

Illinois Anti-Predatory  
Lending Database  
Program

Doc#. 2221512030 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 08/03/2022 06:09 AM Pg: 1 of 11

Certificate of Exemption



Report Mortgage Fraud  
844-768-1713

The property identified as: PIN: 19-23-210-026-0000

Address:

Street: 3314 W 64th Place

Street line 2:

City: Chicago

State: IL

ZIP Code: 60629

**FIRST AMERICAN TITLE**  
**FILE # AF1026806**

Lender: Barnett REI Finance 2 LLC

Borrower: Onyx Homes, LLC

Loan / Mortgage Amount: \$204,425.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is not owner-occupied.

Certificate number: DF4764CD-935F-4B98-BE27-73EC54D7D8A4

Execution date: 8/1/2022

# UNOFFICIAL COPY

This space reserved for recorder's use only

**PREPARED BY AND  
AFTER RECORDING MAIL TO:**  
BARNETT REI FINANCE 2 LLC  
450 SKOKIE BLVD., SUITE 604  
NORTHBROOK, IL 60062  
ATTN: ROBERT WILBUR

**FIRST AMERICAN TITLE**  
**FILE #** AF1026806

-----[Space Above This Line for Recording Data]-----

## IL MORTGAGE

This mortgage (this "**Mortgage**") is made as of August 1, 2022, between Onyx Homes LLC, an Illinois limited-liability company new Mexico limited-liability company ("**Mortgagor**"), whose address is 530-B Harkle Rd, Suite 100, Santa Fe, NM 87505, and Barnett REI Finance 2 LLC, an Illinois limited-liability company ("**Lender**" or "**Secured Party**", as applicable), whose address is 450 Skokie Blvd., Suite 604, Northbrook, Illinois, 60062.

Mortgagor irrevocably mortgages, grants, conveys, transfers, and assigns to Lender that real property in Cook County, Illinois, commonly known as 3314 W 64th Pl, Chicago, IL 60629(the "**Property**"), with a tax identification number of 19-23-210-026-0000 and 19-23-210-027-0000 and legally described as:

LOT FORTY TWO (42) AND LOT FORTY THREE (43) IN NORTH HALF (1/2) OF BLOCK SEVEN (7) IN JOHN F. EBERHART'S SUBDIVISION OF THE NORTHEAST QUARTER (1/4) OF SECTION 23, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

# UNOFFICIAL COPY

TOGETHER with all interest that Mortgagor now has or may hereafter acquire in or to said Property, and in and to all easements and rights of way appurtenant thereto, SUBJECT, HOWEVER, to the terms and conditions herein set forth. Mortgagor agrees to execute and deliver, from time to time, such further instruments as may be requested by Lender to evidence or confirm the lien of this Mortgage on the Property.

## 1. FOR THE PURPOSE OF SECURING:

- A. Payment of the sums due pursuant to the terms of that certain promissory note, and all modifications, extensions, or renewals thereof (the "Note"), dated April 2, 2019 by Onyx Homes, LLC ("Borrower"), which calls for the principal amount of up to \$1,000,000 to be repaid payable to Lender pursuant to and in a manner consistent with all of the terms of: (i) the Note; and (ii) that certain business loan agreement dated April 2, 2019, and all modifications, extensions, or renewals thereof (the "Loan Agreement" and, together with the Note and any and all guarantees supporting the Note, the "Loan Documents"). The terms of the Loan Documents are hereby incorporated herein by reference.
- B. Performance of each agreement of Mortgagor contained herein or incorporated herein by reference or contained in any other agreements or covenants executed by Mortgagor relating to the loan secured hereby.
- C. Performance by Mortgagor with each and every monetary obligation to be performed by Mortgagor under any recorded covenants, conditions, and restrictions pertaining to the Property.
- D. Payment of any and all amounts owed by Mortgagor to Lender under any other loan, promissory note, guaranty or document, whether now existing or hereafter arising.
- E. Mortgagor covenants that Mortgagor is lawfully seized of the estate hereby conveyed and has the right to grant, convey, transfer, and assign the Property to Lender.

## 2. TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR COVENANTS AND AGREES AS FOLLOWS:

- A. **Payment of Principal and Interest.** Mortgagor shall pay or cause to be paid, when due, the principal of and interest on the indebtedness evidenced by the Loan Documents, any fees and costs provided in the Loan Documents, and all other sums secured by this Mortgage.
- B. **Application of Payments.** Unless applicable law requires otherwise, all payments received by Lender from Mortgagor under the Loan Documents or this Mortgage shall be applied by Lender in the following order of priority: (a) costs payable as provided in the Loan Documents; (b) interest payable on the Note as provided in the Loan Documents; and (c) principal of the Note as provided in the Loan Documents.
- C. **Charges; Liens.** Mortgagor shall pay all water and sewer rates, rents, taxes, assessments, insurance premiums, and other impositions attributable to the Property, when due, directly to the appropriate payee.
- D. **Insurance.**

# UNOFFICIAL COPY

i. **Hazard.**

a. Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured under a replacement cost form of insurance policy against loss or damage resulting from such hazards as may be reasonably required by Mortgagee (including, but not limited to, flood insurance in an amount necessary to comply with applicable law), and shall pay promptly, when due, all premiums on such insurance. Without limiting the foregoing, during construction of any improvements on the Property, Mortgagor shall maintain "builder's risk" insurance with extended coverage over fire and other casualties using completed values for the amount of the full insurable value for all such improvements under construction at any time on the Property, including equipment and materials delivered to the Property for incorporation into the Property. All such insurance shall be in form and with insurers approved in writing by Mortgagee and shall have attached thereto: (a) standard non-contributing mortgage clauses entitling Mortgagee, as its interest may appear, to collect any and all proceeds payable under such insurance; and (b) standard waiver of subrogation endorsements, so long as such subrogation endorsement can be obtained without material additional cost to Mortgagor.

b. In the event of any casualty loss, Mortgagor shall give immediate notice thereof to Mortgagee. Mortgagor hereby authorizes Mortgagee, at Mortgagee's option, to adjust and compromise any such losses under any of the aforesaid insurance and, after deducting any of Mortgagee's reasonable costs of collection, to use, apply, or disburse the balance of such insurance proceeds: (a) toward repairing, restoring, and rebuilding the aforesaid improvements, provided such repair, restoration, or rebuilding is economically feasible and the security of this Mortgage is not thereby impaired, in which event Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released for such purposes be deemed a payment on the indebtedness secured thereby; or (b) as a credit upon any portion of the indebtedness secured hereby, with the excess, if any, paid to Mortgagor; provided, however, that so long as no Event of Default shall then exist and no Event of Default shall exist at any time during the period of any repair, restoration, and/or rebuilding of the aforesaid improvements, and subject to the provisions of the immediately following section, upon Mortgagor's written request to Mortgagee made on or before the disbursement of such insurance proceeds to Mortgagee, such insurance proceeds shall be used to repair, restore, and/or rebuild the aforesaid improvements. Unless Mortgagor and Mortgagee otherwise agree in writing, any such application of proceeds to the sums secured by this Mortgage shall not extend or postpone the due date of any portion of the indebtedness secured hereby or change the amount of any installment due on such indebtedness.

c. To the extent any such insurance proceeds are used toward repairing, restoring, and rebuilding such improvements, such proceeds shall be made available, from time to time, upon Mortgagee being furnished with satisfactory evidence of the estimated cost of such repairs, restoration, and rebuilding and with such architect's certificates, waivers of lien, certificates, contractors' sworn

# UNOFFICIAL COPY

statements, and other evidence of the estimated cost thereof and of payments as Mortgagee may reasonably require and approve, and if the estimated cost of the work exceeds 5% of the original principal amount of the Note, with all plans and specifications for such plans, restoration, and rebuilding as Mortgagee may reasonably require and approve. Payments made prior to the final completion of the work shall not exceed 90% of the value of the work performed, from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens except the lien of this Mortgage. Mortgagee shall have the right to require that all funds shall be paid through a construction escrow with a title insurance company selected by Mortgagee. In the event of foreclosure of this Mortgage or other transfer of title to the Property in extinguishment of the Obligations, all right, title, and interest of Mortgagor in and to any such insurance policies then in force, and any claims or proceeds thereunder, shall pass to Mortgagee or any purchaser or grantee therefrom. Mortgagee may, at any time and in its sole discretion, procure and substitute for any and all of such insurance policies, such other policies of insurance, in such amounts and carried in such companies, as it may select.

- ii. **Liability.** Mortgagor shall carry and maintain such comprehensive public liability and worker's compensation insurance as may be reasonably required from time to time by Mortgagee; provided, however, that the amounts of liability coverage shall not be less than \$1,000,000 single limit. Mortgagee shall be named as an additional party insured.
- E. **Proof of Insurance.** All insurance shall be in amount, form, and content and with insurers approved in writing by Mortgagee. Mortgagor shall deliver to Mortgagee a copy or certificate of each policy or policies, with evidence of premiums prepaid, and, prior to any expiration or cancellation, each renewal or replacement thereof. Each policy shall contain provision for not less than 10 days' notice to Mortgagee prior to any cancellation thereof. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgagee loss payable clause in a form acceptable to Lender.
- F. **Preservation and Maintenance of Property.** Mortgagor: (a) shall not commit waste or permit any physical deterioration of the Property; (b) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition in the event of any damage, injury, or loss thereto; (c) shall keep the Property in good repair; (d) shall keep the Property free from mechanic's or other liens or claims for lien not expressly subordinated to the lien thereof; (e) shall pay when due any indebtedness which may be secured by a lien or charge on the premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to the Lender; and (f) shall comply with all laws, ordinances, regulations, and requirements of any governmental body applicable to the Property.
- G. **Protection of Lender's Security.** If Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced that affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, building code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums, and take such action as Lender deems necessary, in its sole

# UNOFFICIAL COPY

discretion, to protect Lender's interest, including, but not limited to, disbursement of attorneys' fees, entry upon the Property to make repairs or otherwise to protect the Property as security for the indebtedness secured by this Mortgage; and procurement of satisfactory insurance as provided in paragraph D hereof. Any amounts disbursed by Lender pursuant to this paragraph G shall become additional indebtedness secured by this Mortgage.

H. **Condemnation.** Mortgagor shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking of the Property, or part thereof, and Mortgagor shall appear in and prosecute any such action or proceeding. The proceeds of any award, payment, or claim for damages, direct or consequential, in connection with any such condemnation or other taking of the Property or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender subject to the following paragraph H.i.

i. Mortgagor authorizes Lender to apply such awards, payments, proceeds, or damages, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, for restoration or repair of the Property or to payment of the sums secured by this Mortgage, whether or not then due, in the order of application set forth in paragraph B hereof, with the balance, if any, to Mortgagor. Mortgagor agrees to execute such further evidence of assignment of any awards, proceeds, damages, or claims arising in connection with such condemnation or taking as Lender may require.

I. **Lien Not Released.** From time to time, Lender may, at Lender's option, extend the time for payment of the indebtedness or any part thereof, reduce the payments thereon, accept a renewal note or notes therefor, or modify the terms and time of payment of said indebtedness. Any actions taken by Lender pursuant to the terms of this paragraph shall not affect the obligations of Mortgagor or Mortgagor's successors or assigns to pay the sums secured by this Mortgage and to observe the covenants of Mortgagor contained herein and shall not affect the lien or priority of lien hereof on the Property.

J. **Forbearance by Lender Not a Waiver.** No waiver by Lender of any right under this Mortgage shall be effective unless in writing. By accepting payment of any sum secured hereby after its due date or by making any payment or performing any act on behalf of Mortgagor that Mortgagor was obligated hereunder but failed to make or perform, or by adding any payment so made by Lender to the indebtedness secured hereby, Lender does not waive its right to require prompt payment when due of all sums so secured or to require prompt performance of all other acts required hereunder, or to declare a default for failure so to pay.

K. **Acceleration in Case of Insolvency.** Notwithstanding anything in this Mortgage or the Loan Documents to the contrary, Lender may, at Lender's option, declare all indebtedness due under this Mortgage and the Note secured hereby to be immediately due and payable without prior notice, and Lender may invoke any remedies permitted by this Mortgage, if any of the following occurs:

i. Mortgagor or any guarantor shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor federal statute relating to bankruptcy, insolvency, arrangements, or

# UNOFFICIAL COPY

reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts;

- ii. Mortgagor or any guarantor shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution, or liquidation under a bankruptcy or insolvency act within a reasonably prompt time after such filing;
- iii. Mortgagor or any guarantor shall be adjudged a bankrupt;
- iv. a trustee or receiver shall be appointed for either of Mortgagor or any guarantor or their Property;
- v. the Property shall become subject to the jurisdiction of a federal bankruptcy court or similar state court;
- vi. Mortgagor or any guarantor shall make an assignment for the benefit of their respective creditors; or
- vii. there is an attachment, execution, or other judicial seizure of any portion of their respective assets and such seizure is not discharged within 10 days.

Any attorneys' fees and other expenses incurred by Lender in connection with such bankruptcy or any of the other aforesaid events in this paragraph K shall be additional indebtedness of Mortgagor secured by this Mortgage and payable on demand.

- L. **Transfers of the Property.** On sale or transfer of all or any part of the Property, or any interest therein, Lender may, at Lender's option, declare all of the sums secured by this Mortgage to be immediately due and payable, and Lender may invoke any remedies permitted by this Mortgage.
- M. **Acceleration; Remedies.** Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this Mortgage or the Loan Documents (including, but not limited to, the covenants to pay when due any sums secured by this Mortgage), Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand.
  - i. When the indebtedness hereby secured shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the order of foreclosure or sale all expenditures and expenses that may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, charges, publication costs, and costs of procuring all abstracts of title or commitments for title insurance. Such fees, charges, and costs may be estimated as to items to be expended after entry of the order of foreclosure or sale as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale that may be had pursuant to such decree the true condition of the title to or the value of such Property. All expenditures and expenses of the nature mentioned in this paragraph shall become so much additional indebtedness secured hereby and shall be immediately due and payable with interest thereon at the rate specified in the Loan Documents and the



# UNOFFICIAL COPY

Note secured hereby. Such expenditures and expenses shall include expenditures made in connection with (1) any proceeding to which Lender shall be a party by reason of this Mortgage or any indebtedness hereby secured; (2) preparation for the commencement of any suit for foreclosure hereof after accrual of the right to foreclose, whether or not actually commenced; (3) any efforts for collection of any past due indebtedness secured hereby. The proceeds of any foreclosure sale of the Property shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in this paragraph; second, all other items that under the terms hereof constitute indebtedness secured by this Mortgage; and, third, any surplus to Mortgagor, its successors, or its assigns, as their rights may appear.

- N. Remedies Cumulative.** Each remedy provided herein shall be exclusive of any other remedy herein or now or hereafter existing by law and may be exercised concurrently, independently, or successively, in any order whatsoever. Every power or remedy hereby given to Lender may be exercised from time to time and as often as deemed expedient by the Lender.
- O. Notice.** Except for any notice required under applicable law to be given in another manner, all notices and other communications required or permitted under this Mortgage shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, and if mailed shall be deemed received on the third business day after deposit in the mail in the continental United States, postage prepaid, addressed to the party to receive such notice at the address set forth above. Notice of change of address shall be given by written notice in the manner set forth in this paragraph N.
- P. Successors and Assigns Bound; Joint and Several Liability; Agents.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Mortgagor. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents, or independent contractors as authorized by Lender.
- Q. Governing Law; Severability.** The loan secured by this Mortgage is made pursuant to, and shall be construed and governed by, the laws of the State of Illinois. If any paragraph, clause, or provision of this Mortgage, the Loan Documents, or any other notes or obligations secured by this Mortgage is determined by a court of competent jurisdiction to be void, invalid, or unenforceable, such decision shall affect only those paragraphs, clauses, or provisions so determined and shall not affect the remaining paragraphs, clauses, and provisions of this Mortgage or the Loan Documents or other notes secured by this Mortgage.
- R. Waiver of Statute of Limitations; Waiver of Right of Redemption.** Time is of the essence for all of Mortgagor's obligations hereunder, and, to the extent permitted by law, Mortgagor waives all present or future statutes of limitation with respect to any debt, demand, or obligation secured hereunder in any action or proceeding for the purpose of enforcing this instrument or any rights or remedies hereunder. Mortgagor further agrees, to the full extent permitted by law, that in case of a default hereunder and acceleration pursuant to paragraph M hereof, neither Mortgagor nor anyone claiming through or under it will set up, claim, or seek to take advantage of any appraisal, valuation, stay, or extension laws now or hereafter in force, or take any other action which would prevent or hinder the enforcement



# UNOFFICIAL COPY

or foreclosure of this Mortgage, the absolute sale of the Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereof. Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully do so, the benefit of all such laws, and any and all right to have the assets comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that Lender or any court having jurisdiction to foreclose such lien may sell the Property in part or as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et. seq.) (the "Act") or residential real estate (as defined in section 15-1219 of the Act). Mortgagor hereby voluntarily and knowingly waives any and all rights of redemption as allowed under Section 15-1601 of the Act.

- S. **Offsets.** No indebtedness secured by this Mortgage shall be deemed to have been offset or compensated by all or part of any claim, cause of action, or counterclaim or part of any claim, cause of action, counterclaim, or crossclaim, whether liquidated or unliquidated, that Mortgagor now or hereafter may have or may claim to have against Lender, and, in respect to the indebtedness now or hereafter secured hereby, Mortgagor waives to the fullest extent permitted by law the benefits of any applicable law, regulation, or procedure that substantially provides that when cross-demands for money have existed between persons at any point when neither demand was barred by the applicable statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in his answer the defense of payment in that the two demands are compensated as far as they equal each other, notwithstanding that an independent action asserting his claim would at the time of filing his answer be barred by the applicable statute of limitations.
- T. **Revolving Loans.** Among other things, this Mortgage is given to secure a revolving credit facility and secures not only present indebtedness but also future advances, whether such future advances are obligatory or are to be made at the option of Lender, or otherwise as are to be made within 20 years of the date hereof. The amount of indebtedness secured hereby may increase or decrease from time to time, however the principal amount of such indebtedness shall not at any time exceed the amount of \$[2,000,000] plus interest thereon, and other costs, amounts, and disbursements as provided herein and in the other Loan Documents.
- U. **Confession of Judgment; Attorney's Fees.** In the event of Default, Borrower irrevocably authorizes and empowers any attorney-at-law to: (a) appear in any court of record on its behalf; (b) confess judgment against it for (i) the unpaid amount of the Note as evidenced by an affidavit signed by an authorized agent of Lender setting forth the amount then due, (ii) attorneys' fees, and (iii) the costs of suit; and (c) release all errors and waive all rights of appeal. If a copy of the Note, verified by an affidavit, shall have been filed in the proceeding, it will not be necessary to file the original as a warrant of attorney. Borrower waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect. No single exercise of the foregoing warrant and power to confess judgment will be deemed to exhaust the power, whether or not any such exercise shall be held by any court to be invalid, voidable, or void; but the power will continue undiminished and may be exercised from time to time as Lender may elect until all amounts owing on the Note have been paid in full.

# UNOFFICIAL COPY

Borrower hereby waives and releases any and all claims or causes of action which Borrower might have against any attorney acting under the terms of authority which Borrower has granted herein arising out of or connected with the confession of judgment hereunder. All expenses incurred by Lender to the extent reimbursable under Sections 15 1510 and 15 1512 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 1101 et. seq.), whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

## V. General Provisions.

- i. The Mortgage applies to, inures to the benefit of, and binds all parties hereto and their heirs, legatees, devisees, administrators, executors, successors, and assigns.
- ii. The term "Lender" shall mean the owner and holder (including a pledgee) of any note secured hereby, whether or not named as Lender herein.
- iii. Whenever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa.
- iv. Captions and paragraph headings used herein are for convenience only, are not a part of this Mortgage, and shall not be used in construing it.

# UNOFFICIAL COPY

Mortgagor has executed this Mortgage or has caused the same to be executed by its representatives thereunto duly authorized.

## MORTGAGOR

Onyx Homes, LLC,  
a new Mexico limited liability company

By: *Jean Richard Menuau*  
Name: Jean Richard Menuau  
Its: Member

By: *Kim M Caton*  
Name: Kim M Caton  
Its: Member

State of ILLINOIS )  
County of COOK ) ss.

I, the undersigned, a notary public, in and for and residing in COOK County, in the State aforesaid, hereby certify that, Jean Richard Menuau and Kim M Caton the Members of Onyx Homes, LLC, personally known to me to be the same persons whose name are subscribed in the foregoing instrument, appeared before me this day in person and being first duly sworn by me acknowledged that she/he signed and delivered the said instrument as her/his free and voluntary act and as the free and voluntary act of such entity, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal on August 1, 2022.

*James Paterik*  
Notary Public

