

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2007 APR 19 AM 9:30

MICHAEL A. BROWN  
RECORDER

2007 032311

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**MORTGAGE  
WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

**THIS MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** ("Mortgage") is made as of April 17, 2007, by and between LAKESHORE DUNES LIMITED PARTNERSHIP, an Illinois limited partnership having an address at 806 Greenwood Street, Evanston, Illinois ("Borrower"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association, having an address at 209 S. LaSalle Street, Suite 410, Chicago, Illinois 60604 ("Lender").

**RECITALS:**

- Document is NOT OFFICIAL!**  
**This Document is the property of the Lake County Recorder!**  
**STOP**
- A. Borrower is the owner and holder of fee simple title in and to all of the Real Property and Improvements, each as described below.
  - B. Borrower and Lender have executed that certain Loan Agreement of even date herewith (as the same may from time to time be amended, modified, restated or extended, the "Loan Agreement").
  - C. Pursuant to the Loan Agreement, Lender has agreed to make a loan to Borrower (the "Loan"), evidenced by a note of even date herewith (the "Note") in the maximum principal amount of FOURTEEN MILLION AND NO/100 DOLLARS (\$14,000,000.00). All capitalized terms used herein shall have the same meanings as set forth in the Loan Agreement, unless otherwise defined herein.
  - D. The execution and delivery of this Mortgage is a condition precedent to the performance by Lender of its obligations under the Loan Agreement.

**NOW, THEREFORE**, in consideration of the making of the Loan by Lender, and to secure the indebtedness and obligations evidenced by the Note and the performance and observance of all obligations, covenants and conditions in the Note, this Mortgage and the other Loan Documents, and for other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, Borrower and Lender hereby agree as follows:

**ARTICLE I. MORTGAGE**

A. **Grant.** For the purposes of and upon the terms and conditions in this Mortgage, each Borrower hereby grants, conveys, assigns, transfers, mortgages, grants a security interest in and confirms to Lender, for the benefit of Lender, and to Lender, forever, all of Borrower's right, title and interest in and to that real property located in the County of Lake, State of Indiana, described on Exhibit

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A attached hereto ("Real Property"), together with all of Borrower's right, title and interest in and to development rights or credits, air rights, water, water rights and water stock related to the Real Property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the Real Property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto; all of Borrower's right, title and interest in and to all buildings, other improvements and fixtures now or hereafter located on the Real Property, including, without limitation, all apparatus, equipment, and appliances used in the operation or occupancy of the Real Property, it being intended by the parties that all such items shall be conclusively considered to be a part of the Real Property, whether or not attached or affixed to the Real Property ("Improvements"); and any and all deposits, securities or other property which may be held at any time and from time to time by Borrower to secure the performance of the covenants, conditions and agreements contained in any lease; all interest or estate which either Borrower may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing (all of the foregoing, together with the Collateral (as defined below), being collectively referred to as the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms.

B. Address. The address of the Subject Property is: 320, 415-435, 440, 500, and 515 North Lake Street, 5700-5717 and 5806 Cypress Avenue, 5700-5706, 5800-5806, and 5801-5807 Kennedy Terrace, 5700-57-24, 5701-5725, and 5801-5815 Hemlock Avenue, and 5700-5742, 5820, 5850 Forest Court, Gary, Indiana. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the Lien of this Mortgage on the Subject Property as described on Exhibit A.

**Document is NOT OFFICIAL!**  
**ARTICLE II. OBLIGATIONS SECURED**

A. Obligations Secured. Borrower makes this grant and assignment for the purpose of securing the following obligations ("Secured Obligations"): (i) payment to Lender of all sums at any time owing under the Note and/or any of the other Loan Documents; (ii) payment and performance of all covenants and obligations of Borrower under this Mortgage; (iii) payment and performance of all covenants and obligations of Borrower under the Loan Agreement and the other Loan Documents, including, without limitation, the obligations to complete the Specified Renovations and Unit Restoration; (iv) obligations that Borrower may agree to pay and/or perform (whether as principal, surety, or guarantor) for the benefit of Lender, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Mortgage; (v) any judgment(s) or final decree(s) rendered to collect any money obligations of Borrower to Lender and/or enforce the performance or collection of all covenants, condition, agreements, other obligations and liabilities of the Mortgagor under this Mortgage or any or all of the other Loan Documents; and (vi) all modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (a) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (b) modifications, extensions or renewals at a different rate of interest, whether or not, in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes. **THE INDEBTEDNESS SECURED HEREBY** will in no event exceed an amount equal to three (3) times the aggregate face amount of the Note as set forth above.

B. Obligations. The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), collection costs, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.

C. Incorporation. All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All Persons who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that the rate of interest on one or more Secured Obligations may vary from time to time.

### ARTICLE III. ASSIGNMENT OF LEASES AND RENTS

A. Assignment. Borrower hereby irrevocably assigns to Lender all of Borrower's right, title and interest in, to and under: (i) all leases of the Subject Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Subject Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Subject Property or any portion thereof, whether now existing or entered into after the date hereof ("Leases"); and (ii) the rents, issues, deposits and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Borrower under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Lender's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Subject Property.

B. Grant of License. Lender confers upon Borrower a license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of an Event of Default (as hereinafter defined). Upon an Event of Default, the License shall be automatically revoked and Lender may collect and apply the Payments pursuant to Section VI.D. without notice and without taking possession of the Subject Property. Borrower hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Lender for the payment to Lender of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder. Borrower hereby relieves the lessees from any liability to Borrower by reason of relying upon and complying with any such notice or demand by Lender.

C. Effect of Assignment. The foregoing irrevocable assignment shall not cause Lender to be: (i) a "mortgagee in possession;" (ii) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants or conditions of the Leases; or (iii) responsible or liable for any waste committed on the Subject Property by the lessees under any of the Leases or any other Persons; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any Lessee, licensee, employee, invitee or other Person. Lender shall not directly or indirectly be liable to Borrower or any other Person as a consequence of: (A) the exercise or failure to exercise any of the rights, remedies or powers granted to Lender hereunder; or (B) the failure or refusal of Lender to perform or discharge any obligation, duty or liability of Borrower arising under the Leases.

D. Representations and Warranties.

(i) Leases. Borrower represents and warrants that: (a) none of the lessor's interests under any of the Leases has been transferred or assigned; and (b) substantially all of the Leases existing as of the date hereof conform in all material respects to the standard lease form provided to Lender prior to the date hereof.

(ii) Use of Proceeds. Borrower represents and warrants that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4(1)(c), and that the indebtedness secured by this Mortgage constitutes a business loan within the purview of said 815 ILCS 205/4(1)(c).

E. Covenants. Borrower covenants and agrees at Borrower's sole cost and expense to: (i) perform the obligations of lessor contained in the Leases and enforce by all available remedies, performance by the lessees of the obligations of the lessees contained in the Leases; (ii) exercise commercially reasonable efforts to keep all portions of the Subject Property leased at all times at rentals not less than the fair market rental value; (iii) deliver to Lender fully executed, counterpart original(s) of each and every Lease if requested to do so; and (iv) execute and record such additional assignments of any Lease or specific subordinations of any Lease to this Mortgage, in form and substance acceptable to Lender, as Lender may request. Borrower shall not, without Lender's prior written consent or unless otherwise permitted by any provision of the Loan Agreement: (a) enter into any Leases after the date of this Mortgage other than in the ordinary course of business consistent with past practices; (b) execute any other assignment relating to any of the Leases or Payments; (c) other than in the ordinary course of business consistent with past practices discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rent one (1) month in advance of the time when it becomes due; (d) other than in the ordinary course of business consistent with past practices terminate, modify or amend any of the terms of the Leases or, in any manner, release or discharge the lessees from any obligations thereunder; (e) enter into any Lease other than a lease substantially in the form of the standard lease form provided to Lender prior to the date hereof or substantially in the form of such other standard lease form approved by Lender in writing (which approval shall not be unreasonably withheld); (f) subordinate or agree to subordinate any of the Leases to any other mortgage or encumbrance or (g) enter into any Lease for a term in excess of twenty-four (24) months. Any such attempted action in violation of the provisions of this Section III. E. shall be null and void.

#### ARTICLE IV. SECURITY AGREEMENT AND FIXTURE FILING

A. Security Interest. Borrower hereby grants and assigns to Lender, as of the date hereof, a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Borrower now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on (i) the Real Property described on Exhibit A attached hereto and incorporated by reference herein, or (ii) the Improvements, together with all rents, issues, deposits and profits of the Subject Property (to the extent, if any, they are not subject to Article III); all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights (including, without limitation, rights under any management agreement concerning the Subject Property, any contract to perform any of the Specified Renovations), general intangibles (including, without limitation, the Interest Rate Protection Agreement), causes of action, choses in action, damages, chattel paper, instruments, documents, notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks, tradestyles, logos and service marks arising from or related to the Subject Property or any business now or hereafter conducted thereon by Borrower; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity

with respect to the Subject Property; all deposits or other security now or hereafter made with or given to utility companies by Borrower with respect to the Subject Property; all advance payments of insurance premiums made by Borrower with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all Loan funds held by Lender, whether or not disbursed; all of Borrower's funds and other property deposited with Lender pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Mortgage constitutes a continuously perfected fixture filing under Article 9.1 of the Indiana Uniform Commercial Code, as amended or recodified from time to time. For this purpose, the addresses of the parties are as set forth in the preamble of this Mortgage and Borrower's organization number is 65-1298769. Lender is authorized to file financing statements relating to the Subject Property without Borrower's signature where permitted by law. Borrower acknowledges receipt of a copy of this Mortgage in compliance with Lender's obligations under Section 9.1-502(f) of the Uniform Commercial Code.

B. Representations and Warranties. Borrower represents and warrants that: (i) Borrower has good title to the Collateral in existence as of the date hereof, and will have good title to Collateral acquired after the date hereof; (ii) Borrower has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other Person; and (iii) Borrower's principal place of business is located at the address shown in Section VII.I.

C. Rights of Lender. In addition to Lender's rights as a "Secured Party" under the Indiana Uniform Commercial Code, as amended or recodified from time to time ("UCC"), Lender may, but shall not be obligated to, at any time without notice and at the expense of Borrower: (i) give notice to any Person of Lender's rights hereunder and enforce such rights at law or in equity; (ii) insure, protect, defend and preserve the Collateral or any rights or interests of Lender therein; (iii) inspect the Collateral; and (iv) endorse, collect and receive any right to payment of money owing to either Borrower from or under or from the Collateral.

D. Rights of Lender on Event of Default. Upon the occurrence of an Event of Default (hereinafter defined), then in addition to all of Lender's rights as a "Secured Party" under the UCC or otherwise at law: (i) Lender may (a) upon written notice, require Borrower to assemble any or all of the Collateral and make it available to Lender at a place designated by Lender; (b) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Lender at Borrower's expense; (c) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become purchaser at any such sale; and (ii) Lender may, for the account of Borrower and at Borrower's expense: (a) operate, use, consume, sell or dispose of the Collateral as Lender deems appropriate for the purpose of performing any or all of the Secured Obligations; (b) enter into any agreement, compromise, or settlement, including, without limitation, settlement of insurance claims, which Lender may deem desirable or proper with respect to any of the Collateral; and (c) endorse and deliver evidence of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Borrower in connection with or on account of any or all of the Collateral.

Notwithstanding any other provision hereof, Lender shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Borrower to Lender unless

Lender shall make an express written election of said remedy under UCC §9-505, or other applicable law.

E. Power of Attorney. Borrower hereby irrevocably appoints Lender as Borrower's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Lender may, without the obligation to do so, in Lender's name, or in the name of Borrower, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Lender's security interests and rights in or to any of the Collateral, and, upon an Event of Default hereunder, take any other action required of Borrower; provided, however, that Lender as such attorney-in-fact shall be accountable only for such funds as are actually received by Lender and that if no Event of Default exists Lender shall provide Borrower with written notice of, and a reasonable opportunity to cure, the circumstance or occurrence giving rise to Lender's desire to act as attorney-in-fact prior to exercising any of the powers granted hereunder.

F. Possession and Use of Collateral. Except as otherwise provided in this Section or the other Loan Documents, so long as no Event of Default exists under this Mortgage or any of the Loan Documents, Borrower may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Borrower's business and in accordance with the Loan Agreement.

#### ARTICLE V. RIGHTS AND DUTIES OF THE PARTIES

A. Title. Borrower represents and warrants that, except as disclosed to Lender in a writing which refers to this warranty, ~~Borrower lawfully holds and possesses fee simple title to the Subject Property, subject to the Permitted Exceptions, without limitation on the right to encumber, and that, subject to the Permitted Exceptions, this Mortgage is a first and prior Lien on the Subject Property.~~

B. Taxes and Assessments. Subject to Borrower's rights to contest payment of taxes as may be provided in the Loan Agreement, ~~Borrower shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become Liens upon or cause a loss in value of the Subject Property or any interest therein. Borrower shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Lender by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Lender pursuant to any Secured Obligation;~~ provided, however, Borrower shall have no obligation to pay taxes which may be imposed from time to time upon Lender and which are measured by and imposed upon Lender's net income.

C. Performance of Secured Obligations. Borrower shall promptly pay and perform each Secured Obligation when due.

D. Liens, Encumbrances and Charges. Subject to Borrower's rights to contest as may be provided in the Loan Agreement, Borrower shall immediately discharge any lien, encumbrance, security interest, preference, priority, or other security agreement, including conditional sale and other title retention agreement, and any other arrangement having a similar economic effect ("Lien") whether or not such Lien has or may attain priority over this Mortgage. Subject to the provisions of the Loan Agreement regarding mechanics' Liens, Borrower shall pay when due all obligations secured by or reducible to Liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or any interest therein, whether senior or subordinate hereto.

E. Damages; Insurance and Condemnation Proceeds. The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Borrower to Lender and, at the request of Lender, shall be paid directly to Lender: (a) all awards of damages and all other

compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property; (b) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property; (c) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Subject Property; and (d) all interest which may accrue on any of the foregoing. Subject to the terms and provisions of the Loan Agreement and subject to applicable law, and without regard to any requirement contained in Section V.F.(iv), Lender may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order, and/or Lender may release all or any part of the proceeds to Borrower upon any conditions Lender may impose. Subject to the terms and provisions of the Loan Agreement, Lender may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Lender; provided, however, in no event shall Lender be responsible for any failure to collect any claim or award, regardless of the cause of the failure.

F. Maintenance and Preservation of the Subject Property. Subject to the terms and provisions of the Loan Agreement, Borrower covenants: (i) to insure the Subject Property against such risks as Lender may require and, at Lender's request, to provide evidence of such insurance to Lender, and to comply with the requirements of any insurance companies insuring the Subject Property; (ii) to keep the Subject Property in good condition and repair; (iii) not to remove or demolish the Subject Property or any part thereof, not to alter, restore or add to the Subject Property and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property without Lender's prior written consent or as provided in the Loan Agreement; (iv) if Lender makes insurance proceeds available to Borrower for the restoration of the Subject Property in accordance with Section V.E. hereof, to complete or restore promptly and in good and workmanlike manner the Subject Property, or any part thereof which may be damaged or destroyed; (v) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (vi) not to commit or permit waste of the Subject Property; (vii) to comply with any and all terms and provisions of the Loan Agreement regarding the maintenance and preservation of the Subject Property; and (viii) to do all other acts which from the character or use of the Subject Property may be reasonably necessary to maintain and preserve its value.

G. Defense and Notice of Losses, Claims and Actions. At Borrower's sole expense, Borrower shall protect, preserve and defend the Subject Property and title to and right of possession of the Subject Property, the security hereof and the rights and powers of Lender hereunder against all adverse claims. Borrower shall give Lender prompt notice in writing of the assertion of any claim (other than rent disputes which are immaterial both individually and in the aggregate), of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property and of any condemnation offer or action.

H. Due on Sale or Encumbrance. If Borrower, directly or indirectly, sells, conveys, transfers or otherwise disposes of, or encumbers, any part of its interest in the Subject Property, legal or equitable, or if Kinzie Realty Corp. ceases to be the property manager for the Subject Property, or if Charles F. Clarke, III or Andrew W. Brown, individually or collectively, cease to own at least fifty-one percent (51%) of the outstanding voting stock of Kinzie Realty Corp. or cease to control the management of Kinzie Realty Corp., in each case, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Lender, which may be given or withheld by Lender in its sole and absolute discretion, Lender shall have the option to declare the Secured Obligations immediately due and payable

without notice. The foregoing actions requiring prior written consent of Lender include but are not limited to: (a) execution of a purchase, sale or option agreement; (b) sale by deed or contract for deed; (c) mortgaging or granting a Lien on the Subject Property; and (d) any change in the officers, general partners or managing members of Borrower, the manager or member of Borrower's general partner, or the manager or member of the owner of such general partner, or the. Borrower shall request in writing Lender's consent to any such proposed action at least thirty (30) days prior to the proposed date of such action. Borrower shall pay all costs and expenses incurred by Lender in evaluating any such request. Lender may condition such consent upon modification of the Loan Documents, an increase in the interest rate or payment of fees. No such action shall relieve Borrower from liability for the Subject Obligations. Notwithstanding the foregoing, Borrower shall be entitled to sell or dispose of fixtures and equipment constituting personal property without the prior written consent of Lender, provided Borrower promptly replace such items of sold or disposed fixtures and equipment with substitute fixtures and equipment of equal or greater value, which property shall be subject to a first lien security interest in favor of Lender.

I. Releases, Extensions, Modifications and Additional Security. Without notice to, or the consent, approval or agreement of, any Persons having any interest at any time in the Subject Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Lender may, from time to time, release any Person from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the Lien of this Mortgage upon the Subject Property.

J. Subrogation. Lender shall be subrogated to the Lien of all encumbrances, whether released of record or not, paid in whole or in part by Lender pursuant to this Mortgage or by the proceeds of any loan secured by this Mortgage.

K. Right of Inspection. Lender, its Lender and employees may enter the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and ascertaining Borrower's compliance with the terms of this Mortgage and the other Loan Documents.

M. IRPTL. Borrower represents and warrants that none of the Subject Property is within the definition of the term "property" (as defined in Ind. Code 13-11-2-174), as such term is used in the Indiana Responsible Property Transfer Law (IC 13-25-3), and the transaction evidenced by this Mortgage is not subject to the provisions of said act, and Borrower shall not allow any of the Mortgaged Property to become subject to or constitute "property" subject to said act.

#### ARTICLE VI. DEFAULT PROVISIONS

A. Event of Default. For all purposes hereof, the term "Event of Default" shall mean (i) any Event of Default as defined in the Loan Agreement, including, without limitation, any Event of Default arising from the failure of either Borrower to perform any obligations hereunder, or the failure of any representation or warranty of either Borrower contained herein to be true and correct and (ii) a breach of any provision of Section V.H hereof.



B. Rights and Remedies. At any time after Event of Default, Lender shall have all the following rights and remedies, each in addition to, and without limiting, the rights and remedies of Lender under the Loan Agreement and the other Loan Documents, at law or in equity:

(i) With or without notice, to declare all Secured Obligations immediately due and payable;

(ii) With or without notice, and without releasing Borrower from any Secured Obligation, and without becoming a "mortgagee in possession," to cure any breach or Event of Default of Borrower and, in connection therewith, to enter upon the Subject Property and do such acts and things as Lender deems necessary or desirable to protect the security hereof, including, without limitation: (a) to appear in and defend any action or proceeding purporting to affect the security of this Mortgage or the rights or powers of Lender under this Mortgage; (b) to pay, purchase, contest or compromise any encumbrance, charge, Lien or claim of Lien which, in the sole judgment of Lender, is or may be senior in priority to this Mortgage, the judgment of Lender being conclusive as between the parties hereto; (c) to obtain insurance; (d) to pay any premiums or charges with respect to insurance required to be carried under this Mortgage; or (e) to employ counsel, accountants, contractors and other appropriate persons;

(iii) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Borrower hereunder, and Borrower agree that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Borrower waive the defense of laches and any applicable statute of limitations;

(iv) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Borrower hereby consents to such appointment;

(v) To enter upon, possess, manage and operate the Subject Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Borrower or the then owner of the Subject Property; to make, terminate, enforce or modify Leases of the Subject Property upon such terms and conditions as Lender deems proper; to make repairs, alterations and improvements to the Subject Property as necessary, in Lender's sole judgment, to protect or enhance the security hereof;

(vi) To resort to and realize upon the security hereunder and any other security now or later held by Lender concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Lender determines in its sole discretion.

(vii) Upon sale of the Subject Property at any judicial foreclosure, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Lender may, but is not obligated to, take into account all or any of the following: (a) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Lender in its sole and absolute underwriting discretion; (b)

- expenses and costs incurred by Lender with respect to the Subject Property prior to foreclosure;
- (c) expenses and costs which Lender anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g. commissions, attorneys' and paralegals' fees and expenses and court costs, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Subject Property, and lost opportunity costs (if any), including, without limitation, the time value of money during any anticipated holding period by Lender;
- (d) declining trends in real property values generally and with respect to properties similar to the Subject Property;
- (e) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property;
- (f) the fact of additional collateral (if any), for the Secured Obligations; and
- (g) such other factors or matters that Lender (in its sole and absolute discretion) deems appropriate. In regard to the above, Borrower acknowledge and agree that: (I) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (II) this Section does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (III) the amount of Lender's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed among Borrower and Lender; and (IV) Lender's credit bid may be (at Lender's sole and absolute discretion) higher or lower than any appraised value of the Subject Property.

C. Application of Foreclosure Sale Proceeds. After deducting all costs, fees and expenses of Lender, including, without limitation, cost of evidence of title, receiver's fees and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Lender shall apply all proceeds of any foreclosure sale: (i) to payment of all sums expended by Lender under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (ii) to payment of all other Secured Obligations; and (iii) the remainder, if any, to the Person legally entitled thereto.

D. Application of Other Sums. All sums received by Lender under Section VI.B. or Section III.B., less all costs and expenses incurred by Lender or any receiver under Section VI.B. or Section III.B., including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Lender shall determine in its sole discretion; provided, however, Lender shall have no liability for funds not actually received by Lender.

E. No Cure or Waiver. Neither Lender's nor any receiver's entry upon and taking possession of all or any part of the Subject Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Lender or any receiver shall cure or waive any breach, Event of Default or notice of Default under this Mortgage, or nullify the effect of any notice of Default or sale (unless all Secured Obligations then due have been paid and performed and Borrower have cured all other Defaults), or impair the status of the security, or prejudice Lender in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the Lien of this Mortgage.

F. Payment Of Costs, Expenses and Attorney's Fees. Borrower hereby agrees to pay to Lender immediately and without demand all costs and expenses incurred by Lender pursuant to subparagraphs (i) through (viii) of Section VI.B. (including, without limitation, court costs, receiver's fees and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure

until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein.

G. Power To File Notices And Cure Defaults. Borrower hereby irrevocably appoints Lender and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Lender deems appropriate to protect Lender's interest, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record (with or without signatures) financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Lender's security interests and rights in or to any of the Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute an Event of Default, Lender may perform any obligation of Borrower hereunder; provided, however, that: (i) Lender as such attorney-in-fact shall only be accountable for such funds as are actually received by Lender; (ii) Lender shall not be liable to Borrower or any other Person for any failure to act under this Section; and (iii) if no Event of Default exists Lender shall provide Borrower with written notice of, and a reasonable opportunity to cure, the circumstance or occurrence giving rise to Lender's desire to act as attorney-in-fact prior to exercising any of the powers granted hereunder.

H. UCC. This Mortgage is intended to be a security agreement as defined under the Uniform Commercial Code. Accordingly, if an Event of Default shall occur under this Mortgage, then in addition to having any other right or remedy available at law or in equity, Lender shall have the option pursuant to applicable law of either (i) proceeding under the Uniform Commercial Code and exercising such rights and remedies as may be provided to a secured party by the Uniform Commercial Code with respect to all or any portion of the personalty (including, without limitation, taking possession of and selling such personalty) or (ii) treating such personalty as real property and proceeding with respect to both the real property and personalty constituting the Mortgaged Property in accordance with Lender's rights, powers and remedies with respect to the real property (in which event the default provisions of the Uniform Commercial Code shall not apply).

## ARTICLE VII. MISCELLANEOUS PROVISIONS

A. Additional Provisions. The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Lender and contain further agreements and affirmative and negative covenants by Borrower which apply to this Mortgage and to the Subject Property and such further rights and agreements are incorporated herein by this reference.

B. Merger. No merger shall occur as a result of Lender's acquiring any other estate in, or any other Lien on, the Subject Property unless Lender consents to a merger in writing.

C. Waiver by Borrower. Borrower waives any requirements of presentment, demands for payment, notices of nonpayment or late payment, protest, notices of protest, notices of dishonor, and all other formalities or notices of any kind not otherwise required hereby. Borrower agrees to the full extent permitted by law, that if an Event of Default occurs hereunder, neither the Borrower nor anyone claiming through or under the Borrower shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the

property hereby conveyed, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Borrower, for themselves and all who may at any time claim through or under either of them, hereby waive and release to the full extent that they may lawfully so do, the benefit of all such laws (including, without limitation, all rights under and by virtue of the homestead exemption laws of the State of Illinois). Borrower waives all rights and/or privileges Borrower might otherwise have to require Lender to proceed against or exhaust the assets encumbered hereby or by any other Loan Document or to proceed against any guarantor or to pursue any other remedy available to Lender in any particular manner or order under the legal or equitable doctrine or principle of marshalling and/or suretyship and further agree that Lender may proceed against any or all of the assets encumbered hereby or by any other Loan Document upon an Event of Default in such order and manner as Lender in its sole discretion may determine. Borrower acknowledges that the Subject Property does not constitute agricultural real estate or residential real estate. To the full extent permitted by law, Borrower hereby voluntarily and knowingly waive any and all rights to reinstatement and redemption. Anything contained herein or in IC 32-29-7-5 to the contrary notwithstanding, no waiver made by Borrower in this Section VII.C. or anywhere else in this Mortgage or in the Loan Documents shall constitute the consideration for or be deemed to be a waiver or release by Lender or any judgment holder of the obligations hereby secured of the right to seek a deficiency judgment against the Borrower or any other person or entity who may be personally liable for the obligations hereby secured, which right to seek a deficiency judgment is hereby reserved, preserved and retained by Lender for its own behalf and its successors and assigns. Lender shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Collateral, or any other property which is now or later may be security for any Secured Obligation, as a whole or in separate parcels, in any order that Lender may designate.

D. Rules of Construction. When the identity of the parties or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Subject Property" means all and any part of the Subject Property and any interest in the Subject Property.

E. Successors in Interest. Subject to the terms and provisions of the Loan Agreement, the terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors or assigns of the parties hereto; provided, however, that this Section VII.E. does not waive or modify the provisions of Section V.H.

F. Joint and Several Liability. The liability to Lender of Borrower under this Mortgage and any other person becoming liable hereunder shall be joint and several.

G. Execution in Counterparts. This Mortgage may be executed in any number of counterparts, each of which, when executed and delivered to Lender, will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.

H. Applicable Law. The validity, construction and enforceability of this Mortgage, including the creation, validity, perfection, priority, and enforceability of the lien and security interest created hereby, all warranties of title contained herein, and all provision hereof relating to the realization of the security covered hereby, shall be governed by and interpreted in accordance with the internal laws of the State of Indiana, without giving effect to conflict of laws principles thereof, but giving effect to federal laws of the United States applicable to national banks.

I. Incorporation. Exhibit A, as attached, is incorporated into this Mortgage by this reference.

J. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given if (a) hand delivered or transmitted by facsimile (effective upon delivery or confirmation of successful facsimile transmission) or (b) if mailed (effective three (3) business days after deposit thereof at any main or branch United States Post Office) by United States registered, or certified mail, postage prepaid, return receipt requested, or (c), if forwarded by overnight delivery service, the next business day, addressed as follows:

If to Borrower:

806 Greenwood Street  
Evanston, Illinois 60201  
Attention: Charles Clarke  
Fax no.: (847) 332-0103

If to Lender:

U.S. Bank National Association  
Real Estate Banking Group  
209 S. LaSalle Street, Suite 410  
Chicago, IL 60604  
Attention: M. Sadler  
Fax no: (312) 325-8852

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove. Borrower shall forward to Lender, without delay, any notices, letters or other communications delivered to the Subject Property or to Borrower naming Lender as addressee, or which could reasonably be deemed to affect the construction of the Specified Renovations, the Unit Restoration, or the ability of Borrower to perform their obligations to Lender under the Loan Documents.

K. Future Advances. In addition to any other obligation secured by this Mortgage, this Mortgage shall also secure (i) future obligations and advances up to Twenty-Eight Million Dollars and No/100 Dollars (\$28,000,000) (whether made as an obligation, made at the option of Lender, made after a reduction to a zero (0) or other balance, or made otherwise) to the same extent as if the future obligations and advances were made on the date of execution of this Mortgage and (ii) future modifications, extensions and renewals of any indebtedness or obligations secured by this Mortgage. The lien of this Mortgage with respect to such future obligations, advances, modifications, extensions and renewals shall have the same priority to which this Mortgage otherwise would be entitled under IC 32-29-1-10 without regard to the fact that such future obligations, advances, modifications, extensions, or renewals may occur after this Mortgage is executed.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Borrower have executed this Mortgage as of the day and year set forth above.

Address:

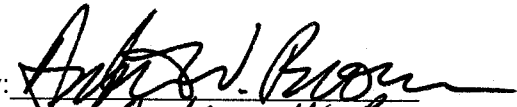
806 Greenwood Street  
Evanston, Illinois 60201  
Attention: Charles Clarke  
Fax no: 847-332-0103

**BORROWER:**

LAKESHORE DUNES LIMITED PARTNERSHIP, an Illinois limited partnership

By: Lakeshore Dunes General LLC, an Illinois limited liability company, general partner

By: Kinzie Assets, LLC, an Illinois limited liability company, member and manager

By:   
Name: Andrew W. Brown  
Its: Principal



STATE OF ILLINOIS

) ss.

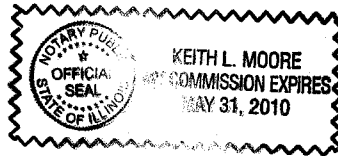
COUNTY OF COOK

On this 11th day of April, 2007, before me, Keith L. Moore a Notary Public in and for the State of Illinois, personally appeared Andrew W. Brown personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his authorized capacity, and that by her/his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal:

Signature: Keith L. Moore

My commission expires 5-31-2010

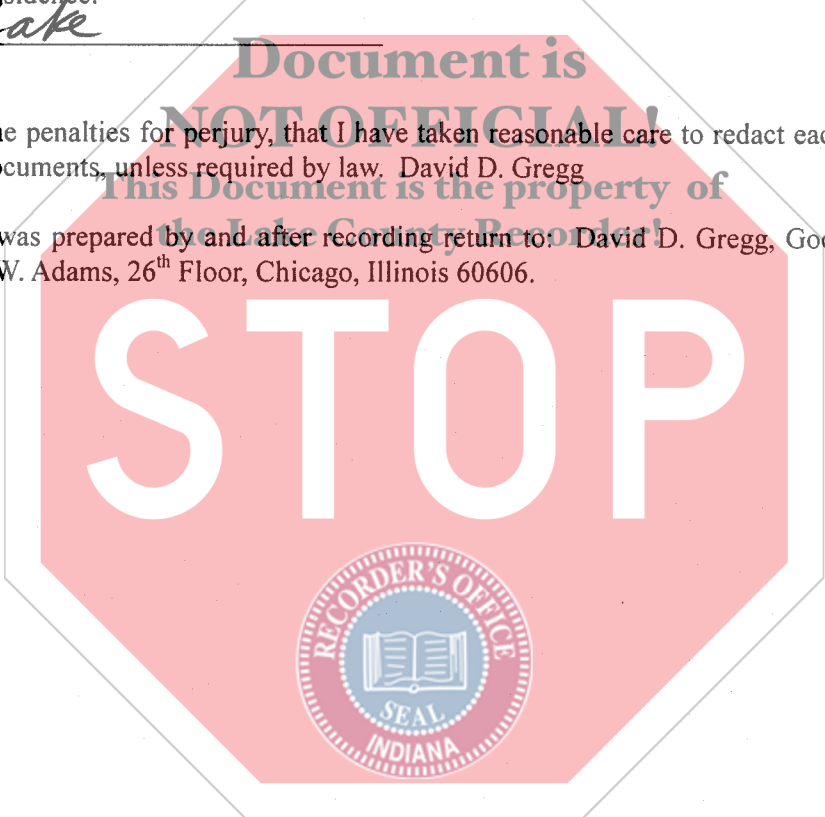


My County of Residence:

Lake

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this documents, unless required by law. David D. Gregg

This instrument was prepared by and after recording return to: David D. Gregg, GoodSmith Gregg & Unruh LLP, 105 W. Adams, 26<sup>th</sup> Floor, Chicago, Illinois 60606.



**EXHIBIT A**

**DESCRIPTION OF REAL PROPERTY**

**PARCEL F1:**

Lots 17 to 24, inclusive, and the vacated South 20 feet of Hickory Avenue, now Forest Avenue, lying North of and adjacent to said lot 17, and the vacated North 20 feet of Hemlock Avenue lying South of and adjacent to said Lot 24, and the West half of the vacated 20 foot alley which adjoins Lots 17 to 24, inclusive, on the East, all in Block "A", in the Johnson-Kennedy Estates second Subdivision, in the City of Gary, as shown in Plat Book 17, page 15, in the Recorders Office in Lake County, Indiana containing 0.9 acres more or less.

**PARCEL F6:**

Lots 18 to 26, inclusive, Block "C", Johnson-Kennedy Estates Second Subdivision, in the City of Gary, as shown in Plat Book 17, page 15, in the Recorders Office of Lake County, Indiana containing 0.82 acres more or less.

**ALSO:**

Part of the Northwest Quarter of the Southeast Quarter of Section 31, Township 37 North, Range 7 West of the Second Principal Meridian, described as follows:

Beginning at a moment at the intersection of the center line of Cypress Avenue and the West line of said Southeast Quarter of Section 31; thence North along said West line of said Southeast Quarter, a distance of 30 feet to the North right-of-way line of Cypress Avenue and the POINT OF BEGINNING; thence North 00 degrees 21 minutes 38 seconds West 1,447.88 feet along said West line (said West line alternately described as the center line of the Section and the West line of Government Lot 5), to the Grand Calumet River Lagoon; thence Easterly along the water's edge of said lagoon for the next Three courses, North 79 degrees 07 minutes 51 seconds East 297.58 feet; North 77 degrees 29 minutes 56 seconds East 152.57 feet; North 78 degrees 43 minutes 43 seconds East 151.99 feet to the West line of Lake Street; thence South 01 degrees 48 minutes 30 seconds East 398.78 feet to the North right-of-way line of Forest Court; thence North 89 degrees 59 minutes 22 seconds West along the North right-of-way line 300.02 feet; thence Northwesterly 189.77 feet along an arc having a radius of 40 feet, a chord length of 55.66 feet and a chord bearing of South 44 degrees 06 minutes 04 seconds West to a point which is 373.02 feet Westerly from the center line of said Lake Street; thence South 01 degrees 48 minutes 30 seconds East 10.03 feet to the South right-of-way line of Forest Court; thence South 89 degrees 59 minutes 22 seconds East along the said right-of-way line 340.02 feet to the West right-of-way line of said Lake Street; thence South 01 degrees 48 minutes 30 seconds East 380.54 feet along said West right-of-way and crossing Hemlock Avenue along its intersection with said line, to the Southeast corner of Lot 16, Block 3, Johnson-Kennedy Estates Fourth Subdivision, as shown in Plat Book 22, page 2 in the Office of the Recorder of Lake County, Indiana; thence North 89 degrees 59 minutes 22 seconds West along the South line of said Lot 16, 133.55 feet to the Southwest corner thereof; thence South 01 degrees 48 minutes 30 seconds East 440.17 feet and crossing Kennedy Terrace; thence South 89 degrees 59 minutes 22 seconds East 133.55 feet to the West right-of-way line of said Lake Street; thence South 01 degrees 48 minutes 30 seconds East along said right-of-way line 298.12 feet to the North right-of-way line of said Cypress Avenue; thence North 89 degrees 59 minutes 22 seconds West along said North right-of-way line 630.66 feet to the POINT OF BEGINNING, containing 19.32 acres more or less, all in Lake County, Indiana.

**Tax Parcel Numbers:**

25-40-0110-0001  
25-40-0110-0013  
25-40-0110-0015  
25-40-0110-0017  
25-40-0110-0019  
25-40-0110-0020



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25-40-0110-0024  
25-40-0110-0025  
25-40-0110-0027  
25-40-0110-0028  
25-40-0110-0029  
25-40-0110-0030  
25-45-0153-0018  
25-45-0155-0020  
25-45-0159-0012  
25-45-0159-0015  
25-45-0159-0016  
25-45-0160-0021

