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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

Doc#: 1915755144 Fee: \$98.00
Edward M. Moody
Cook County Recorder of Deeds
Date: 06/06/2019 09:48 AM Pg: 1 of 13

The property identified as: **PIN: 03-08-100-053-0000**

Address:

Street: 5 West Dundee Road

Street line 2:

City: Arlington Heights

State: IL

ZIP Code: 60004

Lender: Housing Opportunity Development Corporation

Borrower: Heart's Place LP

Loan / Mortgage Amount: \$270,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

FIDELITY NATIONAL TITLE
NC1800022CE

Certificate number: 7D9D2FC0-56D2-4E0F-8C6F-B3315078159E

Execution date: 5/15/2019

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This document was prepared by:
Applegate & Thorne-Thomsen, P.C.
425 S. Financial Place
Suite 1900
Chicago, Illinois 60605
Attn: Diane K. Corbett

After recording, return to:
Applegate & Thorne-Thomsen, P.C.
425 S. Financial Place
Suite 1900
Chicago, Illinois 60605
Attn: Gregory Whitehead

This space reserved for Recorders use only.

Permanent Tax Index Numbers:
03-08-100053-0000
03-08-100-054-0000

**FIDELITY NATIONAL TITLE
NC1800022CE**

Property Address(es):
120 W. Boeger Drive
5 West Dundee Road
Arlington Heights, Illinois

10f4

**JUNIOR MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT
AND FIXTURE FILING
(Sponsor Loan – FHLB-AHP)**

This Junior Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "**Mortgage**") is executed and made this 15th day of May, 2019, by **HEART'S PLACE LP**, an Illinois limited partnership (the "**Mortgagor**"), whose address is c/o Housing Opportunity Development Corporation, 2001 Waukegan Road, P.O. Box 480, Techny, Illinois 60082, in favor of **HOUSING OPPORTUNITY DEVELOPMENT CORPORATION**, an Illinois not-for-profit corporation, whose address is 2001 Waukegan Road, P.O. Box 480, Techny, Illinois 60082, its successors and assigns (hereinafter called "**Lender**").

Reference is made to an Affordable Housing Program Agreement with an effective date of June 13, 2018 by and between the Federal Home Loan Bank of Chicago ("**FHLBC**"), **VILLAGE BANK & TRUST** (the "**Member**") and Lender as the same may be modified, amended and supplemented from time to time with the written consent of all parties thereto (the "**AHP Agreement**") relating to an affordable housing project in Arlington Heights, Illinois (the "**Project**") to be developed by Mortgagor. Pursuant to

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the AHP Agreement, the FHLBC, through the Member, is making a loan (the “**AHP Loan**”) in the amount of Two Hundred Seventy Thousand and No/100 Dollars (\$270,000.00) available to the Lender. Lender is contemporaneously using the proceeds of the AHP Loan to make a loan to the Mortgagor (the “**Loan**”), as evidenced by a promissory note of even date herewith made by Mortgagor (the “**Note**”) to the order of Lender. The maturity date under the Note is May 15, 2049 (the “**Maturity Date**”) and unpaid principal shall bear interest after the Maturity Date at the rate of 2.94% compounding per annum.

Reference is also made to a Retention/Recapture Agreement for Rental Projects dated as of even date herewith by and among the Mortgagor, Lender and Member (the “**Repayment Agreement**”) pursuant to which the Mortgagor and the Lender unconditionally promise, for a period of fifteen (15) years from the date of Project completion (a) to comply with the affordable housing program (“**AHP**”) regulations of the Federal Housing Finance Agency (“**FHFA**”) (currently 12 C.F.R. Part 1291) as may be in effect from time to time or the regulations of any successor in interest to FHFA; (b) to pay and reimburse the Member for the amount of the AHP Loan in the event of a default under the Repayment Agreement which Member may be required to repay to FHLBC and to indemnify Member with respect to all fees, charges, expenses and other indebtedness described in the Repayment Agreement; and (c) to perform all of Mortgagor’s and Lender’s covenants, agreements and obligations under the AHP Agreement, the Repayment Agreement and any other documents evidencing or securing the AHP Loan.

NOW, THEREFORE, to secure to Lender: (a) the repayment of: (i) the indebtedness evidenced by the Note; (ii) any future advances made under the documents evidencing and security the Loan; and (iii) all other sums advanced in accordance herewith to protect the security of this Mortgage, all with interest thereon; and (b) the performance of the covenants and agreements of Mortgagor herein contained, including, without limitation, those covenants contained in Sections 12 and 21 hereof, Mortgagor does hereby execute and deliver this Mortgage, and hereby grants and conveys to Lender a security interest in all of Mortgagor’s estate, title and interest in the property located in Arlington Heights, Illinois as described on Exhibit A, attached hereto and made a part hereof (the “**Property**”); and

In furtherance hereof, the Mortgagor represents and covenants to Lender:

1. That at the execution and delivery of this Mortgage, Mortgagor is well-seized of the Property in fee simple, has good and marketable title and the right to bargain and sell the same in manner and form as above written, that the same is free from all encumbrances whatsoever except for easements, covenants, conditions, restrictions, limitations and liens of record on the date hereof; and that Mortgagor will warrant and defend said Property, as above conveyed, with the above-mentioned appurtenances to the said Lender, its successors, agents and assigns, forever, against all lawful claims or demands whatsoever.

2. That the lien, pledge and security interest of this Mortgage is a good and valid lien, pledge and security interest on all of the Property, subject to those encumbrances listed on Exhibit C. All rights granted to the Lender hereunder are subject and subordinate to senior lenders.

3. To promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, late charges as provided in the Note, and the principal of and interest on any future advances secured by this Mortgage. Privilege is reserved to prepay at any time, without premium or fee, the entire indebtedness or any amount thereof. Mortgagor acknowledges that Lender is required to deliver to the

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Federal Home Loan Bank of Chicago all payments made by Mortgagor pursuant to this Note in accordance with 12 C.F.R. Section 1291.9(a)(9).

4. To pay all taxes, water rates, public or private utility charges, and other governmental or municipal charges, fines, impositions, assessments, of any kind levied or imposed against the Property, and, upon request thereof, to promptly deliver the official receipts thereof to Lender or its designated agent. Tax receipts are to be delivered semi-annually and within 30 days after payment.

5. To keep the Property fully insured for the benefit of Lender in insurance companies acceptable to Lender, to provide certificates of insurance of the policies of insurance to Lender or its designated agent, and to name Lender as beneficiary on the face of said insurance policy. Receipts for payment of such insurance premiums are to be delivered not less than annually.

Provided that paragraphs 4 and 5 shall be deemed as properly performed by Mortgagor to the extent that any senior mortgage is in effect which makes full provisions for the fulfillment of all such obligations of Mortgagor, so long as the Lender is added as a named beneficiary of said insurance policies, and receipts are promptly delivered to Lender or its designated agent.

6. To assign to Lender (subject to senior lenders' rights), the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or any part thereof, or for conveyance in lieu of condemnation. Said proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Mortgagor. In the event of a partial taking of the Property, there shall be applied to the sums secured by this Mortgage such proportions of the proceeds as are equal to that proportion which the amount of the sums secured by this Mortgage immediately prior to the date of the taking bears to the fair market value of the Property immediately before taking, with the balance of the proceeds paid to Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, any such applications of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in the recitals above or change the amount of such installments.

7. To pay to Lender or its designated agent the total amount due under this Mortgage upon demand, should Lender accelerate the indebtedness pursuant to paragraph 13 below.

8. To keep the Property, together with any improvements thereon, in as good order and condition as they are now, reasonable wear and tear excepted, and will not commit or permit waste and shall make all necessary or appropriate repairs, replacements and renewals thereof, interior, exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen. Mortgagor shall not do, or permit to be done, any act or thing which might materially impair the value or usefulness of the Property or any part thereof, shall not commit or permit any waste of the Property or any part thereof, and shall not permit any unlawful occupation, business or trade involving the Property to be conducted. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Mortgagor notice prior to any such inspections specifying reasonable cause therefor related to Lender's interest in the Property.

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9. Mortgagor shall, at Mortgagor's own expense, from time to time as requested by Lender, take such actions and execute and deliver to Lender all such instruments, supplements, further assurances and security or other agreements as may be required or requested by Lender in order to perfect and continue Lender's lien, pledge and security interest in the Property hereunder. Mortgagor hereby irrevocably appoints Lender as Mortgagor's agent and attorney-in-fact to sign all such instruments, supplements, further assurances and security and other agreements in the event that Mortgagor shall fail to do so upon request by Lender.

10. Except as otherwise expressly permitted by the Note and this Mortgage, Mortgagor shall not directly or indirectly sell, convey, assign, transfer or otherwise dispose of fee title to the Project facilities or any part thereof or interest therein without the prior written consent of Lender and in compliance with the requirements set forth in the Repayment Agreement. Mortgagor shall not directly or indirectly create or permit to remain, and will promptly discharge, any mortgage, lien, encumbrance or charge on, pledge of, security interest in or conditional sale or other title retention agreement with respect to the Property or any part thereof or the interest of Lender therein or any revenues, income or profit or other sums arising from the Property or any part thereof, other than those encumbrances listed on Exhibit C. Mortgagor has no right to assign or transfer any of its rights or obligations under this Mortgage or the Note without the express written consent of the Lender and Member, for so long as the Repayment Agreement is in effect. Notwithstanding the foregoing, no consent by Lender shall be necessary in connection with the transfer of partnership interests in the Mortgagor. The withdrawal, removal and/or replacement of the general partner of Mortgagor pursuant to the terms of Mortgagor's partnership agreement shall not constitute a default under the Note and Mortgage, and any such actions shall not accelerate the maturity date of the Loan, provided that any required substitute general partner is (i) approved by Member and FHLBC (during the term of the Repayment Agreement), (ii) is selected with reasonable promptness, and (iii) it, or an affiliate thereof, has experience operating affordable housing financed in part with federal low income housing tax credits.

11. Mortgagor shall not suffer or permit any mechanics' or other liens to be filed or to exist against the Property or any payments paid or payable under the Subsidy Documents, by reason of work, labor, services or materials supplied or claimed to have been supplied to, for or in connection with the Property or to Mortgagor, or anyone holding the Property or any part thereof through or under Mortgagor. If any such lien shall at any time be filed, Mortgagor shall, within thirty (30) days after notice of the filing thereof but subject to the right to contest as herein set forth, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. Notwithstanding the foregoing, Mortgagor shall have the right, at Mortgagor's expense and after written notice to Lender, by appropriate proceeding timely instituted and diligently prosecuted, to contest in good faith the validity or the amount of any such lien. If, however, Lender shall notify Mortgagor that, in the opinion of independent counsel, by nonpayment of any such items the lien, pledge or security interest created by this Mortgage as to any part of the Property will be materially affected or the Property or any part thereof will be subject to imminent loss or forfeiture, Mortgagor shall promptly cause such lien to be discharged of record, as herein provided.

12. Mortgagor shall observe, comply with and fulfill all obligations of itself or Lender set forth in the AHP Agreement and the Repayment Agreement.

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13. Upon: (a) the breach of any condition or covenant of this Mortgage, the AHP Agreement, the Repayment Agreement, certain other AHP documents described in said Exhibit B attached hereto and made a part hereof, and all other documents (the "Subsidy Documents"), whether now or hereafter existing, that are executed and delivered as additional evidence of, or security for, the performance and repayment of the obligations of Mortgagor and/or Lender in connection with the AHP Loan; (b) a determination by the FHLBC pursuant to the AHP Agreement that a portion of the subsidy (as such term is used in the AHP Agreement) must be repaid to the FHLBC; or (c) a default under the Note secured hereby, Lender,, has the following remedies, subject to the rights of senior lenders:

a. Foreclosure proceedings may be instituted at the option of Lender, and the fees and charges of Lender's attorneys shall be a further lien and charge upon the Property under this Mortgage, and all such expenses shall become additional indebtedness secured by this Mortgage and shall be allowed in any decree foreclosing this Mortgage.

b. Acceleration of the unpaid principal balance together with all interest and charges thereon, may, at the option of the Lender, be declared immediately due and payable, without notice or demand, such notice or demand being expressly waived by Mortgagor.

c. Exercise of all or any rights and remedies Lender may have under the Subsidy Documents; and of any rights, remedies and powers Lender may have at law or in equity.

14. Intentionally Omitted.

15. Intentionally Omitted.

16. Upon failure of Mortgagor to pay any taxes, water rates, public or private utilities, other governmental charges, insurances policy premiums, prior liens, and charges thereon, which Mortgagor has agreed to pay under paragraphs 4 and 5 above, Lender may, at its option, pay the same, and any amount so paid by Lender shall be added to the principal debt named herein and bear interest at the rate charged by the first lienholder, payable monthly, from the date of such payment, and shall be secured by this Mortgage.

17. Subject to the rights of senior lenders and upon the occurrence of a default that is not cured as set forth in paragraph 13 above, Lender shall have the right at its option, to collect the rental income and proceeds of the Property, or to appoint a receiver to take possession of and manage and control the premises.

18. Any forbearance by the Lender in exercising any right or remedy hereunder, or otherwise provided by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised cumulatively, concurrently, independently or successively.

19. Indemnification. Mortgagor shall protect, indemnify and save harmless Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses except as may be limited by law or

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judicial order or decision entered in any action brought to recover moneys under this paragraph) imposed upon, incurred by or asserted against Lender by reason of (a) ownership of any interest in the Property; (b) any accident or injury to or death of persons, or loss of or damage to property occurring on or about the Property or any part thereof or adjacent real property, sidewalks, curbs, vaults and vault space, if any, streets or ways or with respect to the operation of Mortgagor's business including but not limited to Mortgagor's ownership of or interest in any of the Property or any part thereof; (c) any use, disuse, non-use or condition of the Property or any part thereof or adjacent real property sidewalks, curbs, vaults and vault space, if any, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms hereof or of the Note or any other instrument or document executed in connection with the transactions contemplated herein and therein; (e) any necessity to defend any right, title or interest conveyed by this Mortgage or to defend any action arising from the creation or perfection of any such right, title or interest; (f) the performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (g) any loss of or damage to property, or injury to or death of any person, that may be occasioned by any cause pertaining to the provision of any part of the Property; (h) any breach or default arising from any act or failure to act by Mortgagor or any of its agents, lessees, contractors, servants, employees or licensees or arising from any accident, injury or damage caused to any person and occurring with respect to the operation of Mortgagor's business including Mortgagor's ownership of or interest in any of the Property; or (i) any such claim, action, or proceeding brought thereon. If any action or proceeding is made or brought against the Lender in respect of which indemnity may be sought hereunder, Lender shall give notice to Mortgagor of the action or proceeding, and shall give the Investor the same written notice (Investor's address for notice purposes is indicated in Section 13 above), and upon such notice, at the option of Lender, (1) Mortgagor shall assume the defense of the action or proceeding with legal counsel satisfactory to Lender, (2) Mortgagor shall assume the defense of the action or proceeding with the participation of Lender at Mortgagor's expense, or (3) Lender shall assume the defense of the action or proceeding with legal counsel satisfactory to Lender at Mortgagor's expense; provided that failure of Lender to give such notice shall not relieve Mortgagor from any of Mortgagor's obligations under this Section unless the failure prejudices the defense by Mortgagor of the action or proceeding. Any amounts payable to Lender under this paragraph shall be paid by Mortgagor on demand together with interest thereon at the per annum rate equal to the Wall Street Journal's prime rate of interest plus 5% from the date thereof in addition to all other payments to be made by the Mortgagor pursuant to the Subsidy Documents and shall be subject to and secured by this Mortgage and Security Agreement as additional indebtedness under this Mortgage. The obligations of Mortgagor under this paragraph shall survive any defeasance of this Mortgage and Security Agreement. The indemnification provided by this paragraph to Lender includes its officers, employees, agents, representatives and its successors and assigns, including, without limitation, Member, as assignee under the Assignment.

20. In case of any damage to or destruction of the Property or any part thereof, there shall be no abatement or reduction of any payment payable by the Mortgagor under the Note and Mortgagor shall promptly give written notice thereof to the Lender generally describing the nature and extent of such damage or destruction.

21. FHLBC AHP Provisions. Mortgagor covenants that: (i) the Property's rental units, or applicable portion thereof, shall remain occupied by and affordable for households with incomes at or below the levels committed to be served in the Application for the Affordable Housing Program dated June 13, 2018 ("**Application**") submitted by Lender to the FHLBC for the 15 year duration of the retention period

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under the AHP Agreement (the “**Retention Period**”); (ii) during the Retention Period, Mortgagor shall comply with the terms of the AHP Regulations (as defined in the Repayment Agreement) in connection with its operation of the Property; (iii) Mortgagor shall give notice to the Lender, the Member and FHLBC of any sale, refinancing, foreclosure, or transfer in lieu of foreclosure of the Property occurring prior to the end of the Retention Period; (iv) in the case of a sale or refinancing of the Property prior to the end of the Retention Period, the remaining portion of the principal balance of the Note shall be immediately due and payable, unless (a) the Property continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the Application for the duration of the Retention Period, or (b) if authorized in a writing signed by the FHLBC in the exercise of its sole discretion, the households are relocated, due to the exercise of eminent domain, or for expansion of housing or services, to another property that is made subject to a deed restriction or other legally enforceable retention agreement or instrument incorporating the income-eligibility and affordability restrictions committed to in the Application for the duration of the Retention period; and (v) provided, however, that the foregoing income-eligibility and affordability restrictions shall terminate upon foreclosure of this Mortgage or of any mortgage having priority over this Mortgage.

22. Any notice required under this Mortgage shall simultaneously be provided to Member at:

Village Bank & Trust
234 West Northwest Highway
Arlington Heights, Illinois 60004
Attention: Stephanie Moister

or such other address provided by Member from time to time.

23. **Environmental Laws.** Mortgagor represents, warrants and covenants to Lender that during the period of Mortgagor's ownership or use of the Property (a) no substance will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require clean-up, removal or some other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws") other than Hazardous Substances remediated or encapsulated in accordance with applicable law during the construction of the improvements on the Property; and (b) Mortgagor will comply with all Environmental Laws. Mortgagor shall indemnify and hold harmless Lender, its directors, officers, employees and agents from all loss, cost (including reasonable attorneys' fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of, or based upon (i) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property or (ii) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property.

24. **Expenses.** To the extent not prohibited by law, Mortgagor shall pay all reasonable costs and expenses before and after judgment, including without limitation, attorneys' fees, fees and expenses for

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environmental assessments, inspections and audits, and fees and expenses for obtaining title evidence incurred by Lender in protecting or enforcing its rights under this Mortgage.

25. The covenants contained herein shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, successors, assigns and agents of the parties hereto. Whenever used, the singular number shall include the plural, and the use of any gender shall include all genders.

26. This Mortgage shall be governed by the laws of the State of Illinois. The invalidity of any clause, part or provision of this Mortgage shall not affect the validity of the remaining portions thereof. In the event of conflict in the terms and provisions of this mortgage and any other loan document of even date herewith, the provisions of this Mortgage shall be deemed controlling.

27. **Maximum Amount of Indebtedness.** Notwithstanding any provision to the contrary in this Mortgage, the Note or any other Loan Document which permits any additional sums to be advanced on or after the date of this Mortgage, whether as additional loans or for any payments authorized by this Mortgage, the total amount of the principal component of the Obligations shall not at any time exceed one hundred twenty-five percent (125%) of the original principal amount of the Note set forth on the first page of this Mortgage.

28. **Subordination.** This Mortgage is subject and subordinate to each of the terms and conditions contained in that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Financing Statement dated as of September 14, 2018 ("First Senior Mortgage") in favor of Village Bank & Trust and that certain Mortgage, Assignment Security Agreement and Fixture Filing dated as of September 14, 2018 in favor of Column Financial, Inc. ("Column") and that certain Affordable Housing Land Use Restriction Agreement dated as of September 14, 2018 in favor of Column.

[Signature page follows]

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Exhibit A
Legal Description

Lot 1 in Hearts Place Resubdivision, being a resubdivision of lots 2 and 3 in Hardee's Dundee road Resubdivision; being a subdivision of parts of the Northwest 1/4 of the Northwest 1/4 and the North 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 8, Township 42 North, Range 11 East of the Third Principal Meridian, according to the Plat thereof recorded July 30, 2018 as document 1821145026, in Cook County, Illinois.

Address: 5 West Dundee Road and 120 W. Boeger Drive, Arlington Heights, Illinois

PIN Number: 03-08-100-053-0000
03-08-100-054-0000

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Exhibit B Subsidy Agreements

The term "Subsidy Documents," as used herein, means the following documents and any other documents previously, now, or hereafter given to evidence, secure, or govern the obligations to the Member by the Mortgagee or Mortgagor, including any and all extensions, renewals, amendments, modifications, and supplements thereof or thereto:

1. The Application;
2. The Rental Worksheet;
3. The AHP Agreement;
4. The Repayment Agreement; and
5. This Mortgage.

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Exhibit C
Permitted Encumbrances

Matters identified on Schedule B of that certain Owner's Policy of Title Insurance issued by Title Service's Inc. to Mortgagor as Policy No. 7553-1-212474-1207.81306-210492199, the Repayment Agreement and that certain Collateral Assignment of Promissory Note and Junior-Mortgage dated of even date herewith by Lender in favor of Member.

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