpose of ascertaining the nature of the activities being conducted thereon and to determine the type, kind and quantity of all products, materials and substances brought onto the Premises or made or produced thereon. Mortgagor and all occupants of the Premises claiming under Mortgagor shall provide to Mortgagee copies of all manifests, schedules, correspondence and other documents of all types and kinds when filed or provided to any Agency or as such are received from any Agency. Mortgagee and its agents and representatives shall have the right to take samples in quantity sufficient for scientific analysis of all products, materials and substances present on the Premises including, but not limited to, samples of products, materials or substances brought onto or made or produced on the Premises by Mortgagor or an occupant claiming by, through or under Mortgagor or otherwise present on the Premises.

37. **Compliance with Illinois Mortgage Foreclosure Act.**

a. If any provision in this Mortgage shall be inconsistent with any provision of the Act, the provision of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

b. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Paragraph 16 of this Mortgage any powers, rights or remedies before, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Illinois Act to the full extent permitted by law.

c. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee in connection with the preservation, protection, maintenance and/or repair of the Premises, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraphs 11, 14 or 27 of this Mortgage, shall be added to the Indebtedness secured by this Mortgage and/or by the judgment of foreclosure.

38. **Miscellaneous.**

a. **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

UNOFFICIAL COPY

b. **Discretion of the Mortgagee.** Unless expressly set forth otherwise, whenever Mortgagee is permitted under this Mortgage to take any discretionary action (including the decision to give or withhold any required approval or consent or to make any other determination), Mortgagee shall act reasonably and in good faith, without willful misconduct or gross negligence.

c. **Invalidity of Provisions: Governing Law.** If any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Mortgagor and Mortgagee shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

d. **Municipal and Zoning Requirements.** Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission alter (or permit the alteration of) the zoning classification of the Premises in effect as of the date thereof, except upon prior written notice to Mortgagee and as long as any such alteration shall not be inconsistent with the current uses of the Premises, nor shall Mortgagor impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

e. **Rights of Tenants.** Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises before that of Mortgagee. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

f. **Option of Mortgagee to Subordinate.** At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution by Mortgagee of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

UNOFFICIAL COPY

g. **Mortgagee in Possession.** Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee pursuant to this Mortgage.

h. **Relationship of Mortgagee and Mortgagor.** Mortgagee shall in no event be construed for any purpose to be a partner, joint, venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective business, and, without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Credit Documents, or otherwise.

i. **Time Is of the Essence.** Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Note and the other Credit Documents and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Credit Documents.

j. **No Merger.** It being the desire and intention of the parties hereto that the Mortgage and the lien hereof do not merge in fee simple title to the Premises, *it is hereby understood and agreed* that should Mortgagee acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

k. **Jurisdiction and Venue.** Mortgagor hereby agrees that all actions or proceedings initiated by Mortgagor and arising directly or indirectly out of this Mortgage shall be litigated in the Circuit Court of Cook County, Illinois, or the United States District Court for the Northern District of Illinois or, if Mortgagee initiates such action, any court in which Mortgagee shall initiate such action and which has jurisdiction. Mortgagor waives any claim that Cook County, Illinois or the Northern District of Illinois is an inconvenient forum or an improper forum based on lack of venue. Should Mortgagor, after being so served, fail to appear or answer to any summons, complaint, process or papers so served within the number of days prescribed by law after the mailing thereof, Mortgagor shall be deemed in default and an order and/or judgement may be entered by Mortgagee against Mortgagor as demanded or prayed for in such summons, complaint, process or papers. The exclusive choice of forum for Mortgagor set forth in this paragraph shall not be deemed to preclude the enforcement, by Mortgagee, of any judgment obtained in any other forum or the taking, by Mortgagee, of any action to enforce the same in any other appropriate jurisdiction, and Mortgagor hereby waives the right, if any, to collaterally attack any such judgement or action.

l. **Waiver of Right to Jury Trial.** MORTGAGEE AND MORTGAGOR ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY THAT MAY ARISE UNDER THE CREDIT DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES AND THEREFORE, THE PARTIES AGREE THAT ANY COURT PROCEEDING ARISING OUT OF ANY SUCH CONTROVERSY WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

UNOFFICIAL COPY

m. Release of Rights of Dower, Homestead and Distributive Share. The undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the Premises and waives all rights of exemption as to any of the Premises.

39. Receipt of Credit Documents. Mortgagor hereby acknowledges the receipt of a copy of the Credit Agreement, this Mortgage together with a copy of the Note, and Environmental Indemnity secured hereby.

[remainder of page intentionally left blank]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has executed this instrument the day and year first above written.

Mortgagor:

DOLYVA PROPERTIES, LLC—2564 W.
WASHINGTON BLVD. SERIES

Krzysztof Doliwa
KRZYSZTOF DOLIWA, individually

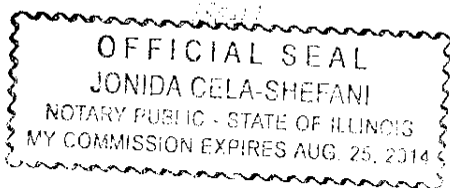
By *Krzysztof Doliwa*
Krzysztof Doliwa, its sole Member

STATE OF ILLINOIS
COUNTY OF COOK

SS:

The undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that KRZYSZTOF DOLIWA, the sole Member of DOLYVA PROPERTIES, LLC—2564 W. WASHINGTON BLVD. SERIES, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he executed and delivered said instrument on his own behalf and on behalf of said company, pursuant to authority granted by the members of said company, as his free and voluntary act and the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 12th day of May, 2012.



Jonida M. Shefani
Notary Public

MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT FOR 2564 W. WASHINGTON BOULEVARD, CHICAGO, ILLINOIS TO FIRST SECURITY TRUST AND SAVINGS BANK

UNOFFICIAL COPY

EXHIBIT A TO
MORTGAGE, SECURITY AGREEMENT, FIXTURE
FILING AND FINANCING STATEMENT
LEGAL DESCRIPTION OF REAL ESTATE

PARCEL 1:

LOT 13 (EXCEPT THE WEST 16-5/10 FEET) OF [sic; AND] THE WEST 12.25 FEET OF LOT 14 IN BLOCK 3 IN MCINTOSH'S SUBDIVISION OF PART OF LOT 2 IN THE PARTITION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 16-12-419-026

COMMONLY KNOWN AS 2564 WEST WASHINGTON BOULEVARD, CITY OF CHICAGO, ILLINOIS 60612

MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT FOR 2564 W.
WASHINGTON BOULEVARD, CHICAGO, ILLINOIS TO FIRST SECURITY TRUST AND SAVINGS BANK