

2019-081876

2019 Nov 27

9:38 AM

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
MICHAEL B BROWN
RECORDER

WHEN RECORDED MAIL TO:

1st Source Bank
Consumer Loan Operations
PO Box 4055
South Bend, IN 46634-4055



THIS MORTGAGE dated November 5, 2019, is made and executed between GAVIN KIRK and ALLISON KIRK, HUSBAND AND WIFE (referred to below as "Grantor") and 1st Source Bank, whose address is 14 Indiana Ave, Valparaiso, IN 46383 (street or rural route address: 100 N Michigan St, _____, South Bend, IN 46601) (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, warrants, and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in LAKE County, State of Indiana:

See "A", which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.

\$551.00

LA# 706587

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The Real Property or its address is commonly known as 1034 FRAN LIN PKWY, MUNSTER, IN 46321.

REVOLVING LINE OF CREDIT. This Mortgage secures the Indebtedness including, without limitation, a revolving line of credit, which obligates Lender to make future obligations and advances to Borrower up to a maximum amount of \$26,400.00 so long as Borrower complies with all the terms of the Credit Agreement. Such future obligations and advances, and the interest thereon, are secured by this Mortgage whether such obligations and advances arise under the Credit Agreement, this Mortgage or otherwise. This Mortgage also secures all modifications, extensions and renewals of the Credit Agreement, the Mortgage or any other amounts expended by Lender on Borrower's behalf as provided for in the Mortgage. Such advances may be made, repaid, and remade from time to time, subject to the limitation that the total outstanding balance owing at any one time, not including finance charges on such balance at a fixed or variable rate or sum as provided in the Credit Agreement, any temporary overages, other charges, and any amounts expended or advanced as provided in this paragraph, shall not exceed the Credit Limit as provided in the Credit Agreement. It is the intention of Grantor and Lender that this Mortgage secures the balance outstanding under the Credit Agreement from time to time from zero up to the Credit Limit as provided in the Credit Agreement and any intermediate balance.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF EACH OF GRANTOR'S AGREEMENTS AND OBLIGATIONS UNDER THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Mortgage, Borrower shall pay to Lender all Indebtedness secured by this Mortgage as it becomes due, and Borrower and Grantor shall strictly perform all Borrower's and Grantor's obligations under this Mortgage.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Borrower and Grantor agree that Borrower's and Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in good condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Hazardous Substances. Grantor represents and warrants that the Property never has been, and never will be so long as this Mortgage remains a lien on the Property, used for the generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance in violation of any Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims and losses resulting from a breach of this paragraph of the Mortgage. This obligation to indemnify and defend shall survive the payment of the Indebtedness and the satisfaction of this Mortgage.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Indiana law.

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TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for the Existing Indebtedness referred to in this Mortgage or those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due and except as otherwise provided in this Mortgage.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Mortgage:

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of ten (10) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, for the maximum amount of Borrower's credit line and the full unpaid principal balance of any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Lender's Expenditures. If Grantor fails (1) to keep the Property free of all taxes, liens, security interests, encumbrances, and other claims, (2) to provide any required insurance on the Property, (3) to make repairs to the Property or to comply with any obligation to maintain Existing Indebtedness in good standing as required below, then Lender may do so. If any action or proceeding is commenced that would materially affect Lender's interests in the Property, then Lender on Grantor's behalf may, but is not required to, take any action that Lender believes to be appropriate to protect Lender's interests. All expenses incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Credit Agreement from the date incurred or paid by Lender to the date of repayment by Grantor. However, if this loan is a "consumer loan" or a "consumer related loan" as defined under the Indiana Uniform Consumer Credit Code, the rate charged will not exceed the Annual Percentage Rate initially disclosed on the loan. All such expenses will become a part of the Indebtedness and, at Lender's option, will (1) be payable on demand; (2) be added to the balance of the Credit Agreement and be apportioned among and be payable with any installment payments to become due during either (a) the term of any applicable insurance policy; or (b) the remaining term of the Credit Agreement; or (3) be treated as a balloon payment which will be due and payable at the Credit Agreement's maturity.

Warranty; Defense of Title. The following provisions relating to ownership of the Property are a part of this Mortgage:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in the Existing Indebtedness section below or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever

defend the title to the Property against the lawful claims of all persons.

Existing Indebtedness. The following provisions concerning Existing Indebtedness are a part of this Mortgage:

Existing Lien. The lien of this Mortgage securing the Indebtedness may be secondary and inferior to the lien securing payment of an existing obligation. The existing obligation has a current principal balance of approximately \$213,000.00. Grantor expressly covenants and agrees to pay, or see to the payment of, the Existing Indebtedness and to prevent any default on such indebtedness, any default under the instruments evidencing such indebtedness, or any default under any security documents for such indebtedness.

Full Performance. If Borrower and Grantor pay all the Indebtedness when due, terminates the credit line account, and Grantor otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

Events of Default. Grantor will be in default under this Mortgage if any of the following happen: (1) Grantor commits fraud or makes a material misrepresentation at any time in connection with the Credit Agreement. This can include, for example, a false statement about Borrower's or Grantor's income, assets, liabilities, or any other aspects of Borrower's or Grantor's financial condition. (2) Borrower does not meet the repayment terms of the Credit Agreement. (3) Grantor's action or inaction adversely affects the collateral or Lender's rights in the collateral. This can include, for example, failure to maintain required insurance, waste or destructive use of the dwelling, failure to pay taxes, death of all persons liable on the account, transfer of title or sale of the dwelling, creation of a senior lien on the dwelling without Lender's permission, foreclosure by the holder of another lien, or the use of funds or the dwelling for prohibited purposes.

Rights and Remedies on Default. Upon the occurrence of an Event of Default and at any time thereafter but subject to any limitation in the Credit Agreement or any limitation in this Mortgage, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Borrower or Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty that Borrower would be required to pay.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Judicial Foreclosure. Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

Other Remedies. Lender shall have all other rights and remedies provided in this Mortgage or the Credit Agreement or available at law or in equity.

Sale of the Property. To the extent permitted by applicable law, Borrower and Grantor hereby waive any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Election of Remedies. All of Lender's rights and remedies will be cumulative and may be exercised alone or together. An election by Lender to choose any one remedy will not bar Lender from using any other remedy. If Lender decides to spend money or to perform any of Grantor's obligations under this Mortgage, after Grantor's failure to do so, that decision by Lender will not affect Lender's right to declare Grantor in default and to exercise Lender's remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Credit Agreement rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. However, Grantor only will pay reasonable attorneys' fees of an attorney not Lender's salaried employee, to whom the matter is referred after default. Grantor also will pay any court costs, in addition to all other sums provided by law.

ADDITIONAL PROVISIONS. The following additional provisions apply and control if they conflict with any other provision herein to the contrary.

1. **Inspections.** Lender or its agents may enter the Property at any reasonable time to inspect the Property. Lender will give Grantor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection will be solely for Lender's benefit and Grantor will in no way rely on Lender's inspection.

2. **Existing Indebtedness.** Grantor agrees (A) not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by a lien document that created a prior security interest or incumbrance on the Property without Lender's prior written consent and (B) to promptly deliver to Lender any notices that Grantor receives from the holder.

3. **Maintenance of Insurance.** In addition to any other insurance required and consistent with the requirements for insurance as provided in this Mortgage, Grantor shall also keep the Property insured against the risks reasonably associated with the Property in such coverages and amounts as Lender requires until such time as the Property is released from this Mortgage. Grantor will give Lender and the insurer immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Indebtedness, at Lender's option. Grantor will immediately notify Lender of cancellation or termination of insurance. If Lender purchases insurance upon my failure to obtain or maintain required insurance, Grantor acknowledges and agrees that the insurance (A) will provide limited protection against physical damage up to any amount equal to the lesser of (1) the unpaid balance of the Indebtedness, excluding any unearned finance charges or (2) the value of the collateral, (B) may not insure my equity in the collateral, (C) may not provide any public liability or property damage indemnification and may not meet the requirements of any financial responsibility laws, (D) may include coverages not originally required, (E) may be written by a company other than one Grantor would choose, (F) may be written at a higher rate than Grantor could obtain if Grantor purchased the insurance. Grantor acknowledges and agrees that Lender or an affiliate may receive commissions on the purchase of this insurance.

4. **Co-Signer.** If Grantor signs this Mortgage but is not otherwise obligated to pay the Indebtedness, Grantor does so only to mortgage Grantor's interest in the Property to secure payment of the Indebtedness, and Grantor does not agree by signing this Mortgage to be personally liable on the Indebtedness. If the Mortgage secures a guaranty between Grantor and Lender, Grantor agrees to waive any rights that may prevent Lender from bringing any action or claim against Grantor or any party indebted under the obligation, including but not limited to anti-deficiency or one-action laws.

5. **Disputes.** Grantor consents to service of process by first-class mail or messenger directed to the last address Grantor has provided to Lender. Nothing in this Agreement affects Lender's rights to serve legal process by any other manner permitted by law, to bring any action or proceeding in the courts of any jurisdiction or to exercise self-help remedies, such as set-off, even if Lender has commenced proceedings for court enforcement of its rights under this Agreement.

6. **Waivers.** Except to the extent prohibited by law, Grantor waives all rights of valuation and appraisalment

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relating to the Property.

7. No Action by Lender. Nothing in this Mortgage shall require Lender to take any action. By not exercising any remedy, Lender does not waive Lender's right to later deem an event a default if it continues or occurs again or to exercise any remedy.

8. Default. In addition to the events of default stated in the Events of Default section, Grantor will also be in default if (A) Grantor fails to maintain a deposit account or investment account with Lender; (B) Grantor dies or is declared legally incompetent; (C) fails to perform any condition or to keep any covenant or obligation of this Mortgage; (D) defaults under the terms of any other document related to the Indebtedness; (E) defaults on any other debt or agreement Grantor has with Lender; (F) fails to satisfy or appeal any judgment against Grantor; (G) changes Grantor's name or assumes another name without notifying Lender before doing so; (H) uses the Property in a manner or for a purpose that threatens confiscation by a legal authority; (I) transfer all or a substantial part of Grantor's money or property; (J) Lender determines in good faith that the value of the Property has declined or is impaired; (K) Grantor or any co-signer, endorser, surety or guarantor of this Mortgage or any other obligations Grantor has with Lender dies, dissolves, becomes insolvent, has a receiver appointed, makes an assignment for the benefit of creditors, voluntarily or involuntarily terminates existence or commences any proceeding under any insolvency, bankruptcy, reorganization, composition or debtor relief law, or (L) Lender determines in good faith that a material adverse change has occurred in Grantor's financial condition from the conditions set forth in Grantor's most recent financial statement or that the prospect for payment or performance of this Agreement is impaired for any reason.

9. Condemnation. Grantor will give Lender prompt notice of any pending or threatened action by any entity to purchase or take all or any part of the Property through condemnation, eminent domain or otherwise. Grantor authorized Lender to intervene in Grantor's name in any such action. Grantor assigns to Lender the proceeds of any award or claim for damages in connection with the condemnation or taking. Such proceeds will be deemed payments and applied as provided in the Mortgage. This assignment is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

10. Joint and Several Liability. Each Grantor's obligations under this Mortgage are independent of the obligations of any other Grantor. Lender may sue each Grantor individually or together with any other Grantor. Lender may release any part of the Property, and Grantor will still be obligated under this Mortgage for the remaining Property. Grantor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or any evidence of debt without Grantor's consent. Such a change will not release Grantor from the terms of this Mortgage.

11. Amendment, Integration and Severability. No amendment or modification of this Mortgage shall be effective unless made in writing and executed by Grantor and Lender. This Mortgage and Related Documents are the complete and final expression of the agreement. If any provision of this Mortgage is unenforceable, then that provision shall be severed and the remaining provisions will remain enforceable.

Miscellaneous Provisions. The following miscellaneous provisions are a part of this Mortgage:

Governing Law. This Mortgage will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Indiana without regard to its conflicts of law provisions. This Mortgage has been accepted by Lender in the State of Indiana.

Time is of the Essence. Time is of the essence in the performance of this Mortgage.

Waive Jury. All parties to this Mortgage hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Definitions. The following words shall have the following meanings when used in this Mortgage:

Borrower. The word "Borrower" means GAVIN J. KIRK and includes all co-signers and co-makers signing the Credit Agreement and all their successors and assigns.

Credit Agreement. The words "Credit Agreement" mean the credit agreement dated November 5, 2019, with credit limit of \$26,400.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory

note or agreement. The maturity date of the Credit Agreement is November 16, 2031. **NOTICE TO GRANTOR: THE CREDIT AGREEMENT CONTAINS A VARIABLE INTEREST RATE.**

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

Existing Indebtedness. The words "Existing Indebtedness" mean the indebtedness described in the Existing Liens provision of this Mortgage.

Grantor. The word "Grantor" means GAVIN KIRK and ALLISON KIRK.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Credit Agreement or Related Documents, together with all renewals of, extensions of, modifications or consolidations of and substitutions for the Credit Agreement or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, including, but not limited to, attorneys' fees, costs of collection and costs of foreclosure, together with interest on such amounts as provided in this Mortgage.

Lender. The word "Lender" means 1st Source Bank, its successors and assigns. The words "successors or assigns" mean any person or company that acquires any interest in the Credit Agreement.

Mortgage. The word "Mortgage" means this Mortgage between Grantor and Lender.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

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EACH GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND EACH GRANTOR AGREES TO ITS TERMS.

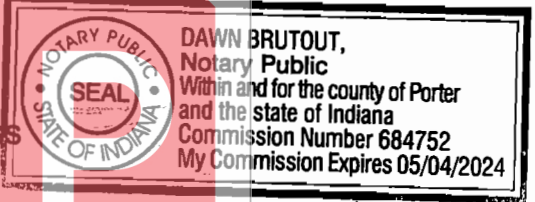
GRANTOR:

X [Signature]
GAVIN KIRK

X [Signature]
ALLISON KIRK



STATE OF IN
COUNTY OF Porter



On this day before me, the undersigned Notary Public, personally appeared GAVIN KIRK and ALLISON KIRK, to me known to be the individuals described in and who executed the Mortgage, and acknowledged that they signed the Mortgage as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 5th day of November, 2019

By [Signature] Residing at Porter Co

Notary Public in and for the State of IN My commission expires 05/04/2024

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law (Larry W Cripe).

This Mortgage was prepared by: Larry W Cripe



EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): **45-07-30-178-006.000-027**

LOT 10 IN FAIRMEADOW TWELFTH ADDITION TO THE TOWN OF MUNSTER, AS PER PLAT THEREOF,
RECORDED IN PLAT BOOK 38, PAGE 86, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.



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ALTA Residential Limited Coverage Junior Loan Policy (08/01/2012)



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