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This Instrument was prepared by and after recording should be returned to:  
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GUERARD KALINA & BUTKUS  
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Wheaton IL 60187

2008 064001

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2008 SEP 11 AM 10:39

MICHAEL A. BROWN  
RECORDER

62008 F491

(Space Above This Line for Recording Data)

JUNIOR MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on September 3, 2008. The Mortgagors are Jeffrey A. Svihlik and Margo R. Babineaux, husband and wife, whose address is 4995 East 105<sup>th</sup> Lane, Crown Point, IN 46307 (collectively "Borrower"). This Security Instrument is given to FIRST UNITED BANK, whose address is 7626 W. Lincoln Highway, Frankfort IL 60423 ("Lender"). Borrower owes Lender the principal sum of \$1,319,080.79 as evidenced by Borrower's Promissory Note dated the same date as this Security Instrument in the amount of \$1,319,080.79 (the "Note"). This Security Instrument secures to Lender:

- (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note;
- (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and
- (c) the performance of Mortgagor's covenants and agreements under this Security Instrument and the Note.

For this purpose, Mortgagor does hereby mortgage, grant and convey to Lender the real property legally described on Exhibit "A" attached hereto and incorporated herein, which has the address of 4995 East 105<sup>th</sup> Lane, Crown Point, IN 46307 ("Property Address").

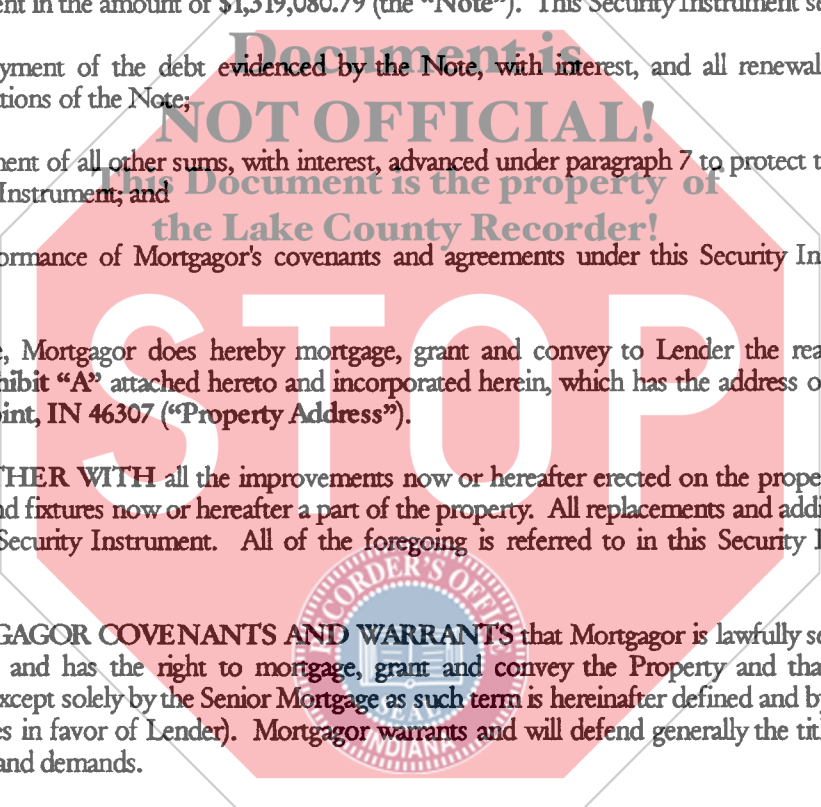
TOGETHER WITH all the improvements now or hereafter erected on the property, all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property".

MORTGAGOR COVENANTS AND WARRANTS that Mortgagor is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered (except solely by the Senior Mortgage as such term is hereinafter defined and by other mortgages and encumbrances in favor of Lender). Mortgagor warrants and will defend generally the title to the Property against all claims and demands.

Mortgagor and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower or Mortgagor shall promptly pay when due the principal of and interest on the debt evidence by the Note and any prepayment and late charges due under the Note.

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2. **Funds for Taxes and Insurance.** Subject to applicable law, Mortgagor shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums, and (d) yearly flood insurance premiums, if any. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Mortgagor's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Mortgagor for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Mortgagor interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Mortgagor to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Mortgagor any interest or earnings on the Funds. Mortgagor and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Mortgagor, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Mortgagor for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Mortgagor in writing, and, in such case Mortgagor shall pay to Lender the amount necessary to make up the deficiency. Mortgagor shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Mortgagor any Funds held by Lender. If, under paragraph 17, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

The foregoing notwithstanding, Lender initially suspends the requirement of the payment of Funds to Lender for the purpose of paying Escrow Items, subject to Lender's right to reinstate and require the payment of Funds to Lender: (a) upon Mortgagor's breach of any covenant or agreement in this Security Instrument or in the Note, or (b) in the event Mortgagor fails to furnish Lender with satisfactory written evidence of payment of all Escrow Items when due.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. **Charges; Liens.** Mortgagor shall pay all prior mortgages, taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Except as provided in Paragraph 21 herein regarding the Senior Mortgage, Mortgagor shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Mortgagor shall pay them on time directly to the person owed payment. Mortgagor shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Mortgagor makes these payments directly, Mortgagor shall promptly furnish to Lender receipts evidencing the payments.

Mortgagor shall promptly discharge any lien which has priority over this Security Instrument unless Mortgagor: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Mortgagor a notice identifying the lien. Mortgagor shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Hazard or Property Insurance.** Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval which shall not be unreasonably withheld. If Mortgagor fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Mortgagor shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 17 the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

The provisions of this Paragraph 5 shall be subject to the provisions of the Senior Mortgage.

6. **Preservation, Maintenance and Protection of the Property; Mortgagor's Loan Application.** Mortgagor shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Mortgagor shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Mortgagor shall also be in default if Mortgagor, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note.

7. **Protection of Lender's Rights in the Property.** If Mortgagor fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Mortgagor secured by this Security Instrument. Unless Mortgagor and Lender agree to other terms of payments, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Mortgagor requesting payment. Notwithstanding any provision to the contrary set forth herein, amounts disbursed by Lender under this paragraph 7 which shall be secured by this Security Instrument shall not exceed 300% of the amount of the original indebtedness secured hereby.

8. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Mortgagor notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Mortgagor. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Mortgagor and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Mortgagor. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Mortgagor and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Mortgagor, or if, after notice by Lender to Mortgagor that the condemnor offers to make an award or settle a claim for damages, Mortgagor fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option,

either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

The provisions of this Paragraph 9 shall be subject to the provisions of the Senior Mortgage.

10. **Mortgagor Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Mortgagor shall not operate to release the liability of the original Mortgagor or Mortgagor's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Mortgagor or Mortgagor's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

11. **Successors and Assigns Bound; Joint and Several Liability.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Mortgagor, subject to the provisions of paragraph 15. Mortgagor's covenants and agreements shall be joint and several.

12. **Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Mortgagor which exceed permitted limits will be refunded to Mortgagor. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Mortgagor. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

13. **Notices.** Any notice to Mortgagor provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Mortgagor designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Mortgagor. Any notice shall be deemed to have been given on the date of delivery or on the second business day following the date of deposit into the US Mail. Any notice provided for in this Security Instrument shall be deemed to have been given to Mortgagor or Lender when given as provided in this paragraph.

14. **Governing Law; Severability.** This Security Instrument shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. **Transfer of the Property or a Beneficial Interest in Mortgagor.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Mortgagor is sold or transferred

and Mortgagor is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument.

16. **Hazardous Substances.** Mortgagor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Mortgagor shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Mortgagor shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Mortgagor has actual knowledge. If Mortgagor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Mortgagor shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 17, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

17. **Acceleration: Remedies.** Upon the occurrence of an Event of Default as such term is defined in the Note, after any applicable notice and cure periods, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 17, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

18. **Lender in Possession.** Upon acceleration under paragraph 17 or abandonment of the Property, Lender (in person, by agent or by judicially appointed receiver) shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. Any rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Security Instrument. The provisions of this Paragraph 18 shall be subject to the provisions of the Senior Mortgage.

19. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Mortgagor. Mortgagor shall pay any recordation costs.

20. **Waiver of Homestead.** Mortgagor hereby waives all right of Homestead exemption in the Property.


21. **Senior Mortgage.** Mortgagor represents and warrants that title to the Property is encumbered only by a mortgage in favor of Bank One, N.A. in the original amount of \$640,000.00 (the "Senior Mortgage") and other mortgage liens in favor of Mortgagee. Mortgagor covenants and agrees that Mortgagor shall make all

payments required under the terms of the Senior Mortgage and shall otherwise keep the Senior Mortgage free from default.

BY SIGNING BELOW, Mortgagor accepts and agrees to the terms and covenants contained in this Security Instrument.

IN WITNESS WHEREOF, the undersigned has caused these presents to be signed and delivered as of the date first above written.

MORTGAGOR(S):

  
JEFFREY A. SVIHLIK

  
MARGO R. BABINEAUX

STATE OF ILLINOIS  
COUNTY OF Cook

Document is  
**NOT OFFICIAL!**

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JEFFREY A. SVIHLIK and MARGO R. BABINEAUX, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as their own free and voluntary act for the uses and purposes therein set forth. GIVEN under my hand and official seal this 3rd day of September, 2008.

  
Notary Public

**"OFFICIAL SEAL"**  
Rosemarie Brodeur  
Notary Public, State of Illinois  
My Commission Expires April 27, 2010



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**LOT 77 IN TREES II, UNIT NO. 2, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 75  
PAGE 29, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA**

**COMMONLY KNOWN AS 4995 EAST 105<sup>TH</sup> LANE, CROWN POINT, INDIANA 46307**

**TAX PARCEL NO. 44-54-51-19**

