When Recorded Mail To: David S. Lang, Esq. Rosenblum, Goldenhersh, Silverstein & Zafft, P.C. 7733 Forsyth Blvd., Suite 400 St. Louis, Missouri 63105

2011 045090

STATE OF INDIANA FILED FOR RECORD

2011 AUG 19 PH 1: 04

MICHELLE B. FAJMAN RECORDER

Document is

Modification and Subordination Agreement 1. **Title of Document**:

Date of Document his August ulta 2011 is the property of 2. the Lake County Recorder!

3. Grantor(s): Duneland Village Associates, L.P., a Missouri limited partnership c/o McCormack Baron Salazar, Inc.

720 Olive Street, Suite 2500

St. Louis, Missouri 63101

Grantee: 4.

Gary Housing Authority

578 Broadway

Gary, Indiana 46402

Attn: Alfreda Peterson

Legal description: 5.

See EXHIBIT B attached hereto and incorporated herein.

Reference(s) to Volume and Page(s): VOIANA 6.

> Second Leasehold Mortgage and Security Agreement recorded as Document 2003-092584.

CKA COMP

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MODIFICATION AND SUBORDINATION AGREEMENT

THIS MODIFICATION AND SUBORDINATION AGREEMENT is made and entered into and dated as of August ______, 2011, by and between DUNELAND VILLAGE ASSOCIATES, L.P., a Missouri limited partnership (the "Mortgagor"), and the GARY HOUSING AUTHORITY, a municipal corporation (the "Subordinate Lender").

WHEREAS, on September 1, 2003, Mortgagor received a loan from the Subordinate Lender in the amount of Three Million One Hundred Sixteen Thousand and NO/100 Dollars (\$3,116,000.00)(the "GHA Loan"), evidenced by a Second Mortgage Loan Promissory Note dated September 1, 2003 (the "Promissory Note"), a Second Mortgage Loan Agreement dated as of September 1, 2003 (the "Loan Agreement"), and a Second Leasehold Mortgage and Security Agreement dated as of September 1, 2003, and recorded September 5, 2003 as Document 2003-092584 in the County of Lake Recorder of Deeds against the Mortgagor's leasehold interest in the real property described on Exhibit B attached hereto (the "Second Mortgage").

WHEREAS, the GHA Loan is subordinate to that certain first mortgage currently held by Gershman Investment Corp., an Arkansas corporation (the "<u>First Mortgage</u>"), said First Mortgage to be refinanced with the proceeds of a new loan in the amount of Three Million Four Hundred Forty-Nine Thousand and NO/100 Dollars (\$3,449,000.00) from Gershman Investment Corp., an Arkansas corporation, and insured by the U.S. Department of Housing and Urban Development ("<u>HUD</u>") pursuant to Section 223(a)(7) of the National Housing Act.

WHEREAS, as a condition of refinancing the First Mortgage, the Subordinate Lender and Mortgagor are required to amend the terms of the GHA Loan to comply with the HUD requirements relating to Secondary Financing, and the Subordinate Lender and Mortgagor desire to amend the Promissory Note, Loan Agreement, and Second Mortgage to conform with same.

NOW THEREFORE, the undersigned agree that the following documents are hereby amended as follows:

- 1. The Subordinate Lender hereby consents to the recording of a Regulatory Agreement (HUD-92466), Mortgage (HUD-4118-B), and UCC-1 Financing Statement (collectively, the "HUD Documents") as a first priority lien encumbering the property described in Exhibit B and acknowledges and agrees that those provisions of the HUD Documents are superior to the Subordinate Lender's security interest and shall continue in full force and effect following the date of acquisition of the project by foreclosure (or instrument in lieu of foreclosure).
- 2. The Second Mortgage, Promissory Note, and Loan Agreement are each hereby amended by adding the following language at the end of each document:

"Nothing herein is intended to alter or conflict with the terms, conditions, and provisions of the HUD regulations, handbooks, administrative requirements, and lender notices in effect at the time of endorsement of the HUD mortgage note, or the documents required to be executed by the Borrower in connection with the endorsement of the HUD mortgage note; and to the extent that they do so, the

HUD regulations, administrative requirements, handbooks, lender notices and documents shall control and this document shall be amended or deemed amended so as not to alter or conflict with the aforesaid regulations, documents, administrative requirements, handbooks or notices. This provision shall terminate and be void upon termination of HUD insurance of the HUD mortgage loan."

- 3. The Second Mortgage, Promissory Note, and Loan Agreement are hereby amended by adding the Secondary Financing Rider attached hereto as Exhibit A, as an exhibit to each agreement.
- 4. Except as amended hereby, the Loan Agreement, Second Mortgage, and Promissory Note shall remain in full force and effect.
- 5. This Agreement may be executed in any number of counterparts and all counterparts shall be construed together and shall constitute but one agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date hereinafter written.

MORTGAGOR:

DUNELAND VILLAGE ASSOCIATES, L.P., a Missouri limited partnership

By:

MBA Urban Development Co.,

A Missouri corporation, Its general partner

Bv:

Hillary B. Zimmerman,

Vice President

STATE OF MISSOURI

COUNTY OF ST. LOUIS

Document is NO'S OFFICIAL!

This Document is the property of

On this day of August, 2011, before me, a Notary Public in and for the City and State aforesaid, personally appeared Hillary B. Zimmerman, to me personally known, who, being by me duly sworn, did say that she is Vice President of MBA Urban Development Co., a Missouri corporation, the general partner of Duneland Village Associates, L.P., a Missouri limited partnership, and acknowledged before me that, acting under due corporate and partnership authority, she executed the foregoing instrument for the purposes therein expressed as the free act and deed of said corporation and limited partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the aforesaid City and State, the day and year last above written.

Notary Public

My Commission Expires:

"NOTARY SEAL"
David Lang, Notary Public
St. Louis County, State of Missouri
My Commission Expires 10/11/2012
Commission Number 08409298

SUBORDINATE LENDER:

GARY HOUSING AUTHORITY,

A municipal corporation

freda Peterson.

Executive Director

STATE OF INDIANA

) SS

CITY OF GARY

This Document is the pr

On this /by/ day of August, 2011, before me, a Notary Public in and for the City and State aforesaid, personally appeared Alfreda Peterson, to me personally known, who, being by me duly sworn, did say that she is the Executive Director of the GARY HOUSING AUTHORITY, a municipal corporation, and acknowledged before me that, acting under due corporate authority, she executed the foregoing instrument for the purposes therein expressed as the free act and deed of said corporation. ocument is

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the aforesaid City and State, the day and year last above written.

the Lake Count Notary Public

My Commission Expires:

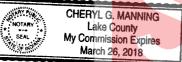




EXHIBIT A SECONDARY FINANCING RIDER

Secondary Financing Rider To GHA LOAN

THIS RIDER is attached to and made a part of the foregoing Second Mortgage Loan Promissory Note (herein, the "Junior Note"), Second Leasehold Mortgage and Security Agreement (herein, the "Junior Mortgage"), and Second Mortgage Loan Agreement between DUNELAND VILLAGE ASSOCIATES, L.P., a Missouri limited partnership, referred to herein as the "Mortgagor," and the GARY HOUSING AUTHORITY, a municipal corporation, referred to herein as the "Junior Lender" (Collectively, the "Junior Loan Documents"). The terms and conditions of the Rider supersede the terms of the Junior Loan Documents, and, should there be any conflict or inconsistency between this Rider and the Junior Loan Documents, the terms and conditions of this Rider shall prevail. By acceptance of delivery and recordation of the Junior Loan Documents, the Junior Lender agrees to the following provisions. By execution of the Junior Loan Documents, the Mortgagor agrees to the following provisions:

- 1. The Junior Loan Documents are specifically subordinate to that certain note and mortgage between the Mortgagor and Gershman Investment Corp. (herein, the "Senior Mortgagee") dated August 1, 2011 and recorded August 19, 2011 in the real property records of the County of Lake, Indiana (the "Senior Mortgage").
- 2. The Junior Note may not mature, and may not bear a maturity date, prior to the date on which the Senior Mortgage matures.
- 3. The Junior Mortgage may be assumed when a sale or transfer of the physical assets occurs under the following conditions:
 - a. Not more than 70 percent of the net proceeds of the sale or transfer is applied to the reduction of the Junior Loan.
 - b. For these instructions, net proceeds are the funds available to the original mortgagor after:
 - i. Correcting any monetary or covenant default on the first mortgage, and
 - ii. Making required contributions to any reserve funds and needed improvements to the property as evidenced by HUD's annual inspection reports.
- 4. If HUD approves a sale of the project pursuant to HUD guidelines for transfers of physical assets, then Junior Lender will agree to such transfer of the ownership of the project.

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- 5. The Junior Note and Junior Mortgage automatically terminate if HUD acquires title to the project by a deed in lieu of foreclosure.
 - 6. The Junior Mortgage is subject to and subordinate to the Senior Mortgage, and the HUD Regulatory Agreement between HUD and the Mortgagor.
- 7. As of the date the Mortgagor has obtained the Senior Mortgage, the proceeds of the Junior Note have been drawn down, the Junior Note is in its repayment period, and the Mortgagor has no further right to draw down the proceeds thereof.
- 8. Payment Only From Surplus Cash. Check the appropriate alternative below:
 - a. X [For junior loans secured by a lien against the project] As long as the Secretary of Housing and Urban Development, or his/her successors or assigns, is the insurer or holder of the Senior Mortgage, any payments due from project income under the Junior Loan Documents, or any prepayments made, shall be payable only from surplus cash of the project, as that term is defined in the Regulatory Agreement dated August ______, 2011, between the Secretary and the Mortgagor, and subject to the availability of such surplus cash in accordance with the provision of said Regulatory Agreement. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the maker to pay the indebtedness evidenced by the Junior Note.
 - [For junior loans NOT secured by a lien against the project] As long as the b. Secretary of Housing and Urban Development, or his/her successors or assigns, is the insurer or holder of the Senior Mortgage, any payment due from project income under the Junior Loan Documents, or any prepayments made, shall be payable only from surplus cash of the project, as that term is defined in the Regulatory Agreement dated _______, 2011, between the Secretary and Mortgagor, and subject to the availability of such surplus cash in accordance with the provisions of said Regulatory Agreement. The restrictions on payment imposed by this paragraph shall not excuse any default caused by the failure of the maker to pay the indebtedness evidenced by the Junior Note. Junior Lender has no claim and will not later assert any claim for payment against the mortgaged property, the mortgage proceeds, any reserve or deposit made with the Senior Mortgagee or another required by the Secretary in connection with the mortgage transaction, or against the rents or other income from the mortgaged property. The Mortgagor cannot issue a surplus cash note to the principals as evidence of an obligation for payment of the Junior Loan.
- 9. Mortgagor has obtained the prior written consent of the Senior Mortgagee to the existence of the Junior Loan.
- 10. To the extent that the Junior Note provides for payment of principal and interest, such principal and interest shall be due an payable as stated therein only from surplus cash of

- the project, as that term is defined in the Regulatory Agreement dated July 22, 2011, between the Secretary and Mortgagor, and subject to the availability of such surplus cash in accordance with the provisions of said Regulatory Agreement.
- 11. The Junior Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Junior Lender except with the prior written approval of HUD.
- 12. The Junior Lender certifies that the Junior Loan Documents represent a *bona fide* transaction and that it fully understands all of HUD's requirements for such secondary financing, and that no prepayment of principal or interest shall be accepted without evidence that the Federal Housing Commissioner has authorized such prepayment. If an unauthorized prepayment is accepted, the funds shall be held by the Junior Lender in trust for the project.



EXHIBIT B LEGAL DESCRIPTION

Legal Description: DUNELAND VILLAGE AS RECORDED IN PLAT BOOK 093, PAGE 55, BEING A SUBDIVISION OF A TRACT OF LAND IN THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 36 NORTH, RANGE 7 WEST OF THE SECOND PRINCIPAL MERIDIAN, LYING SOUTH OF THE RIGHT OF WAY OF THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, NOW THE NEW YORK CENTRAL RAILROAD COMPANY AND EAST OF A LINE 990 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID QUARTER SECTION, IN THE CITY OF GARY, LAKE COUNTY, INDIANA AND AS CORRECTED BY CERTIFICATE OF SURVEYOR RECORDED JUNE 6, 2003 AS DOCUMENT NO. 2003 057315.

PARCEL 1:

BLOCK 1 DUNELAND VILLAGE AS PER PLAT THEREOF RECORDED IN PLAT BOOK 093, PAGE 55, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, AND AS CORRECTED BY CERTIFICATE OF SURVEYOR RECORDED JUNE 6, 2003 AS DOCUMENT NO. 2003 057315, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 36 NORTH, RANGE 7 WEST OF THE SECOND PRINCIPAL MERIDIAN; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER, 306.75 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 30.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, 181.64 FEET; THENCE NORTH 88 DEGREES 45 MINUTES 08 SECONDS WEST, 78.67 FEET; THENCE ON A CURVE TO THE RIGHT, 513.54 FEET SAID CURVE HAVING A RADIUS OF 760.00 FEET AND A CHORD THAT BEARS NORTH 69 DEGREES 23 MINUTES 41 SECONDS WEST, 503.82 FEET; THENCE NORTH 43 DEGREES 39 MINUTES 35 SECONDS EAST, 234.12 FEET; THENCE ON A CURVE TO THE LEFT, 431.40 FEET, SAID CURVE HAVING A RADIUS OF 625.00 FEET AND A CHORD THAT BEARS SOUTH 66 DEGREES 46 MINUTES 33 SECONDS EAST, 422.88 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

BLOCK 2 DUNELAND VILLAGE AS PER PLAT THEREOF RECORDED IN PLAT BOOK 093, PAGE 55, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, AND AS CORRECTED BY CERTIFICATE OF SURVEYOR RECORDED JUNE 6, 2003 AS DOCUMENT NO. 2003 057315, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 36 NORTH, RANGE 7 WEST OF THE SECOND PRINCIPAL MERIDIAN; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER, 639.05 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 30.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, 282.20 FEET; THENCE ON A CURVE TO THE RIGHT, 393.29 FEET SAID CURVE HAVING A RADIUS OF 575.00 FEET AND A CHORD THAT BEARS NORTH 66 DEGREES 39 MINUTES 16 SECONDS WEST, 385.67 FEET; THENCE NORTH 43 DEGREES 39 MINUTES 35 SECONDS EAST, 250.20 FEET; THENCE ON A CURVE TO THE LEFT, 190.89 FEET, SAID CURVE HAVING A RADIUS OF 352.89 FEET AND A CHORD THAT BEARS SOUTH 74 DEGREES 06 MINUTES 26 SECONDS EAST, 188.57 FEET TO THE POINT OF BEGINNING.

NOT OFFICIAL!

BEGINNING. PARCEL 3:

BLOCK 3 DUNELAND VILLAGE AS PER PLAT THEREOF RECORDED IN PLAT BOOK 093, PAGE 55, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, AND AS CORRECTED BY CERTIFICATE OF SURVEYOR RECORDED JUNE 6, 2003 AS DOCUMENT NO. 2003 057315, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 36 NORTH, RANGE 7 WEST OF THE SECOND PRINCIPAL MERIDIAN; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER, 639.05 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 30.00 FEET; THENCE ON A CURVE TO THE RIGHT 190.89 FEET, SAID CURVE HAVING A RADIUS OF 352.89 FEET AND A CHORD THAT BEARS NORTH 74 DEGREES 06 MINUTES 26 SECONDS WEST, 188.57 FEET; THENCE NORTH 46 DEGREES 20 MINUTES 25 SECONDS WEST, 150.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 43 DEGREES 39 MINUTES 35 SECONDS WEST, 246.35 FEET; THENCE ON A CURVE TO THE RIGHT, 147.07 FEET SAID CURVE HAVING A RADIUS OF 375.00 FEET AND A CHORD THAT BEARS NORTH 26 DEGREES 50 MINUTES 09 SECONDS WEST, 146.12 FEET; THENCE NORTH 15 DEGREES 36 MINUTES 03 SECONDS WEST, 42.11 FEET; THENCE ON A CURVE TO THE RIGHT, 168.82 FEET SAID CURVE HAVING A RADIUS OF 575.00 FEET AND A CHORD THAT BEARS NORTH 07 DEGREES 11 MINUTES 23 SECONDS WEST, 168.22 FEET; THENCE SOUTH 87 DEGREES 41 MINUTES 47 SECONDS EAST, 200.38 FEET; THENCE SOUTH 48 DEGREES 30 MINUTES 29 SECONDS EAST, 16.35 FEET; THENCE ON A CURVE TO THE LEFT, 152.63 FEET, SAID CURVE HAVING A RADIUS OF 352.89 FEET AND A CHORD THAT BEARS SOUTH 21 DEGREES 40 MINUTES 46 SECONDS EAST, 151.44 FEET TO THE POINT OF BEGINNING.

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, PARCEL 4:

BLOCK 4 DUNELAND VILLAGE AS PER PLAT THEREOF RECORDED IN PLAT BOOK 093, PAGE 55, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, AND AS CORRECTED BY CERTIFICATE OF SURVEYOR RECORDED JUNE 6, 2003 AS DOCUMENT NO. 2003 057315, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 36 NORTH, RANGE 7 WEST OF THE SECOND PRINCIPAL MERIDIAN; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER, 306.75 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 30.00 FEET; THENCE ON A CURVE TO THE RIGHT 431.40 FEET, SAID CURVE HAVING A RADIUS OF 625.00 FEET AND A CHORD THAT BEARS NORTH 66 DEGREES 46 MINUTES 33 SECONDS WEST, 422.88 FEET; THENCE NORTH 45 DEGREES 02 MINUTES 38 SECONDS WEST, 150.04 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 43 DEGREES 39 MINUTES 35 SECONDS WEST, 150.04 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 43 DEGREES 39 MINUTES 35 SECONDS WEST, 232.35 FEET; THENCE ON A CURVE TO THE RIGHT, 272.76 FEET SAID CURVE HAVING A RADIUS OF 760.00 FEET AND A CHORD THAT BEARS NORTH 28 DEGREES 25 MINUTES 19 SECONDS WEST, 271.30 FEET; THENCE ON A CURVE TO THE RIGHT, 99.61 FEET SAID CURVE HAVING A RADIUS OF 315.00 FEET AND A CHORD THAT BEARS NORTH 09 DEGREES 04 MINUTES 52 SECONDS WEST, 99.20 FEET; THENCE NORTH 00 DEGREES 01 MINUTES 19 SECONDS WEST, 202.08 FEET; THENCE NORTH 46 DEGREES 08 MINUTES 27 SECONDS EAST, 18.75 FEET; THENCE SOUTH 87 DEGREES 41 MINUTES 47 SECONDS EAST, 178.42 FEET; THENCE ON A CURVE TO THE LEFT, 184.45 FEET SAID CURVE HAVING A RADIUS OF 625.00 FEET AND A CHORD THAT BEARS SOUTH 07 DEGREES 08 MINUTES 47 SECONDS EAST, 183.78 FEET; THENCE SOUTH 15 DEGREES 36 MINUTES 03 SECONDS EAST, 172.72 FEET TO THE POINT OF BEGINNING.

PARCEL 5:

BLOCK 5 DUNELAND VILLAGE AS PER PLAT THEREOF RECORDED IN PLAT BOOK 093, PAGE 55, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, AND AS CORRECTED BY CERTIFICATE OF SURVEYOR RECORDED JUNE 6, 2003 AS DOCUMENT NO. 2003 057315, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 36 NORTH, RANGE 7 WEST OF THE SECOND PRINCIPAL MERIDIAN; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER, 1100.62 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF THE NEW YORK CENTRAL RAILROAD; THENCE NORTH 87 DEGREES 43 MINUTES 49 SECONDS WEST ALONG SAID SOUTHERLY RIGHT OF WAY LINE 328.40 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 01 DEGREE 06 MINUTES 51 SECONDS WEST 115.80 FEET; THENCE ON A CURVE TO THE LEFT, 4.32 FEET SAID CURVE HAVING A RADIUS OF 302.89 FEET AND A CHORD THAT BEARS NORTH S 00 DEGREES 42 MINUTES 36 SECONDS WEST, 4.32 FEET; THENCE NORTH 87 DEGREES 41 MINUTES 47 SECONDS WEST, 419.80 FEET; THENCE NORTH 02 DEGREES 16 MINUTES 11 SECONDS EAST, 119.84 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF THE NEW YORK CENTRAL RAILROAD; THENCE SOUTH 87 DEGREES 43 MINUTES 49 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE 417.34 FEET TO THE POINT OF BEGINNING.

BASIS OF BEARINGS PLAT OF DUNELAND VILLAGE RECORDED IN PLAT BOOK 93, PAGE 55.

