



Doc#: 0926747036 Fee: \$58.25
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/24/2009 10:07 AM Pg: 1 of 11

Illinois Anti-Predatory
Lending Database
Program

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 19-31-218-016-0000

Address:

Street: 6451 West 81st Street

Street line 2:

City: Burbank

State: IL

ZIP Code: 60459

Lender: Nicholas Excavating, Inc.

Borrower: Andrzej Zieba

Loan / Mortgage Amount: \$94,500.00

This property is located within Cook County and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

Certificate number: 62ABD0AC-CB4D-4B7B-9058-E782CF22D3E0

Execution date: 09/22/2009

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MORTGAGE

THIS MORTGAGE is made this 6th day of MAY, 2009 the Mortgagor,

ANDRZEJ ZIEBA
8415 S. Normandy, Burbank, IL
(Hereinafter "Zieba")

and the Mortgagee,

Nicholas Excavating, Inc. of the
City of Bridgeview, IL
(Hereinafter "Nicholas")

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of NINETY FOUR THOUSAND FIVE HUNDRED (\$94,500.00) DOLLARS, which indebtedness is evidenced by Zieba's Note dated the 6TH day of MAY, 2009. Said Note bearing penalties and interest in excess of NINETY FOUR THOUSAND FIVE HUNDRED (\$107,000.00) DOLLARS.

TO SECURE to Nicholas the repayment of the indebtedness evidenced by the Note, with interest thereon, the payment of all other sums, with interest thereon, advanced herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Zieba herein contained, Zieba does hereby mortgage, grant and convey to Nicholas the property described herein, in the County of COOK, State of ILLINOIS.

LEGAL DESCRIPTION:

LOT 1 IN ZIEBA'S W. 81ST STREET RESUBDIVISION OF THE EAST 185.85 (EXCEPT THE WEST 66 FEET THEREOF) OF LOT 43 IN FREDERICK H. BARTLETT'S 79TH STREET ACRES, BEING A SUBDIVISION OF THE NORTHEAST ¼ OF SECTION 31, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PERMANENT REAL ESTATE INDEX NUMBER **19-31-218-016-0000**

Commonly known as: **6451 West 81st Street, Burbank, Illinois 60459**

LOT 2 IN ZIEBA'S W. 81ST STREET RESUBDIVISION OF THE EAST 185.85 (EXCEPT THE WEST 66 FEET THEREOF) OF LOT 43 IN FREDERICK H. BARTLETT'S 79TH STREET ACRES, BEING A SUBDIVISION OF THE NORTHEAST ¼ OF SECTION 31, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

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PERMANENT REAL ESTATE INDEX NUMBER **19-31-218-015-0000**

Commonly known as: **6447 West 81st Street, Burbank, Illinois 60459**

WAREHOUSE UNIT 8626 IN 77TH AVENUE INDUSTRIAL CONDOMINIUM ASSOCIATION, INC. CONDOMINIUM, AS DELINEATED ON A PLAT OF SURVEY OF THE FOLLOWING DESCRIBED TRACT OF LAND: LOTS 42 AND 43 IN FRANK DELUGACH'S GERTRUDE HIGHLANDS, OF THE WEST ½ OF THE EAST ½ OF THE SOUTHWEST ¼ OF SECTION 36, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, WHICH PLAT OF SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED FEBRUARY 25, 2004 AS DOCUMENT NUMBER 0405644015; TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS.

PERMANENT REAL ESTATE INDEX NUMBER **18-36-324-035-1001**

Commonly known as: **8626 South 77th Avenue, Bridgeview, Illinois 60455**

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are herein referred to as the and thereafter "Property").

Zieba covenants that he is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and the Property is unencumbered, and that Zieba will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Nicholas's interest in the Property.

UNIFORM COVENANTS. *Mortgagor and Mortgagee covenant and agree as follows:*

1. **PAYMENT OF PRINCIPAL AND INTEREST:** Zieba shall promptly pay when due the principal of and interest on the indebtedness evidenced by the note, prepayment and late charges as provided in the Note, and the principal of and interest on any Future Advances secured by this Mortgage.
2. **TAXES AND INSURANCE:** Zieba shall be responsible for the payment of all real estate taxes, special assessments and insurance. Nicholas protection insurance to be presented at closing.

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3. **APPLICATION OF PAYMENTS:** Unless applicable law provides otherwise, all payments received by Zieba under the note and paragraphs 1 and 2 hereof shall be applied by Nicholas first in payment of amounts payable to Nicholas by Zieba under paragraph 2 hereof, then to late charges, then to interest payable on the note, then to the principal of the Note, next to interest and principal of any Future Advances, and finally to payment of all costs, charges and attorney's fees incurred by Nicholas in the maintenance or enforcement of its rights hereunder.

4. **CHARGES; LIENS:** Zieba shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this mortgage, and leasehold payments or ground rents, if any, in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Zieba making payment, when due, directly to the payee thereof.

Zieba shall promptly furnish to Nicholas all notice of amounts due under this paragraph, and in the event Zieba shall make payment directly, Zieba shall promptly furnish to Nicholas receipts evidencing such payments.

Zieba shall promptly discharge any lien which has priority over this mortgage; provided, that Zieba shall not be required to discharge any such lien so long as Zieba shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Nicholas, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property of any part thereof.

Zieba shall pay all closing costs, legal fees and other additional fees, including those of the Nicholas.

5. **HAZARD INSURANCE:** Zieba shall keep the improvements hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Nicholas may require and in such amounts and for such periods as Nicholas may require; provided, that Nicholas shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Mortgage.

The insurance carrier providing the insurance shall be chosen by Zieba subject to approval by Nicholas, provided, that such approval shall not be unreasonably withheld.

All premiums on insurance policies shall be paid in the manner provided under paragraph 2 hereof.

All insurance policies and renewals thereof shall be in form acceptable to Nicholas and shall include a standard mortgage clause in favor of and in form acceptable to Nicholas.

Nicholas shall have the right to hold the policies and renewals thereof, and Zieba shall give

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prompt notice to the insurance carrier and Nicholas.

Nicholas may make proof of loss if not made promptly by Zieba.

Unless Nicholas and Zieba otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired.

If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Zieba.

If the Property is abandoned by Zieba, or if Zieba fails to respond to Nicholas within 30 days from the date notice is mailed by Nicholas to Zieba that the insurance carrier offers to settle a claim for insurance benefits, Nicholas is authorized to collect and apply the insurance proceeds at Nicholas's option either to restoration or repair of the property or to the sums secured by this mortgage.

Unless Nicholas and Zieba otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments.

If under paragraph 18 hereof the Property is acquired by Nicholas, all right, title and interest of Zieba in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to the Nicholas to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.

6. **PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Zieba shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the property and shall comply with the provisions of any lease if this Mortgage is on a leasehold.
7. **PROTECTION OF NICHOLAS'S SECURITY:** If Zieba fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Nicholas's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Nicholas at Nicholas's option, upon notice to Zieba, may make such appearances, disburse such sums and take such action as is necessary to protect Nicholas's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs.

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8. **INSPECTION:** Nicholas may make or cause to be made reasonable entries upon and inspections of the property, provided that Nicholas shall give Zieba notice prior to any such inspection specifying reasonable cause therefor related to Nicholas's interest in the Property.
9. **CONDEMNATION:** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Nicholas.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Zieba.

In the event of a partial taking of the property, unless Zieba and Nicholas otherwise agree in writing, there shall be applied to the sums secured by this Mortgage such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this mortgage immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Zieba.

If the Property is abandoned by Zieba, or if, after notice by Nicholas to Zieba that the condemnor offers to make an award or settle a claim for damages, Zieba fails to respond to Nicholas within 30 days after the date such notice is mailed, Nicholas is authorized to collect and apply the proceeds, at Nicholas's option, either to restoration or repair of the Property or to the sums secured by this Mortgage.

Unless Nicholas and Zieba otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments.

10. **ZIEBA NOT RELEASED:** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Nicholas to any successor in interest of Zieba shall not operate to release, in any manner, the liability of the original Zieba and Zieba's successors in interest.

Nicholas shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this interest.

11. **FORBEARANCE BY NICHOLAS NOT A WAIVER:** Any forbearance by Nicholas in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

The procurement of insurance or the payment of taxes or other liens or charges by Nicholas

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shall not be a waiver of Nicholas's right to accelerate the maturity of the indebtedness secured by this Mortgage.

12. **REMEDIES CUMULATIVE:** All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this mortgage or afforded by law of equity, and may be exercised concurrently, independently or successively.
13. **SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CAPTIONS:** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Nicholas and Zieba, subject to the provision of paragraph 17 hereof.
- All covenants and agreements of Zieba shall be joint and several.
- The captions and headings of the paragraphs of this mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.
14. **NOTICE:** Except for any notice required under applicable law to be given in another manner, (a) any notice to Zieba provided for in this mortgage shall be given by mailing such notice by certified mail addressed to Zieba at the Property Address or at such other address as Zieba may designate by notice to Nicholas as provided herein, and (b) any notice to Nicholas shall be given by certified mail, return receipt requested, to Nicholas's address stated herein or to such other address as Nicholas may designate by notice to Zieba as provided herein.
- Any notice provided for in this Mortgage shall be deemed to have been given to Zieba or Nicholas when given in the manner designated herein.
15. **ZIEBA'S COPY:** Zieba shall be furnished a conformed copy of the Note and of this mortgage at the time of execution or after recordation hereof.
16. **TRANSFER OF THE PROPERTY; ASSUMPTION:** If all or any part of the Property or an interest therein is sold or transferred by Zieba without Nicholas's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Nicholas may, at Nicholas's option, declare all the sums secured by this Mortgage to be immediately due and payable.

Nicholas shall have waived such option to accelerate if, prior to the sale or transfer, Nicholas and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Nicholas and that the interest payable on the sums secured by this mortgage shall be at such rate as Nicholas shall request.

If Nicholas has waived the option to accelerate provided in this paragraph 16, and if Zieba's

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successor in interest has executed a written assumption agreement accepted in writing by Nicholas, Nicholas shall release Zieba from all obligations under this Mortgage and the Note.

If Nicholas exercises such option to accelerate, Nicholas shall mail Zieba notice of acceleration in accordance with paragraph 14 hereof.

Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Zieba may pay the sums declared due.

If Zieba fails to pay such sums prior to the expiration of such period, Nicholas may, without further notice or demand on Zieba, invoke any remedies permitted by paragraph 18 hereof.

17. **HAZARDOUS SUBSTANCES:** Zieba shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Zieba shall not do, nor allow anyone else to do anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of hazardous Substances that are generally recognized to be appropriate to normal residential or business uses and to maintenance of the Property.

Zieba shall promptly give Nicholas written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the property and any hazardous Substance or Environmental law of which Zieba has actual knowledge. If Zieba learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any hazardous Substance affecting the property is necessary, Zieba shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 17, "hazardous substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances; gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 17, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS: Zieba and Nicholas further covenant and agree as follows:

18. **ACCELERATION; REMEDIES:** Except as provided in paragraph 16 hereof, upon Zieba's breach of any covenant or agreement of Zieba in this mortgage, including the covenants to pay when due any sums secured by this Mortgage, Nicholas prior to acceleration shall mail notice to Zieba as provided in paragraph 14 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed by Zieba, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the

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sums secured by this Mortgage, recordation and execution of deed in lieu of foreclosure by judicial proceeding and sale of the Property.

The notice shall further inform Zieba of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Zieba to acceleration and foreclosure.

If the breach is not cured on or before the date specified in the notice, Nicholas at Nicholas's option may declare all of the sums secured by this mortgage to be immediately due and payable without further demand.

Nicholas shall be entitled to collect in such proceeding all expenses of deed in lieu of and/or foreclosure, including, but not limited to, reasonable attorney's fees, and costs of documentary evidence, abstracts and title reports.

19. **ZIEBA'S RIGHT TO REINSTATE:** Notwithstanding Nicholas's acceleration of the sums secured by this Mortgage, Zieba shall have the right to have any proceedings begun by Nicholas to enforce this mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) Zieba pays Nicholas all sums which would be then due under this Mortgage, the Note and notes security Future Advances, if any, had no acceleration occurred; (b) Zieba cures all breaches of any other covenants or agreements of Zieba contained in this Mortgage; (c) Zieba pays all reasonable expenses incurred by Nicholas in enforcing the covenants and agreements of Zieba contained in this Mortgage and in enforcing Nicholas's remedies as provided in paragraph 18 hereof, including, but not limited to, reasonable attorney's fees; and (d) Zieba takes such action as Nicholas may reasonable require to assure that the lien of this Mortgage, Nicholas's interest in the property and Zieba's obligation to pay the sums secured by this Mortgage shall continue unimpaired.

Upon such payment and cure by Zieba, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. **ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; NICHOLAS IN POSSESSION:**

As additional security hereunder, Zieba hereby assigns to Nicholas the rents of the Property, provided that Zieba shall, prior to acceleration under paragraph 18 hereof or abandonment of Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 18 hereof or abandonment of the Property, and at any time prior to the expiration of any period of redemption following judicial sale, Nicholas, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due.

All rents collected by Nicholas or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but no limited to receiver's

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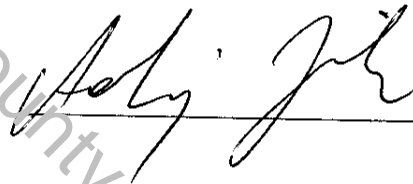
fees, premiums of receiver's bonds and reasonable attorney's fees, and then to the sum secured by this Mortgage.

Nicholas and the receiver shall be liable to account only for those rents actually received.

- 21. **WAIVER OF HOMESTEAD EXEMPTION:** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Illinois as to all indebtedness secured by this Mortgage.
- 22. **RELEASE:** Upon payment of all sums secured by this Mortgage, Nicholas shall release this mortgage without charge to Zieba. Zieba shall pay all costs of recordation, if any.
- 23. **WAIVER OF REDEMPTION:** The Zieba hereby acknowledges and hereby waives any right of redemption it may have by statute or common law in the event a foreclosure action is instituted.

IN WITNESS WHEREOF, the parties have executed this Mortgage.

ANDRZEJ ZIEBA



NICHOLAS EXCAVATING, INC.

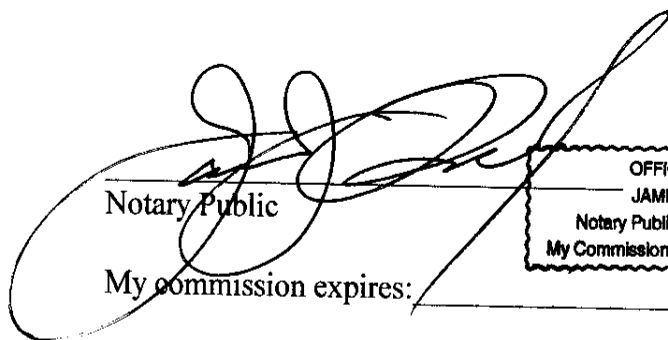


STATE OF ILLINOIS)
)SS:
COUNTY OF COOK)

THE UNDERSIGNED, a Notary Public in and for said county and state, do hereby certify that ANDRZEJ ZIEBA and MARK NICHOLAS are personally known to me to be the same person(s) whose name(s) is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument as his/her/their free and voluntary act for the uses and purposes therein set forth.

GIVEN UNDER MY HAND AND OFFICIAL seal, this 14th day of May, 2009, 2009.

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Notary Public
My commission expires: _____

OFFICIAL SEAL
JAMES J. PINK
Notary Public - State of Illinois
My Commission Expires Jun 16, 2012

Property of Cook County Clerk's Office