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Doc#: 0536241007 Fee: \$32.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/28/2005 09:17 AM Pg: 1 of 5

ASSIGNMENT OF RENTS
and LEASES

This Instrument Prepared by:
John M. Mulherin, Esq.
Mulherin, Rehfeldt & Varchetto
211 S. Wheaton Ave. #200
Wheaton, IL 60187

FOR RECORDER'S USE ONLY

This ASSIGNMENT OF RENTS and LEASES (the "Assignment") is made as of the 19th day of December, 2005 and is made by 2033 West Jarvis Development LLC, an Illinois Limited Liability Company ("Assignor"), in favor of Community Bank - Wheaton/Glen Ellyn, an Illinois Banking Corporation ("Assignee") of 357 Roosevelt Road, Glen Ellyn, Illinois 60137.

WITNESSETH:

Assignor is indebted to Assignee under the terms of its Promissory Note (the "Note") in the principal amount of Nine Hundred Forty Five Thousand (\$945,000) Dollars and payable to the order of and delivered to Assignee by which Note, Assignor promises to pay the principal sum and interest in accordance with the terms of said Note with final balance due on January 31, 2007 (the "Maturity").

NOW, THEREFORE, Assignor, to further secure the repayment of the Note, does hereby assign, transfer and set over unto Assignee all of the rents, issues, profits and income whatsoever arising from or which may be had under any leases or tenancies now existing or which may hereafter be created on 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 3/4 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
Commonly known as: 2033 West Jarvis, Chicago, IL 60645

which, with the property hereinafter described, is referred to herein as the "Premises."

BOX 333-CT

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Mulherin

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In consideration of the extension of credit as described above, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor does hereby covenant and agree as follows:

1. **COLLECTION OF RENTS** So long as there exists no default by Assignor in the payment of the indebtedness secured by this Assignment, or under any obligation of Assignor under the Mortgage given as security hereunder, Assignor shall have the right to collect, but not more than thirty (30) days in advance of the date due, all rents, issues and profits from the Premises and to retain the full use and enjoyment of same.

2. **PAYMENT IN FULL** Upon the payment in full of the indebtedness secured by this Assignment as evidenced by the recording of a filing or recording of an instrument of satisfaction or full release of the Mortgage without the recording of another Mortgage or Trust Deed in favor of Assignee affecting the Premises, this Assignment shall be null and void and of no force and effect.

3. **PERFORMANCE BY ASSIGNOR** Assignor shall: (i) fulfill or perform each and every condition and covenant of any leases to be performed by Assignor, as Lessor; (ii) enforce the tenants' obligations under all leases; (iii) give Assignee prompt notice of any notice of default actually received by it from Lessee alleging a default under the terms of any lease, together with a complete copy of any such notice; (iv) not modify, nor in any way alter or extend the terms of a lease existing as of the date of this Assignment, or enter into any lease with respect to the Premises after the date of this Assignment; (v) not terminate the term of any lease nor accept a surrender thereof unless required to do so by the terms of the lease; (vi) not anticipate the rents thereunder for more than thirty (30) days prior to accrual, and (vii) not waive nor release any lessee from any obligations or conditions to be performed by lessee without first receiving the prior written consent of Assignee.

4. **RIGHTS ASSIGNED** The rights assigned hereunder include all of Assignor's right and power to make, modify, terminate the term or accept the surrender of the premises under any lease, or to accept the payment of rents for more than thirty (30) days prior to the accrual thereof, each without first receiving the prior written consent of Assignor.

5. **DEFENSE OF ACTIONS** Assignor shall, at its sole cost and expense, appear in and defend any action growing out of or in any manner connected with any lease or the obligations or liabilities of Assignor, as lessor, brought by any lessee, or any person claiming rights thereunder.

6. **RIGHTS OF ASSIGNEE** Should Assignor fail to make any payment under the

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Note, or fail to do any act as required under this Assignment or under the Mortgage, Assignee may, but without obligation to do so and with reasonable notice or demand to Assignor, and without releasing Assignor from any obligation under either this Assignment, the Mortgage or the Note, make or do the same, including specifically, without limiting its general powers, appearing in and defending any action purporting to affect the security hereof or the rights or powers of Assignee, and performing any obligation as lessor under any lease, and in exercising such powers pay necessary costs and expenses, employ legal counsel and thereby incur attorneys' fees. Assignor shall pay immediately upon demand from Assignee all such sums expended by Assignee under the authority hereof, together with interest thereon at the rate equal to the Default Rate prescribed in the Note.

7. **ACCELERATION** In addition to the rights of Assignee to accelerate the indebtedness in the event of a default by Assignor which is not cured within the time provided under the terms of the Note or Mortgage, Assignee shall have the right to declare Assignor to be in default hereunder in the event that Assignor either, (i) fails to observe the affirmative covenants of Section three (3) of this Assignment, or (ii) exercises of any rights assigned hereunder as set forth in Section four (4) of this Assignment, and fails, after reasonable notice ("Notice") to Assignor, to cure the default within the time specified in the Notice. For purposes of this Assignment, any notice requiring the cure of any default under this Assignment shall be deemed to be reasonable if it requires the performance or cure of the event of default within thirty (30) days of the date of the Notice.

8. **REMEDIES OF ASSIGNEE** Upon the occurrence of an event of default as prescribed herein, or under the Note or Mortgage, Assignee, at its option, with reasonable notice, and without regard to the adequacy of other security for the indebtedness secured hereby, either in person or by an agent, whether or not in conjunction with the filing or prosecution of any action to enforce the Note or Mortgage, may enter upon, take possession of, and operate the Premises; whether or not in possession thereof collect and receive all rents due under any leases, including those past due and unpaid, and apply the same, less costs of collection, to the indebtedness secured hereby; make, enforce, modify and accept the surrender of leases; obtain and evict tenants; fix or modify rents; and do any acts which Assignee, in its sole discretion and judgment, deems appropriate to protect the security hereof until all indebtedness secured hereby is paid in full. Any income received by Assignee from the Premises in excess of the amount necessary to meet all obligations of Assignor, including the indebtedness secured hereby (the "Operating Expenses"), for the period of six (6) months following the date of the calculation of the Operating Expenses, shall be paid over to Assignor. No action taken by Assignee hereunder, shall cure or waive any default or waive, modify, or affect any notice of default made under the Mortgage or Note, or invalidate any act done pursuant to such notice.

9. **WARRANTIES OF ASSIGNOR** Assignor warrants and represents to Assignee that:

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(a) Assignor has not executed any prior Assignment, or other document which in effect, assigns any of the rights assigned hereunder;

(b) Assignor has not done anything, or knowingly permitted anything to be done, to impair the value and security of any of the leases or to encumber or assign any existing or future lease or rents, or which might prevent, or limit, Assignee from exercising its rights hereunder;

(c) Assignor has not done any act which would result in the anticipation, waiver, release, discount, set off, or compromise of any rents;

(d) Assignor has not accepted any rents, or made any concessions of rent, under any lease for an effective period of more than thirty (30) days from the date of the accrual;

(e) Any and all leases represented by Assignor to exist as of the date of this Assignment with respect to the Premises, are in full force and effect, bona fide, and there exists no default by any lessee thereunder; and,

(f) Assignor has not received any notice, nor knows of not facts or circumstances, by which Assignee could infer or believe that any lessee is likely to default under the terms of any lease, including the filing, by a lessee, of a petition in bankruptcy.

10. **INDEMNIFICATION** Assignee shall not be obligated to perform or discharge any obligation under any lease, or under or by reason of this Assignment, and Assignor hereby agrees to indemnify, protect and save Assignee harmless from and against any and all liability, loss, claims or damages which it may or might incur under any lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any terms of any lease. Should Assignee incur any such liability, loss or damage under any lease, or under or by reason of this Assignment, or in defense of any claim or demand, the amount thereof, including reasonable attorney's fees, court costs, and related expenses, including those of a consultant or agent with respect to the management of the Premises, Assignor shall, upon demand, reimburse Assignee for any and all such expenses, together with interest thereon at the rate equal to the Default Rate in the Note, which amount, until paid, shall be deemed to be an additional indebtedness of the Note secured by the Mortgage.

11. **ASSIGNMENT BINDING ON SUCCESSORS AND ASSIGNS** This Assignment shall inure to the benefit of the successors and assigns of Assignee, and shall bind the Assignor's legal representatives, successors and assigns.

IN WITNESS WHEREOF Assignor has executed this Assignment of Rents and Leases at Glen Ellyn, Illinois.

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Assignor

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, 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 Assignment of Rents and Leases 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