



Doc#: 0536241006 Fee: \$38.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
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MORTGAGE and SECURITY AGREEMENT

This Instrument Prepared by:

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211 S. Wheaton Ave. #200
Wheaton, IL 60187

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Rehfeldt
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This **MORTGAGE AND SECURITY AGREEMENT** (the "Mortgage") is made as of the 19th day of December, 2005 by 2033 West Jarvis Development LLC, an Illinois Limited liability Company ("Mortgagor") in favor of Community Bank - Wheaton/Glen Ellyn, an Illinois Banking Corporation ("Mortgagee") of 357 Roosevelt Road, Glen Ellyn, Illinois 60137.

RECITALS:

A. Mortgagee has extended credit to Mortgagor in the principal sum of Nine Hundred Forty Five Thousand (\$945,000) Dollars (the "Indebtedness"); and,

B. Mortgagor has, concurrent with the execution of this Mortgage, executed and delivered to Mortgagee its Principal Promissory Note (the "Note") in the amount of the Indebtedness set forth above, by which Note Mortgagor promises to pay the principal sum and interest in accordance with the terms of the Note with payment due on January 31, 2007, all of said principal and interest payable at the offices of the Mortgagee: 100 No. Wheaton Avenue, Wheaton, Illinois. 60187.

NOW, THEREFORE, the Mortgagor to secure the repayment of the Indebtedness, provisions and limitations of the Note, and the performance of the covenants and agreements herein contained, by the Mortgagor to be performed, and also in consideration of the sum of One (\$1) Dollar in hand paid, the RECEIPT WHEREOF IS HEREBY acknowledged, does by the represents GRANT, REMISE, RELEASE, CONVEY AND MORTGAGE unto Mortgagee, and the Mortgagee's successors and assigns, all of Mortgagor's interest in and to that certain parcel of real property situated in the City of Chicago, County of Cook and State of Illinois, to wit:

The West 5 feet of Lot 38 and the East 29 Feet 11 ¼ inches of Lot 39 in Marshall's Subdivision of Lot 4 of the County Clerk's Division of Part of the Southwest Fractional Quarter of Fractional Section 30, Township 41 North, Range 14 East of the Third Principal Meridian, North of the Indian Boundary Line, in Cook County, Illinois.

Permanent Index Number: 11-30-317-015-0000

BOX 333-CT

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Commonly known as: 2033 West Jarvis, Chicago, IL 60645
with the property hereinafter described, is referred to herein as the "Premises."

TOGETHER with all improvements, tenements, easements, fixtures, and appurtenances thereto belonging, and all rents, issues and profits thereof for so long and during all times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily) and all apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing), screens, window shades, storm doors and windows, floor coverings, stoves and water heaters. All of the foregoing are declared to be a part of said real estate whether physically attached thereto or not, and it is agreed that all similar apparatus, equipment or articles hereafter placed in the Premises by Mortgagor or their successors or assigns shall be considered as constituting part of the real estate.

TO HAVE AND TO HOLD the Premises unto the Mortgagee, and the Mortgagee's successors and assigns, forever, for the purposes, and upon the uses herein set forth, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois, which said rights and benefits the Mortgagor does hereby expressly release and waive.

The following covenants, conditions and provisions shall apply with respect to this Mortgage.

1. **MAINTENANCE OF MORTGAGED PREMISES.** Mortgagor shall (1) comply with all of the terms and conditions of the Construction Loan Agreement (the "Loan Agreement") by and between Mortgagor and Mortgagee dated even date herewith, with regard to the installation of Improvements to the Premises; (2) keep said Premises in good condition and repair, without waste, and free from mechanic's or other liens or claims for lien not expressly subordinated to the lien hereof; (3) pay when due any indebtedness which may be secured by a lien or charge on the Premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to the Mortgagee; and, (4) comply with all requirements of law or municipal ordinances with respect to the Premises and the use thereof.

2. **ESCROW FOR REAL ESTATE TAXES.** Mortgagee may, by written notice to Mortgagor, require Mortgagor to pay, in addition to the monthly payments of principal and interest ("Installment Payments") required by the Note, an amount per month equal to one-twelfth (1/12th) of the current real estate taxes assessed against the Premises in an escrow account (the "tax escrow account") to be maintained by Mortgagee for the payment of the taxes assessed against the Premises. In the event Mortgagee makes a demand upon Mortgagor to establish a tax escrow account, Mortgagor shall, within sixty (60) days of the date of the demand, deposit with Mortgagee an amount, along with payments falling due after the demand, sufficient to satisfy the estimated tax payments currently due on the Premises, whether yet properly payable to any governmental body assessing such tax (the "tax deficiency"). If Mortgagor fails to deposit the amount of the tax

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deficiency with Mortgagee within the aforesaid sixty (60) day period, Mortgagee may declare Mortgagor to be in default under the terms of this Mortgage. Mortgagee may at its option, but shall not be required to, advance funds to satisfy the tax deficiency and, in the event that Mortgagee so advances funds for that purpose, interest shall accrue on the amount of funds so advanced at the rate equal to the Default Rate as prescribed in the Note. Mortgagee shall not be obligated to pay interest on the tax escrow account nor shall Mortgagee be obligated to segregate Mortgagor's funds in a separate account but may co-mingle the funds in one or more of its general accounts.

3. MORTGAGEE'S RIGHTS IN THE EVENT OF THE IMPOSITION OF CERTAIN TAXES. In the event of the enactment after this date of any law of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of the mortgages or debts secured by mortgages or Mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this mortgage, Mortgagor shall pay such taxes or assessments, or reimburse Mortgagee therefore; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by Illinois law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable one hundred eighty (180) days from the giving of such notice, unless Loan can be refinanced on terms acceptable to Mortgagee.

4. FEDERAL TAXES OTHER THAN INCOME TAXES. If, by the laws of the United States of America or of any state having jurisdiction in the Premises, any tax is due or becomes due in respect of the issuance of the note hereby secured, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agree to indemnify Mortgagee, and Mortgagee's successors and assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note secured hereby.

5. INSURANCE. Mortgagor, at its sole cost and expense, shall at all times maintain insurance in conformity with the requirements for the maintenance of Insurance as prescribed in the Loan Agreement.

6. EVENTS OF DEFAULT. The occurrence of any of the following events shall be an "Event of Default" hereunder:

6.1 The occurrence of an Event of Default under the Note, the Assignment of Rents and Leases or the Loan Agreement by and between Mortgagor and Mortgagee (collectively the "Loan Documents") which default is not cured in the manner provided for in the Loan Documents; and,

6.2 Within the Cure Period granted in the Loan Agreement between Mortgagor and Mortgagee, the failure by Mortgagor to promptly perform, or cause to be performed, any of its

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obligations set forth herein or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under this Mortgage.

7. MORTGAGEE'S RIGHT TO MAKE PAYMENTS TO PROTECT ITS INTERESTS IN PREMISES. In case of default herein, Mortgagee may, but need not, make any payment or perform any act hereinbefore required by Mortgagor in any form and manner deemed expedient, 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 said Premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the mortgaged Premises and the lien hereof, shall become indebtedness secured hereby and become immediately due and payable without notice and with interest thereon at the highest rate now permitted by Illinois law. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to the Mortgagee on account of any default hereunder on the part of the Mortgagor.

8. MORTGAGEE'S RIGHT TO RELY UPON TAX BILLS. Mortgagee making any payment hereby authorized relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office ("Public Documents") 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. Mortgagee will furnish copies of Public Documents to Mortgagor, who shall have the right to take appropriate action or request Mortgagee to do so.

9. FORECLOSURE OF MORTGAGE. When the indebtedness hereby secured shall become due under the terms of the Note, whether by acceleration or otherwise, or there exists any other Event of Default under the terms of this Mortgage, Mortgagee shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, costs 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 title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or provide evidence to bidders to any sale which may be had pursuant to a court-ordered decree of sale or sale held pursuant to consent of the Mortgage, of the true condition of the title to or value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the default rate, as specified in the Note, when paid or incurred by Mortgagee in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which the Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this mortgage or

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any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any actual or threatened suit or proceeding which might affect the premise or the security hereof.

10. **WAIVER OF RIGHT OF REDEMPTION.** Mortgagor, on behalf of itself and any successors-in-interest to Mortgagor, pursuant to the provisions of Section 15-1601 of the Illinois Code of Civil Procedure [735 ILCS 5/15-1601] does hereby waive the Right of Redemption from a Judgment of Foreclosure of the Mortgage.

11. **APPLICATION OF PROCEEDS FROM SALE OF MORTGAGED PREMISES.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraphs hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the note; fourth, any surplus over and above distribution and application to Mortgagor, its beneficiaries, legal representatives or assigns, as their rights may appear.

12. **APPOINTMENT OF RECEIVER.** Upon or at any time after the filing of a complaint to foreclose this mortgage, the court in which such complaint is filed may appoint a receiver of said 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 then value of the Premises or whether the same shall be then occupied as a homestead or not, and the Mortgagee may be placed in possession and appointed as such receiver. Such receiver shall have power to collect rents, issues and profits of said Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in its hands in payment in whole or in part of: (1) 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 prior to foreclosure sale; (2) the deficiency in case of a sale and deficiency.

13. **HAZARDOUS SUBSTANCES.** Mortgagor represents and warrants to Mortgagee that: (a) during the period of Mortgagor's ownership of the Premises there will there be any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, or about the Premises; (b) Mortgagor has no knowledge

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of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Mortgagee in writing: (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any prior owners or occupants of the Premises, or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; (c) Except as previously disclosed to and acknowledged by Mortgagor in writing: (i) neither Mortgagor nor any tenant, contractor, agent or other authorized use of the Premises shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Premises and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation those laws, regulations, and ordinances described above. Mortgagor authorizes Mortgagee and its agents to enter upon the Premises to make such inspections and tests as Mortgagee may deem appropriate to determine compliance of the Premises with this section of the Mortgage. Any inspections or tests made by Mortgagee shall be for Mortgagee's purposes only and shall not be construed to create any responsibility or liability on the part of Mortgagee to Mortgagor or to any other person. The representations and warranties contained herein are based on Mortgagor's due diligence in investigating the Premises for hazardous waste. Mortgagor hereby (a) releases and waives any future claims against Mortgagee for indemnity or contribution in the event Mortgagor becomes liable for cleanup or other costs under any such laws, and (b) agrees to indemnify and hold harmless Mortgagee against any and all claims, losses, liabilities, damages, penalties and expenses which Mortgagee may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Mortgagor's ownership or interest in the Premises, whether or not the same was or should have been known to Mortgagor. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Mortgagee's acquisition of any interest in the Premises, whether by foreclosure or otherwise. The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Mortgage, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §1251 et seq., Clean Air Act of 1966, as amended, 42 U.S.C. §7401 et seq., Toxic Substances Control Act of 1976, 15 U.S.C. §2601 et seq., or Hazardous Materials Transportation Act, 49 U.S.C. App. §1801 et seq.

14. **WAIVER OF DEFENSES.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the note hereby secured.

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15. **MORTGAGEE'S RIGHT OF INSPECTION.** Upon reasonable notice to Mortgagee, which shall be not less than twenty four (24) hours, Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

16. **GUARANTOR'S CONFIRMATION OF MODIFICATION OF TERMS.** If the payment of the Note or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefore, or interested in said Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation or release.

17. **PROHIBITION AGAINST TRANSFER OF PROPERTY.** Except as specifically permitted under the Loan Agreement, Mortgagor covenants and agrees not to: sell, convey, assign or transfer, or promise or contract to sell, convey, assign or transfer, all or any part of the Premises or any interest therein, or amends or terminates any ground lease affecting the Premises, or if title to the Premises, or any direct or indirect interest therein, is otherwise sold or transferred, voluntarily or involuntarily, including without limitation sale or transfer in any proceeding for foreclosure or judicial sale of the Premises, in each case without Mortgagee's prior written consent, Mortgagee shall be entitled to immediately accelerate the amounts due under the Note and declare all indebtedness secured by this Mortgage to be immediately due and payable. Failure to pay such indebtedness within thirty (30) days after notice to Mortgagor of such acceleration shall constitute an Event of Default hereunder.

18. **MORTGAGEE'S OBLIGATION TO RELEASE LIEN.** Mortgagee shall release this Mortgage and lien thereof by proper instrument upon payment and discharge of the indebtedness secured hereby and payment of a fee, as specified in section 3.3.7 of the Loan Agreement, to Mortgagee for the execution of such release.

19. **TERMS OF MORTGAGE BINDING ON BENEFICIARIES AND ALL PARTIES HAVING AN INTEREST IN MORTGAGOR** This mortgage and all provisions hereof, shall extend to and be binding upon Mortgagor and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the note or this mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein and the holder or holders, from time to time, of the Note secured hereby.

IN WITNESS WHEREOF the Mortgagor has executed this Mortgage on the day and year first above written.

Mortgagor

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2033 W. Jarvis Development LLC, an
Illinois Limited Liability Company

By: *William J. Harty*
William J. Harty, Sole Member

STATE OF ILLINOIS)
) ss.
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that William J. Harty, personally known to me to be the sole member of 2033 W. Jarvis Development LLC, an Illinois Limited Liability Company, appeared before me this day and acknowledge that he executed the foregoing Mortgage and Security Agreement as the free and voluntary act of the Company and as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this 19th day of December, 2005.



Julie A. Ebbert
Notary Public

After recording mail to:

Community Bank-Wheaton/Glen Ellyn
100 N. Wheaton Avenue
Wheaton, IL 60187
Attn: Loan Department

2033 W. Jarvis Development LLC.
Mortgage and Security Agreement
348.2005