

UNOFFICIAL COPY

1/2

13-01213

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1306549036 Fee: \$74.00
Karen A. Yarbrough RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 03/06/2013 12:23 PM Pg: 1 of 19

Report Mortgage Fraud
800-532-8785

Property of Cook County Clerk's Office

PREMIER TITLE

The property identified as: **PIN:** 12-22-300-022-0000

Address:

Street: 9439 Nerbonne Park

Street line 2:

City: Franklin Park

State: IL

ZIP Code: 60131

Lender: Medford Capital, LLC.

Borrower: Maros Havran

Loan / Mortgage Amount: \$130,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7/70 et seq. because it is commercial property.

Certificate number: 3D46F353-F789-4FAC-9B75-DA38A0189334

Execution date: 02/08/2013

19

UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING MAIL
TO:

Richard Springer, Esq.
The Law Offices of D.S. Ashen, Ltd.
217 N. Jefferson Street, Suite 601
Chicago, IL 60606

FOR RECORDERS USE ONLY

MORTGAGE

THIS MORTGAGE, is made as of this 8th day of February 2013 by **Maros Havran** (the "Mortgagor"), whose address is 9439 Nerbonne Park, Franklin Park, IL 60131, to **Medford Capital, LLC**, an Illinois limited liability company (together with its successors and assigns), including each and every holder of the Note (the "Mortgagee") whose address is 3223 Lake Ave., Suite 15C, Wilmette, IL 60091.

WHEREAS, the Mortgagor has, concurrently executed and delivered to the Mortgagee a Note dated the date hereof, payable to the order of the Mortgagee, in the principal sum of One Hundred and Thirty Thousand (\$130,000.00) Dollars (the "Note"), evidencing a \$130,000.00 mortgage loan made by Mortgagee to Mortgagor (the "Mortgage Loan"), repayable in monthly installments payments of interest only as therein described, the terms and provisions of which Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and

WHEREAS, the indebtedness evidenced by the Note, and any extensions, refinancings, amendments, renewals, modifications, increases, consolidations and conversions thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as provided herein or in the Note or other Loan Documents (as herein defined), are herein collectively called the "Indebtedness Hereby Secured".

NOW, THEREFORE:

To secure the payment of the interest and premium, if any, on the Note according to its tenor and effect and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, provisions and agreements herein and in the Note contained, and in consideration of the premises, and for other good and valuable considerations, the receipt and sufficiency of all of which is hereby acknowledged by the Mortgagor, the Mortgagor does hereby **RELEASE, REMISE, ALIENATE, MORTGAGE, CONVEY** unto the Mortgagee, and **GRANT** the Mortgagee a security interest in, all and rights, interests and property hereinafter described (collectively, the "Premises"):

- (a) All of the real estate particularly described in **Exhibit "A"** attached hereto, and commonly known as the following ("Real Estate"):

Address: 9439 Nerbonne Park, Franklin Park, IL 60131
PIN: 12-22-300-022-0000

UNOFFICIAL COPY

- (b) All buildings and other improvements now or at any time hereafter constructed or erected upon or located at the Real Estate, together with and including all fixtures, equipment, machinery, appliances and other articles and attachments now or hereafter forming part of, attached to or incorporated in any such building or improvements (collectively, the "Improvements");
- (c) All privileges, reservations, allowances, hereditaments, tenements and appurtenances now or hereafter belonging or pertaining to the Real Estate or Improvements;
- (d) All leasehold estates, right, title and interest of the Mortgagor in any and all leases, subleases, arrangements or agreements relating to the use and occupancy of the Real Estate and Improvements or any portion thereof, now or hereafter existing or entered into (collectively, the "Leases"), together with all cash or security deposits, advance rentals and other deposits or payments of similar nature given in connection with any Leases;
- (e) All rents, issues, profits, royalties, income, avails, and other benefits now or hereafter derived from the Real Estate and Improvements, under Leases or otherwise (collectively, the "Rents"), subject to the right, power and authority given to the Mortgagor in the Assignment (as herein defined), to collect and apply the Rents;
- (f) All right, title and interest of the Mortgagor in and to all options to purchase or lease the Real Estate or Improvements or any portion thereof or interest therein, or any other rights, interests or greater estates in the rights and properties comprising the Premises, now owned or hereafter acquired by the Mortgagor;
- (g) Any interests, estates or other claims, both in law and in equity, which the Mortgagor now has or may hereafter acquire in the Real Estate and Improvements or other rights, interests or properties comprising the Premises now owned or hereafter acquired;
- (h) All right, title and interest of the Mortgagor now owned or hereafter acquired in and to
 - (i) any land or vaults lying within the right-of-way of any street or alley, open or proposed, adjoining the Real Estate; (ii) any and all alleys, sidewalks, strips and gores of land adjacent to or used in connection with the Real Estate and Improvements; (iii) any and all rights and interests of every name or nature forming part of or used in connection with the Real Estate and/or the operation and maintenance of the Improvements; (iv) all easements, rights-of-way and rights used in connection with the Real Estate or Improvements or as a means of access thereto; and (v) all water rights and shares of stock evidencing the same;
- (i) All the estate, interest, right, title or other claim or demand which the Mortgagor now has or may hereafter have or acquire with respect to (i) the proceeds of insurance in effect with respect to the Premises and (ii) any and all awards, claims for damages and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding, or purchase in lieu thereof, of the whole or any part of the Premises, including any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (all herein generally called "Awards").

UNOFFICIAL COPY

TO HAVE AND TO HOLD the Premises hereby mortgaged and conveyed or intended so to be, together with the rents, issues and profits thereof, unto the Mortgagee forever, for the uses and purposes herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default, as hereinafter defined;

FOR THE PURPOSE OF SECURING:

- (a) Payment of the indebtedness with interest thereon evidenced by the Note and any and all modifications, amendments, increases, refinancings, extensions, renewals, conversions and consolidations thereof or thereto, in whole or in part, and all other Indebtedness Hereby Secured;
- (b) Performance and observance by the Mortgagor of all of the terms, provisions, covenants and agreements on the Mortgagor's part to be performed and observed under the Assignment; and
- (c) Performance and observance by the Mortgagor of all of the terms, provisions, covenants and agreements on the Mortgagor's part to be performed or observed under all other loan documents securing or relating to the Note (such other loan documents, together with the Note, the Assignment and this Mortgage, collectively, the "Loan Documents");

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the Indebtedness Hereby Secured shall be duly and punctually paid and all the terms, provisions, conditions and agreements herein contained on the part of the Mortgagor to be performed or observed shall be strictly performed and observed, then the Mortgagee shall release this Mortgage at the expense of the Mortgagor.

AND IT IS FURTHER AGREED THAT:

1. **Payment of Indebtedness.** The Mortgagor will duly and promptly pay each and every installment of interest and premium, if any, on the Note, and all other Indebtedness Hereby Secured, as the same becomes due, and will duly perform and observe all of the covenants, agreements and provisions herein and in the Note provided on the part of the Mortgagor to be performed and observed.
2. **Maintenance, Repair, Restoration, Prior Liens, Parking.** The Mortgagor will:
 - (a) promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for the purpose;
 - (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens, materialmen's or like liens or claims or other liens or claims for lien;
 - (c) pay, when due, any indebtedness which may be secured by a lien or charge on the Premises that is inferior or superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee;

UNOFFICIAL COPY

- (d) complete, within a reasonable time, any Improvements now or at any time in the process of erection upon the Premises;
- (e) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;
- (f) make no material alterations in the Premises, except as required by law or municipal ordinance or otherwise consented to by the Mortgagee;
- (g) suffer or permit no change in the general nature of the occupancy of the Premises without the Mortgagee's prior written consent;
- (h) pay when due all operating costs of the Premises;
- (i) initiate or acquiesce in no zoning reclassification with respect to the Premises, without the Mortgagee's prior written consent; and
- (j) provide, improve, grade, surface and thereafter maintain, clean, repair, police and adequately light parking areas within the Premises as may be required by law, ordinance or regulation, together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof.

3. Taxes. The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (collectively the "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby; and the Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefore; provided that the Mortgagor may contest the amount or propriety of any Taxes in accordance with the provisions of Section 28 hereof; provided that (a) in the event that any law or court decree has the effect of deducting from the value of land for the purposes of taxation any lien thereon, or imposing upon the Mortgagee the payment in whole or any part of the Taxes or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or in the interest of the Mortgagee in the Premises or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured or the holder thereof, then, and in any such event, the Mortgagor upon demand by the Mortgagee, will pay such Taxes, or reimburse the Mortgagee therefore and (b) nothing in this Section 3 contained shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

4. Insurance Coverage. The Mortgagor will insure and keep insured the Premises and each and every part and parcel thereof against such perils and hazards as the Mortgagee may from time to time require, and in any event including:

- (a) All risk insurance coverage against loss to the Improvements caused by fire, lightning and risks covered by the so-called "all perils" endorsement and such other risks as the Mortgagee may reasonably require, in amounts (but in no event less than the initial

UNOFFICIAL COPY

stated principal amount of the Note) equal to the full replacement value of the Improvements, plus the cost of debris removal, with full replacement cost endorsement;

- (b) Comprehensive general public liability insurance against bodily injury and property damage in any way arising in connection with the Premises with such limits as the Mortgagee may reasonably require and in any event not less than \$1,000,000.00 single limit coverage;
- (c) During the making of any alterations or improvements to the Premises (i) insurance covering claims based on the owner's contingent liability not covered by the insurance provided in Subsection (b) above; (ii) Workmen's Compensation insurance covering all persons engaged in making such alterations or improvements; and (iii) builder's risk insurance complete form;
- (d) Federal Flood Insurance in the maximum obtainable amount up to the amount of the Indebtedness Hereby Secured evidenced by the Note, if the Premises is in a "flood plain area" as defined by the Federal Insurance Administration pursuant to the Federal Flood Disaster Protection Act of 1973, as amended;
- (e) Rental value insurance (or, at the discretion of the Mortgagee, business interruption insurance) in amounts sufficient to pay during any period of up to one (1) year in which the Improvements may be damaged or destroyed (i) all rents derived from the Premises and (ii) all amounts (including all taxes, assessments, utility charges and insurance premiums) required herein to be paid by the Mortgagor or by tenants of the Premises; and
- (f) If any part of the Premises is now or hereafter used for the sale or dispensing of beer, wine, spirits or any other alcoholic beverages, so-called "Dram Shop" or "Innkeeper's Liability" insurance against claims or liability arising directly or indirectly to persons or property on account of such sale or dispensing of beer, wine, spirits or other alcoholic beverages, including in such coverage loss of means of support, all in amounts as may be required by law or as the Mortgagee may specify, but in no event less than \$1,000,000.00 single limit coverage.

5. Insurance Policies. All policies of insurance to be maintained and provided as required by Section 4 hereof shall:

- (a) be in forms, companies having a Best Insurance Guide rating of A+ or A and are licensed to transact business in the State of Illinois and amounts reasonably satisfactory to the Mortgagee, and all policies of casualty insurance shall have attached thereto the Mortgagee clauses or endorsements in favor of and with loss payable to the Mortgagee;
- (b) contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against the Mortgagee;
- (c) be written in amounts sufficient to prevent the Mortgagor from becoming a coinsurer; and

UNOFFICIAL COPY

- (d) provide for ten (10) days prior written notice of cancellation or material modification to the Mortgagee.

The Mortgagor will deliver all policies, and including additional and renewal policies to the Mortgagee, and, in case of insurance policies about to expire, the Mortgagor will deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration.

6. Deposits for Real Estate Taxes. In order to assure the payment of Real Estate Taxes payable with respect to the Premises as and when the same shall become due and payable:

At or before the Loan Opening and disbursement of funds, Borrower is required to maintain a real estate tax escrow with Lender and shall deposit as initial reserves an amount equal to 4 months of the Real Estate Taxes. Additionally, Borrowers shall deposit with Lender on the first day of each month, commencing with the date the first Loan Payment is due, an amount equal to one-twelfth (1/12) of the Taxes ("Tax Escrow Account") next to become due upon the Property; provided that, in the case of the first such deposit, there shall be deposited, in addition, an amount as estimated by the Lender which, when added to monthly Loan Payment to be made thereafter, shall assure to the Lender's satisfaction that there will be sufficient funds on deposit to pay all bills as they come due. Payment for the Tax Escrow Account is included in Borrowers Loan Payment and shall cover real estate taxes.

The Lender will, out of the Tax Escrow Account, upon the presentation of all bills to Lender, pay the real estate taxes. If the total on hand in the Tax Escrow Account shall not be sufficient to pay all of the bills when they become due, then the Borrowers shall pay to the Lender within 21 days on demand any amount necessary to make up the deficiency. If the total of such deposits exceed the amount required to pay the taxes, such excess shall be maintained in the Tax Escrow Account for future bills. Notwithstanding anything to the contrary herein contained, the Lender shall not be liable for any failure to apply to the payment of all bills unless the Borrower, while no default exists hereunder and within a reasonable time before the due date, shall have requested the Lender in writing to make the application of such deposits on hand, accompanied with copies of the bills. Failure to pay the deficiency of Tax Deposits within 21 days of demand will result in a default under this Mortgage.

In the event real estate taxes for the Property increase, upon seven (7) days written notice to Borrower, Lender in its sole and exclusive discretion, is hereby authorized to increase the amount of the Loan Payment to account for any such increase. Failure by Borrower to pay the new Loan Payment shall constitute a default of this Agreement. In the event of a default in any of the provisions contained in this Mortgage or in the Note, the Mortgagee may, at its option, without being required so to do, apply any Tax Deposits on hand on any of the Indebtedness Hereby Secured, in such order and manner as the Mortgagee may elect. When the Indebtedness Hereby Secured has been fully paid, then any remaining Tax Deposits shall be paid to the Mortgagor. All Tax Deposits are hereby pledged as additional security for the Indebtedness Hereby Secured, and shall be held in trust to be irrevocably applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Mortgagor.

The aggregate of the monthly tax deposits, together with monthly payments of interest and/or principal and interest payable on the Note, shall be paid in monthly increments to be applied to the following items in the order stated:

- (i) Taxes;
- (ii) Late Charges (as defined in the Note) and costs advanced by the Mortgagee;

UNOFFICIAL COPY

- (iii) Indebtedness Hereby Secured other than principal and interest on the Note;
- (iv) Interest on the Note.

7. **Proceeds of Insurance.** The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Premises, and,

- (a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Mortgagor, or (ii) allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that the Mortgagor may itself adjust losses aggregating not in excess of Ten Thousand Dollars (\$10,000.00), and provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand;
- (b) In the event of any insured damage to or destruction of the Premises or any part thereof (an "Insured Casualty") and if, in the reasonable judgment of the Mortgagee, the Premises can be restored to an architectural and economic unit of the same character and not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness Hereby Secured and the insurers do not deny liability to the insured, then, if no Event of Default as hereinafter defined shall have occurred and be then continuing, the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding ("Restoring") the Premises or any part thereof subject to Insured Casualty, as provided for in Section 9 hereof;
- (c) If in the reasonable judgment of the Mortgagee the Premises cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then at any time from and after the Insured Casualty, upon thirty (30) days written notice to the Mortgagor, the Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;
- (d) Except as provided for in Subsection (b) of this Section 7, the Mortgagee shall apply the proceeds of insurance (including amounts not required for Restoring effected in accordance with Subsection (b) above) consequent upon any Insured Casualty toward the Indebtedness Hereby Secured, in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of insurance proceeds as aforesaid;
- (e) In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the restoring of the Premises, the Mortgagor hereby covenants to restore the same so that the Premises will be of at least equal value and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;

UNOFFICIAL COPY

- (f) Any portion of the insurance proceeds remaining after payment in full of the Indebtedness Hereby Secured shall be paid to the Mortgagor or as ordered by a court of competent jurisdiction;
- (g) No interest shall be payable by the Mortgagee on account of any insurance proceeds at any time held by the Mortgagee.

8. **Condemnation.** The Mortgagor will give the Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the Premises; and, the Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any Award consequent upon any Taking;

- (a) If in the reasonable judgment of the Mortgagee the Premises can be restored to an architectural and economic unit of the same character and not less valuable than the Premises prior to such Taking and adequately securing the outstanding balance of the Indebtedness Hereby Secured, then, if no Event of Default (as herein defined) shall have occurred and be then continuing, the Award shall be applied to reimburse the Mortgagor for the cost of Restoring the portion of the Premises remaining after such Taking, as provided in Section 9 hereof;
- (b) If in the reasonable judgment of the Mortgagee the Premises cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then, at any time from and after the Taking, upon thirty (30) days written notice to the Mortgagor, the Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become, immediately due and payable;
- (c) Except as provided for in Subsection (b) of this Section 8, the Mortgagee shall apply any Award (including the amount not required for Restoration effected in accordance with Subsection (b) above) toward the Indebtedness Hereby Secured in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness Hereby Secured made out of any Award as aforesaid;
- (d) In the event that any Award shall be made available to the Mortgagor for Restoring the portion of the Premises remaining after a Taking, the Mortgagor hereby covenants to restore the remaining portion of the Premises so that it will be of at least equal value and of substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;
- (e) Any portion of any Award remaining after payment in full of the Indebtedness Hereby Secured shall be paid to the Mortgagor or as ordered by a court of competent jurisdiction;
- (f) No interest shall be payable by the Mortgagee on account of any Award at any time held by the Mortgagee.

UNOFFICIAL COPY

9. Disbursement of Insurance Proceeds and Condemnation Awards. In the event the Mortgagor is entitled to reimbursement out of insurance proceeds or any Award held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award, to complete the proposed Restoring, and with such architect's certificate, waivers of lien, contractor's sworn statements and such other evidence of cost and of payment as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such Restoring be submitted to and approved by the Mortgagee prior to commencement of work. No payment made prior to the final completion of the Restoring shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay for the cost of completion of the Restoring, free and clear of all liens or claims for lien.

10. Stamp Tax. If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, the Mortgagor shall pay such tax in the manner required by such law.

11. Effect of Extensions of Time, Amendments on Junior Liens and Others. If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefore, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, if any, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extensions, variation or release. Any person, firm or corporation taking a junior mortgage or other lien upon the Premises or any interest therein, shall take such lien subject to the rights of the Mortgagee herein to amend, modify and supplement this Mortgage, the Note and the Assignment, and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this Section contained shall be construed as waiving any provision of Section 15 hereof which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed or encumbered.

12. Effect of Changes in Tax Laws. In the event of the enactment after the date hereof by any legislative authority having jurisdiction of the Premises of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgage or debts secured by mortgages or the Mortgagee's interest in the Premises, or the method of collecting taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured, or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefore; provided that if in the opinion of counsel for the Mortgagee the payment by the Mortgagor of any such taxes or assessments shall be unlawful, then the Mortgagee may, by notice to the Mortgagor, declare the entire principal balance of the Indebtedness Hereby Secured to be due and

UNOFFICIAL COPY

payable on a date specified in such notice not less than 180 days after the date of such notice, and the Indebtedness Hereby Secured shall then be due and payable without premium or penalty on the date so specified in such notice.

13. The Mortgagee's Performance of the Mortgagor's Obligations. In case of default herein, the Mortgagee either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein which is required of the Mortgagor (whether or not the Mortgagor is personally liable therefore) in any form and manner deemed expedient to the Mortgagee; and the Mortgagee may, but shall not be required to make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien on title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax or assessment, and may, but shall not be required to, complete construction, furnishing and equipping of the Improvements upon the Premises and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and Improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including attorney's fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Premises and such Improvements or to pay any such operating costs and expenses thereof or to keep the Premises and Improvements operational and usable for their intended purposes, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the default rate, specified in the Note (the "Default Rate"). Inaction of the Mortgagee shall never be considered a waiver of any right accruing to it on account of any default on the part of the Mortgagor. The Mortgagee, in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Improvements or the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, the Mortgagee may do so in such amounts and to such persons as the Mortgagee may deem appropriate and may enter into such contracts therefore as the Mortgagee may deem appropriate or may perform the same itself.

14. Inspection of Premises. The Mortgagee shall have the right to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose.

15. Restrictions on Transfer. It shall be an immediate Event of Default and default hereunder if, without the prior written consent of the Mortgagee, any of the following shall occur, and in any event the Mortgagee may condition its consent upon such increase in rate of interest payable upon the Indebtedness Hereby Secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as the Mortgagee may in its sole discretion require:

- (a) If the Mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein, and sales or other disposition of Mortgage (as defined in Section 16) no

UNOFFICIAL COPY

longer useful in connection with the operation of the Premises ("Obsolete Mortgage"), provided that prior to the sale or other disposition thereof, such Obsolete Mortgage has been replaced by Mortgage, subject to the first and prior lien hereof, of at least equal value and utility;

- (b) If the Mortgagor is a corporation or limited liability company, then if any shareholder, member or officer shall create, effect contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any such interest in such corporation or limited liability company;
- (c) If there shall be any change in control of the corporation or limited liability company (by way of management, ownership, membership or otherwise) which directly or indirectly negatively affects the Premises;

(each event described in the foregoing Sections 15(a) thru (c), inclusive, being sometimes hereinafter referred to as "Unpermitted Transfer") in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that the foregoing provisions of this Section 15 shall not apply (i) to liens securing the Indebtedness Hereby Secured, (ii) to the lien of current taxes and assessments not yet due and payable or (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests as the case may be, in the Mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee.

16. Events of Default. An event of default shall occur if one or more of the following events (herein called "Events of Default") shall happen:

- (a) If a default is made in the due and punctual payment of the Note or any installment thereof of interest when the same is due and payable, and any applicable grace period as specified in the Note shall have elapsed; or
- (b) If default is made in the making of any payment of any other monies required to be made under the Note or hereunder; or
- (c) If an Unpermitted Transfer as described in Section 15 hereof shall occur and be continuing without notice of any kind; or
- (d) If default is made in the maintenance of the Real Estate or Premises by Mortgagor or delivery to the Mortgagee of insurance required to be maintained and delivered hereunder, without notice or grace of any kind; or
- (e) If (and for the purpose of this Section 18(e) only, the term the Mortgagor shall mean and include not only the Mortgagor but each other person who, as guarantor, comaker or otherwise, shall be or become liable for or obligated upon all or any part of the Indebtedness Hereby Secured or any of the covenants or agreements contained herein),

UNOFFICIAL COPY

- (i) the Mortgagor shall file a voluntary petition for relief under the United States Bankruptcy Code (the "Bankruptcy Code") or any similar law, state or federal, now or hereafter in effect, or
- (ii) the Mortgagor shall file an answer admitting insolvency or inability to pay its debts, or
- (iii) Within sixty (60) days after the filing against the Mortgagor of any involuntary proceedings under such Bankruptcy Code or similar law, such proceedings shall not have been vacated or stayed, or
- (iv) the Mortgagor files a Bankruptcy proceeding in Federal Court or the Mortgagor be adjudicated in a bankruptcy, or a trustee or receiver shall be appointed for the Mortgagor or for all or the major part of the Mortgagor's property or the Premises, in any involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the Mortgagor's property or the Premises in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of the Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days, or
- (v) the Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises
- (f) If any default shall exist under any provision in this Mortgage hereof or under the Assignment; or
- (g) If the Premises shall be abandoned;
- (h) If any default shall exist under the provisions of any of the other Loan Documents and not be cured within any applicable grace period; or
- (i) If any representation made by or on behalf of the Mortgagor in connection with the Indebtedness Hereby Secured, shall prove untrue in any material respect; or
- (j) If any action in State or Federal Court is filed against the Premises, the Borrower, or otherwise, which negatively affects the Premises in anyway, creates a lien on the Premises, creates a judgment against the premises, or in any way effects Borrower's Mortgaged collateral on the Premises.
- (k) Borrower obtains additional subordinated financing of the Mortgaged Property during the term of the Loan without the prior written consent of the Lender.
- (l) If any lien gets placed on the Premises which negatively affects the Premises in anyway, or effects Borrower's Mortgaged collateral on the Premises in anyway; or
- (m) If any other terms and conditions within this Mortgage, the Note or any other Loan Document is violated.

UNOFFICIAL COPY

Upon receiving written notice from Mortgagee of an Event of Default, Mortgagor shall cure the default within seven (7) days from the date of the notice, provided, however, that in the event of a default which is not capable of being cured within a seven (7) day period, and Mortgagor has initiated and diligently pursued a course of action reasonably expected to cure the default within the seven (7) day period, the time to cure may be extended for an additional twenty-one (21) day period.

Upon an Event of Default not cured, Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, without further notice all Indebtedness Hereby Secured to be immediately due and payable, whether or not such default is thereafter remedied by the Mortgagor, and the Mortgagee may immediately proceed to foreclose this Mortgage and/or exercise any right, power or remedy provided by this Mortgage, the Note, the Assignment, Loan Agreement, or any other loan document, or by law or in equity conferred. This provision continues with any extensions, modifications or renewals of this Mortgage or any other loan documents.

17. Foreclosure. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof pursuant to the Illinois Mortgage Foreclosure Act. Mortgagor, and all subsequent persons claiming an interest in this Mortgage, expressly waives all rights of redemption and rights of reinstatement pursuant to section 5/15-1601 of the Illinois Mortgage Foreclosure Act.

18. Possession. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises or have a Mortgagee in Possession appointed. Such appointment shall have the powers and duties provided for under sections 735 ILCS 5/15-1701 through 1706 of the Illinois Mortgage Foreclosure Act.

19. Waiver. The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee, but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted.

20. Assignment. As further security for the Indebtedness Hereby Secured, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee a separate instrument (herein called the "Assignment") dated as of the date hereof. The Mortgagor agrees that it will duly perform and observe all of the terms and provisions on its part to be performed and observed under the Assignment.

21. Commercial Loan. It is understood and agreed that the loans evidenced by the Note and secured hereby are commercial business loans within the purview of Section 205/4 of Chapter 815 of Illinois Compiled Statutes (or any substitute, amended, or replacement statutes).

UNOFFICIAL COPY

22. Environmental Conditions. The Mortgagor represents that: (i) the Mortgagor shall keep or cause the Premises to be kept free of Hazardous Materials, (ii) Mortgagor has not used Hazardous Materials on, from or affecting the Premises in any manner which violates federal, State of Illinois or any Illinois unit of local government's laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best knowledge of the Mortgagor, no prior owner of the Premises or any tenant, subtenant, occupant, prior tenant, prior subtenant or prior occupant has used Hazardous Materials on, from or affecting the Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials; and (iii) the Mortgagor has never received any notice of any violations of federal, State of Illinois or Illinois local governmental laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials and, to the best knowledge of the Mortgagor, there have been no actions commenced or threatened by any party for noncompliance. For purposes of this Mortgage, "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (42 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto.

23. Contests. Notwithstanding anything to the contrary herein contained, the Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises ("Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

- (a) The Mortgagor shall forthwith give notice of any Contested Lien to the Mortgagee at the time the same shall be asserted;
- (b) The Mortgagor shall deposit with the Mortgagee the full amount (the "Lien Amount") of such Contested Lien, together with such amount as the Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment the Mortgagor may furnish to the Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to the Mortgagee;
- (c) The Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit the Mortgagee to be represented in any such contest and shall pay all expenses incurred by the Mortgagee in so doing, including fees and expenses of the Mortgagee's counsel (all of which shall constitute so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand);
- (d) The Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to the Mortgagor, or (ii) forthwith upon demand by the

UNOFFICIAL COPY

Mortgagee if, in the opinion of the Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if the Mortgagor shall fail so to do, the Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by the Mortgagee in so doing shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand; and provided further that the Mortgagee may in such case use and apply for the purpose monies deposited as provided in Subsection 29(b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

24. Title in the Mortgagor's Successors. In the event that the ownership of the Premises or any part thereof becomes vested in a person or persons other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the Mortgagor. The Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises.

25. Rights Cumulative. Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

26. Successors and Assigns. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and the respective successors and assigns of the Mortgagor, and shall inure to the benefit of the Mortgagee and its successors and assigns. Wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such from time to time holder of the Note shall have and enjoy all of the rights, privileges, powers, options, benefits and security afforded hereby and hereunder, and may enforce every and all of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder was herein by name specifically granted such rights, privileges, powers, options, benefits and security and was herein by name designated the Mortgagee.

27. Provisions Severable. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

28. Waiver of Defense. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

29. Maximum Indebtedness Hereby Secured and Future Advances. In no event shall the Indebtedness Hereby Secured exceed two times the aggregate stated principal amount of the Note.

UNOFFICIAL COPY

This Mortgage secures the repayment of all advances that the Mortgagee may extend to the Mortgagor under the Note and secures not only existing indebtedness, but also secures future advances, with interest thereon, whether such advances are obligatory or to be made at the option of the Mortgagee to the same extent as if such future advances were made on the date of the execution of this Mortgage, and although there may be no indebtedness outstanding at the time any advance is made.

30. Addresses and Notices. All Notices in connection of this Note shall be deemed effective if made in writing and delivered to the recipient's address upon (a) hand delivery, (b) registered or certified mail, postage prepaid, (c) Federal Express or like overnight courier service, or (d) regular first class United States Mail. Notice made in accordance with this section shall be deemed delivered on receipt if delivered by hand or on the third (3rd) business day after mailing if mailed regular first class United States mail or registered or certified mail, or on the next business day if deposited with an overnight courier service.

If to the Bank:

Stuart Urkov
Medford Capital LLC
3223 Lake Ave., #15C
Wilmette, IL 60091

with a copy to:

The Law Office of Deborah S. Ashen, Ltd.
217 N. Jefferson St., Suite 601
Chicago, IL 60661
Attn: Deborah S. Ashen
dsa@ashenlaw.com

If to Borrower:

Maros Havran
9439 Nerbonne Park
Franklin Park, IL 60131

or to either party at such other addresses as such party may designate in a written notice to the other party. "Business Day" shall mean any day when the Mortgagee is open for business other than Saturday, Sunday or any other day on which national banks in Chicago, Illinois are not open for business.

31. The Mortgagor Will Not Discriminate. The Mortgagor covenants and agrees at all times to be in full compliance with provisions of law prohibiting discrimination on the basis of race, color, creed or national origin including, the requirements of Title VIII of the 1968 Civil Rights Act, or any substitute, amended or replacement Acts.

32 Interest at the Default Rate. Without limiting the generality of any provision herein or in the Note contained, from and after the occurrence of any Event of Default hereunder, the Note shall bear interest at its default rate set forth in the Note, and all Indebtedness Hereby Secured other than the Note shall bear interest at the highest default rate set forth in the Note.

33. Condition of Title. The Mortgagor represents that the Mortgagor is the owner in fee of the Real Estate as so described on Exhibit "A" hereto, all of which is encumbered hereby as security for

UNOFFICIAL COPY

EXHIBIT "A" Legal Description

File No.: 2013-01213-PT

LOT 16 IN FRANK-LON HOMES, INC. UNIT NUMBER 3, BEING THE NORTH 53 RODS (EXCEPT THE NORTH 544.18 FEET AND THE WEST 33 FEET THEREOF) LYING WEST OF THE RIGHT OF WAY CONVEYED BY DOCUMENT NUMBER 655073 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT REGISTERED AS DOCUMENT NUMBER 1205434 AND CERTIFICATE CORRECTION REGISTERED AS DOCUMENT NUMBER 1257161, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 9439 Nerbonne Park, Franklin Park, IL 60131

PERMANENT INDEX NO.: 12-22-300-022-0000

Property of Cook County Clerk's Office