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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 1222718036 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 08/14/2012 09:23 AM Pg: 1 of 8

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 17-07-213-010-0000

Address:

Street: 1831 W. ERIE ST.

Street line 2:

City: CHICAGO

State: IL

ZIP Code: 60647

Lender: WALTER BOITCHOUK

Borrower: 1831 W ERIE INC.

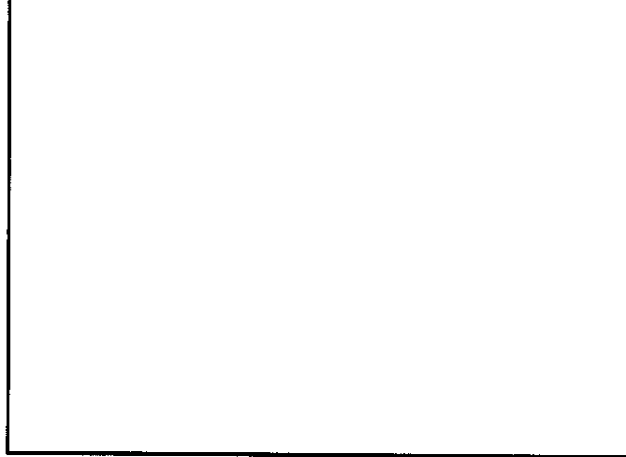
Loan / Mortgage Amount: \$400,000.00

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.

Certificate number: D5F42747-7E9A-4EEA-A447-87DA4C9D3500

Execution date: 08/07/2012

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Property of Cook County Clerk's Office

MORTGAGE

THIS MORTGAGE ("Mortgage"), made as of this 7th day of August, 2012, by 1831 W ERIE INC., an Illinois corporation with the principal place of business at 2712 W. Chicago Ave., Chicago, IL 60622 ("Borrower"), to and for the benefit of WALTER BOITCHOUK, an individual, of 1100 N. Cumberland Ave., Park Ridge, IL 60068 ("Lender").

WITNESSETH:

Borrower owes Lender the principal sum of FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (\$400,000.00). This debt is evidenced by Borrower's promissory note ("Note") dated the same date as this Mortgage. This Mortgage secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications; (b) the payment of all other sums, with interest, advanced under Paragraph 6 to protect the security of this Mortgage; and (c) the performance of Borrower's covenants and agreements under this Mortgage and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender the following described property located in Cook County, Illinois:

LOT 63 IN W.E. DOGGETS SUBDIVISION OF BLOCK 14, IN CANAL TRUSTEES SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Index Number: 17-07-213-010-0000

Street Address: 1831 W. Erie St., Chicago, Illinois 60647

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 rights and stock and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing is referred to in this Mortgage as the "Property".

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. Application of Payments. Unless prohibited by applicable law, all payments received by Lender under this Mortgage, the Note and all other documents given to Lender to further evidence, secure or guarantee the secured indebtedness (collectively, "Loan Documents") shall be applied by Lender first to interest payable on the Note and to any prepayment premium which may be due, and then to Note principal.

3. Charges. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Mortgage, and leasehold payments or ground rents, if any. Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

4. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires with Lender named as an additional insured. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval, which approval shall not be unreasonably withheld.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Mortgage, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraphs 1 and 2 or change the amount of the payments.

5. Preservation and Maintenance of Property; Leaseholds. Borrower shall not destroy, damage or substantially change the Property, allow the Property to deteriorate or commit waste. If this Mortgage is on a leasehold, Borrower shall comply with the provisions of the lease, and if Borrower acquire fee title to the Property, the leasehold and fee title shall not merge unless Lender agrees to the merger in writing.

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6. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or to enforce laws or regulations), then Lender may, at his sole option, do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Mortgage, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Any amounts disbursed by Lender under this Paragraph shall become additional debt of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with Interest, upon notice from Lender to Borrower requesting payment.

7. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

8. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, the sums secured by this Mortgage shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemner offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Mortgage, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraphs 1 and 2 or change the amount of such payments.

9. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to Borrower or any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against Borrower or any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

10. Successors and Assigns Bound; Joint and Several Liability. The covenants and agreements contained herein shall bind, and the rights hereunder shall inure to, the respective heirs, executors, legal representatives, successors and assigns of Lender and Borrower. If this Mortgage is executed by more than one Borrower, each Borrower shall be jointly and severally liable hereunder.

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11. Loan Charges. If the loan secured by this Mortgage is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

12. Notices. Any notice or demand that Lender or Borrower may desire or be required to give to the other shall be in writing and shall be mailed by certified mail or delivered (in person or by nationally recognized overnight courier service) to the intended recipient at its address set forth below:

- (a) If to Borrower, to: 1831 W Erie Inc., 2712 W. Chicago Ave., Chicago, IL 60622, with a copy to Daniel Lauer, Esq., Daniel G. Lauer & Associates, P.C., 1424 W. Division St., Chicago, IL 60642
- (b) If to Lender, to: Walter Boitchouk, 1100 N. Cumberland Ave., Park Ridge, IL 60068, with a copy to Alexander Demchenko, Esq., Demchenko & Kashuba LLC, 2338 W. Belmont Ave., Chicago, IL 60618.

13. Governing Law; Severability. This Mortgage shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision. To this end the provisions of this Mortgage and the Note are declared to be severable.

14. Prohibitions on Transfer of the Property or of an Interest in Borrower. It shall be an immediate default if, without the prior written consent of Lender, which consent may be granted or withheld at Lender's sole discretion, Borrower shall create, effect or consent to or shall suffer or permit any lease, conveyance, sale (including an installment sale), assignment, transfer, lien, pledge, hypothecation, mortgage, security interest, or other encumbrance or alienation, whether by operation of law, voluntarily or otherwise, (collectively "Transfer") of: (1) the Property or any part thereof or interest therein; (2) all or a portion of the beneficial interest of Borrower or change in the power of direction, if Borrower is a trustee; (3) all or a portion of the stock of any corporate Borrower or corporate beneficiary of a trustee Borrower, that results or could result in a material change in the identity of the person(s) or entities previously in control of such corporation; or (4) all or a portion of a partnership, or joint venture interest of a joint venturer in the joint venture, if Borrower or Borrower's beneficiary, in the event Borrower is a trustee, consists of or includes a partnership or joint venture, that results or could result in a material change in the identity of the person(s) in control of such partnership or joint venture (each of the foregoing is referred to as a "Prohibited Transfer"). In the event of such default, Lender may declare the entire unpaid balance, including interest, immediately due and payable. This option shall not be exercised by Lender if prohibited by Federal law as of the date of this Mortgage.

15. Event of Default. Each of the following shall constitute an event of default ("Event of Default") under this Mortgage:

- a. Borrower's failure to pay any amount due herein or secured hereby, or any installment of principal or interest when due and payable whether at maturity or by acceleration or otherwise under the Note, this Mortgage, or any other Loan Document;

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- b. Borrower's failure to perform or observe any other covenant, agreement, representation, warranty or other provision contained in the Note, this Mortgage (other than an Event of Default described elsewhere in this Paragraph) or any other document or instrument evidencing, guarantying or securing the payments of principal and/or interest under the Note;
- c. The occurrence of any breach of any representation or warranty contained in the Note, Mortgage or any other Loan Documents;
- d. A Prohibited Transfer occurs;
- e. A court having jurisdiction shall enter a decree or order for relief in respect of Borrower in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law; or if Borrower, or any beneficiary of or person in control of Borrower, shall: (i) file a voluntary petition in bankruptcy, insolvency, debtor relief or for arrangement, reorganization or other relief under the Federal Bankruptcy Act or any similar state or federal law; (ii) consent to or suffer the appointment of or taking possession by a receiver, liquidator, or trustee (or similar official) of the Borrower or for any part of the Property or any substantial part of the Borrower's other property; (iii) make any assignment for the benefit of Borrower's creditors; (iv) fail generally to pay Borrower's debts as they become due;
- f. All or a substantial part of Borrower's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon;
- g. If Borrower is other than a natural person or persons: (i) the dissolution or termination of existence of Borrower, voluntarily or involuntarily, whether by reason of death of a general partner of Borrower or otherwise; (ii) the amendment or modification in any respect of Borrower's articles or agreement of partnership or its corporate resolutions or its articles of incorporation or bylaws that would affect Borrower's performance of its obligations under the Note, this Mortgage or the other Loan Documents;
- h. An indictment or other charge is filed against Borrower in any jurisdiction, under any federal or state law, for which forfeiture of the Property or of other collateral securing the Secured Indebtedness or of any other funds, property or other assets of Borrower or Lender, is a potential penalty (unless such charge is dismissed within ten (10) days after filing);
- i. The death or legal incapacity of any individual Borrower or Guarantor.

16. ACCELERATION; REMEDIES. AT ANY TIME AFTER AN EVENT OF DEFAULT, LENDER, AT LENDER'S OPTION, MAY DECLARE ALL SUMS SECURED BY THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS TO BE IMMEDIATELY DUE AND PAYABLE WITHOUT FURTHER DEMAND AND MAY FORECLOSE THIS MORTGAGE BY JUDICIAL PROCEEDING. LENDER SHALL BE ENTITLED TO COLLECT IN SUCH PROCEEDING ALL EXPENSES OF FORECLOSURE, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COSTS INCLUDING ABSTRACTS AND TITLE REPORTS, ALL OF WHICH SHALL BECOME A PART OF THE SECURED INDEBTEDNESS AND IMMEDIATELY DUE AND PAYABLE, WITH INTEREST AT THE DEFAULT RATE. THE PROCEEDS OF ANY FORECLOSURE SALE OF THE PROPERTY SHALL BE APPLIED AS FOLLOWS: FIRST, TO ALL COSTS, EXPENSES AND FEES INCIDENT TO THE FORECLOSURE PROCEEDINGS; SECOND, AS SET FORTH IN PARAGRAPH 2 OF THIS MORTGAGE; AND THIRD, ANY BALANCE TO BORROWER.

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17. Assignment of Leases and Rents. All right, title, and interest of Borrower in and to all present and future leases affecting the Property, written or oral (collectively, "Leases"), and all rents, income, receipts, revenues, issues, avails and profits from or arising out of the Property (collectively "Rents") are hereby transferred and assigned to Lender as further security for the payment of the principal and/or interest under this Note, and Borrower hereby grants a security interest to Lender in and to the same. If requested by Lender, Borrower shall submit all future Leases affecting the Property to the Lender for its approval prior to execution, and all approved and executed Leases shall be specifically assigned to Lender by an instrument satisfactory to Lender. Each Lease shall, at the option of Lender, be paramount or subordinate to this Mortgage. Borrower shall furnish Lender with executed copies of each Lease and, if requested by Lender, with estoppel letters from each tenant, which estoppel letters shall be in a form satisfactory to Lender and shall be delivered no later than thirty (30) days after Lender's written demand.

If, without Lender's prior written consent, Borrower; (i) as lessor, fails to perform and fulfill any term, covenant, or provision in any Lease; (ii) suffers or permits to occur any breach or default under the provisions of any separate assignment of any Lease given as additional security for the Secured Indebtedness; (iii) fails to fully protect, insure, preserve, and cause continued performance or fulfillment of the terms, covenants, or provisions, which are required to be performed by the lessee or the lessor of any other Lease or Leases hereafter assigned to Lender; (iv) cancels, terminates, or materially amends or modifies any Lease; or (v) permits or approves an assignment by lessee of a Lease or a subletting of all or any part of the Property demised in the Lease; such occurrence shall constitute an Event of Default hereunder.

Lender shall have the right to assign Borrower's right, title and interest in any Leases to any subsequent holder of this Mortgage or the Note and other Loan Documents or to any person acquiring title to all or any part of the Property through foreclosure or otherwise.

Upon an Event of Default, this Mortgage shall constitute a direction to each lessee under the Leases and each guarantor thereof, if any, to pay all Rents directly to Lender without proof of the Event of Default. Lender shall have the authority, as Borrower's attorney-in-fact (such authority being coupled with an interest and irrevocable) to sign the name of Borrower and to bind Borrower and to bind Borrower on all papers and documents relating to the operation, leasing and maintenance of the Property. While this assignment is a present assignment, Lender shall not exercise any of the rights or powers conferred upon it by this Paragraph until an Event of Default shall occur under this Mortgage.

If Borrower, as lessor, shall neglect or refuse to perform and keep all of the covenants and agreements contained in the Lease or Leases, then Lender may perform and comply with any such Lease covenants and agreements. All related costs and expenses incurred by the Lender shall become a part of the Secured Indebtedness and shall be due and payable upon demand by Lender with interest thereon accruing thereafter at the Default Rate.

Lender, however, shall not be obligated to perform or discharge any obligation, duty or liability under any Lease. Borrower shall, defend, protect, indemnify and hold Lender harmless from and against any and all liability, loss or damage to Lender under the Leases or under or by reason of their assignments and of and from any and all claims and demands whatsoever which may be asserted against Lender by reason of all alleged obligations or undertakings on its part to perform or discharge any Lease terms, covenants or agreements. The amount of any such liability, loss or damage arising under the Leases or under or by reason of their assignment, or in the defense of any claims or demands, including costs, expenses and reasonable attorneys' fees, incurred by Lender shall be a part of the Secured Indebtedness due and payable upon demand with interest thereon accruing thereafter at the Default Rate.

