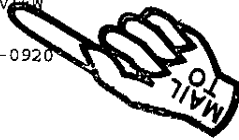


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THIS INSTRUMENT WAS PREPARED BY and AFTER RECORDING RETURN TO:

PREPARED BY:
TRACY HALL

RETURN TO:
M&I BANK FSB
ATTN: DOCUMENT REVIEW
PO BOX 5920
MADISON, WI 53705-0920



29729106 / 00001

0502022

354264



Doc#: 0402211152
Eugene "Gene" Moore Fee: \$34.00
Cook County Recorder of Deeds
Date: 01/22/2004 11:12 AM Pg: 1 of 6

W.B.A. 428 ILCS/02 F41142
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23-05-201-099-000

SECURES FUTURE ADVANCES

Parcel Identification No.

DOCUMENT NO.

REAL ESTATE MORTGAGE
(For Consumer or Business Mortgage Transactions)

RIGHT TITLE OF ILLINOIS
CHICAGO, ILLINOIS
2007
LIBRARY
SERIES
SUTHERLAND

625

DAVID BENES AND ROSEANN BENES HUSBAND AND WIFE AS
TENANTS BY THE ENTIRETY

whether one or more) mortgages, conveys, assigns, grants a security interest in and warrants to
M&I BANK FSB ("Lender")

in consideration of the sum of ****TWELVE THOUSAND DOLLARS AND ZERO CENTS**** Dollars

(\$ 12,000.00), loaned or to be loaned to
ROSEANN BENES
AND/OR DAVID BENES, husband & wife

("Borrower," whether one or more), evidenced by Borrower's note(s) or agreement dated January 12, 2004 the real estate described below, together with all privileges, hereditaments, easements and appurtenances, all rents, leases, issues and profits, all claims, awards and payments made as a result of the exercise of the right of eminent domain, and all existing and future improvements and fixtures (all called the "Property") to secure the Obligations described in paragraph 4 of this Mortgage, including but not limited to repayment of the sum stated above plus certain future advances made by Lender. Mortgagor hereby releases and waives all rights under and by virtue of the homestead exemption laws of this state. The current interest rate on Borrower's note(s) or agreement is SIX AND 00/1000 percent (6.000 %) and may vary based upon changes in an index rate. The maturity date of the Borrower's note(s) or agreement is January 12, 2005, which may be extended, modified or renewed from time to time and the Mortgage will secure the Obligations as extended, modified or renewed. The total principal secured by this Mortgage shall at no time exceed TWO times the amount of the indebtedness stated in Borrower's note(s) or agreement described above.

1. Description of Property. (This Property IS the homestead of Mortgagor.)

LEGAL DESCRIPTION ATTACHED

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If checked here, this Mortgage secures a revolving line of credit and shall secure not only the amount which Lender has presently advanced to Borrower under the Borrower's note(s) or agreement, but also any future amounts which Lender may advance to Borrower under Borrower's note(s) or agreement within twenty (20) years from the date of this Mortgage to the same extent as if such future advance were made as of the date of execution of this Mortgage.

If checked here, description continues or appears on attached sheet.

If checked here, this Mortgage is a "construction mortgage" under 810 ILCS 5/9-313 (l)(c).

If checked here, Condominium Rider is attached.

2. Title. Mortgagor warrants title to the Property, excepting only restrictions and easements of record, municipal and zoning ordinances, current taxes and assessments not yet due and _____
THAT CERTAIN 1ST MTG TO MERS

3. Escrow. Interest N/A be paid on escrowed funds if an escrow is required under paragraph 8(a) of this Mortgage.

4. Mortgage as Security. This Mortgage secures prompt payment to Lender of (a) the sum stated in the first paragraph of this Mortgage, plus interest and charges according to the terms of the promissory notes or agreement of Borrower to Lender identified above, and any extensions, renewals or modifications signed by any Borrower of such promissory notes or agreement, (b) to the extent not prohibited by applicable law (i) any additional sums which are in the future loaned by Lender to any Mortgagor, to any Mortgagor and another or to another guaranteed or endorsed by any Mortgagor primarily for personal, family or household purposes and agreed in documents evidencing the transaction to be secured by this Mortgage, and (ii) all other additional sums which are in the future loaned by Lender to any Mortgagor, to any Mortgagor and another or to another guaranteed or endorsed by any Mortgagor, (c) all interest and charges, and (d) to the extent not prohibited by law, all costs and expenses of collection or enforcement (all called the "Obligations"). This Mortgage also secures the performance of all covenants, conditions and agreements contained in this Mortgage. Unless otherwise required by law, Lender will satisfy this Mortgage upon request by Mortgagor if (a) the Obligations have been paid according to their terms, (b) any commitment to make future advances secured by this Mortgage has terminated, (c) Lender has terminated any line of credit under which advances are to be secured by this Mortgage, and (d) all other payments required under this Mortgage and the Obligations and all other terms, conditions, covenants, and agreements contained in this Mortgage and the documents evidencing the Obligations have been paid and performed.

5. Taxes. To the extent not paid to Lender under paragraph 8(c), Mortgagor shall pay before they become delinquent all taxes, assessments and other charges which may be levied or assessed against the Property, or against Lender upon this Mortgage or the Obligations or other debt secured by this Mortgage, upon Lender's interest in the Property, and deliver to Lender receipts showing timely payment.

6. Insurance. Mortgagor shall keep the improvements on the Property insured against direct loss or damage occasioned by fire, flood, extended coverage perils and such other hazards as Lender may require, through insurers approved by Lender, in amounts, without co-insurance, not less than the unpaid balance of the Obligations or the full replacement value, whichever is less, and shall pay the premiums when due. The policies shall contain the standard mortgagee and loss payee clauses in favor of Lender and, unless Lender otherwise agrees in writing, the original of all policies covering the Property shall be deposited with Lender. Subject to Lender's approval, Borrower is free to select the insurance agent or insurer through which insurance is obtained. Mortgagor shall promptly give notice of loss to insurance companies and Lender. All proceeds from such insurance shall be applied, at Lender's option, to the installments of the Obligations in the inverse order of their maturities (without penalty for prepayment) or to the restoration of the improvements on the Property. In the event of foreclosure of this Mortgage or other transfer of title to the Property, in extinguishment of the indebtedness secured hereby, all right, title, and interest of Mortgagor in and to any insurance then in force shall pass to the purchaser or grantee.

7. Collateral Protection Insurance Notice. Unless Mortgagor provides Lender with evidence of the insurance coverage required by this Mortgage, Lender may purchase insurance at Mortgagor's expense to protect Lender's interests in the Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Lender purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Lender purchases insurance for the Property, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges Lender may impose in connection with the placement of the insurance as required by this Mortgage. If Lender purchases insurance for the Property, Mortgagor will be responsible for the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Mortgagor's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on Mortgagor's own.

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SGHEULE
ALTA Commitment
File No.: 354264

LEGAL DESCRIPTION

Parcel 1:

That part of Lot 8 in Willows Edge, being a subdivision of Section 5, Township 37 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois, described as follows:

Commencing at the Southwest corner of said Lot 8; thence North 00 degrees 00 minutes 42 seconds East, a distance of 18.92 feet; Thence South 89 degrees 59 minutes 18 seconds East, a distance of 7.26 feet; thence South 50 degrees 34 minutes 03 seconds East, a distance of 27 feet; thence North 39 degrees 25 minutes 57 seconds East, a distance of 27 feet; for a place of beginning; thence North 39 degrees 25 minutes 57 seconds East, a distance of 22 feet, thence North 50 degrees 34 minutes 03 seconds West, a distance of 27 feet, thence South 39 degrees 25 minutes 57 seconds West, a distance 22 feet; thence South 50 degrees 34 minutes 03 second, East a distance of 27 feet to the point of beginning.

Parcel 2:

Easements appurtenant to and for the benefit of parcel 1 for ingress and egress as set forth in declaration of party wall rights, covenants, conditions, easements and restrictions dated January 25, 1998 as document number 88138286.

128 Willows Edge Drive E
Willow Springs, IL 60408

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8. Mortgagor's Covenants. Mortgagor covenants:

- (a) **Escrow.** If an escrow is required by Lender, to pay Lender sufficient funds, at such times as Lender designates, to pay when due (1) the estimated annual real estate taxes and assessments on the Property, (2) all property and hazard insurance premiums, (3) flood insurance premiums, if any, (4) if payments owed under the Obligations are guaranteed by mortgage guaranty insurance, the premiums necessary to pay for such insurance, and (5) other items agreed to be included in the escrow. Lender may, at any time, collect and hold such escrow funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Mortgagor's escrow account under the federal Real Estate Settlement Procedures Act of 1974, as amended from time to time. Lender may estimate the amount of escrow funds due on the basis of current data and reasonable estimates of future expenditures of future escrow account funds or as otherwise required by applicable law. Lender shall apply the escrowed funds against taxes, assessments and insurance premiums when due or as otherwise required by law. Escrowed funds may be commingled with Lender's general funds. If the escrowed funds held by Lender exceed the amount permitted to be held by applicable law, Lender shall account to Mortgagor for the excess escrowed funds in a manner determined by Lender or as otherwise required by applicable law. If the escrowed funds held by Lender at any time are not sufficient to pay the escrow account items when due, Lender may notify Mortgagor in writing, and Mortgagor shall pay to Lender the amount necessary to make up the deficiency in a manner determined by Lender or as otherwise required by applicable law;
- (b) **Condition and Repair.** To keep the Property in good and tenantable condition and repair, and to restore or replace damaged or destroyed improvements and fixtures;
- (c) **Liens.** To keep the Property free from liens and encumbrances superior to the lien of this Mortgage and not described in paragraph 2 of this Mortgage;
- (d) **Other Mortgages.** To perform all of Mortgagor's obligations and duties under any other mortgage or security agreement on the Property and any obligation to pay secured by such a mortgage or security agreement;
- (e) **Waste.** Not to commit waste or permit waste to be committed upon the Property;
- (f) **Conveyance.** Not to sell, assign, lease, mortgage, convey or otherwise transfer any legal or equitable interest in all or part of the Property, or permit the same to occur without the prior written consent of Lender and, without notice to Mortgagor, Lender may deal with any transferee as to his interest in the same manner as with Mortgagor, without in any way discharging the liability of Mortgagor under this Mortgage or the Obligations;
- (g) **Alteration or Removal.** Not to remove, demolish or materially alter any part of the Property, without Lender's prior written consent, except Mortgagor may remove a fixture, provided the fixture is promptly replaced with another fixture of at least equal utility;
- (h) **Condemnation.** To pay to Lender all compensation received for the taking of the Property, or any part, by condemnation proceeding (including payments in compromise of condemnation proceedings), and all compensation received as damages for injury to the Property, or any part. The compensation shall be applied in such manner as Lender determines to rebuilding of the Property or to the Obligations in the inverse order of their maturities (without penalty for prepayment);
- (i) **Inspection.** Lender and its authorized representatives may enter the Property at reasonable times to inspect it, and at Lender's option to repair or restore the Property and to conduct environmental assessments and audits of the Property;
- (j) **Ordinances.** To comply with all laws, ordinances and regulations affecting the Property; and
- (k) **Subrogation.** That Lender is subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the proceeds of the note(s) or agreement identified above.

9. **Environmental Laws.** Mortgagor represents, warrants and covenants to Lender (a) that during the period of Mortgagor's ownership or use of the Property no substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require clean-up, removal or some other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws"); (b) that Mortgagor has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner or person using the Property; (c) that, without limiting the generality of the foregoing, Mortgagor has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components (PCBs) or underground storage tanks; (d) that there are no conditions existing currently or likely to exist during the term of this Mortgage which would subject Mortgagor to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claims relating to any Hazardous Substance; (e) that Mortgagor is not subject to any court or administrative proceeding, judgment, decree, order or citation relating to any Hazardous Substance; and (f) that Mortgagor in the past has been, at the present is, and in the future will remain in compliance with all Environmental Laws. Mortgagor shall indemnify and hold harmless Lender, its directors, officers, employees and agents from all loss, cost (including reasonable attorneys' fees and legal expenses), liability and damage

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whatsoever directly or indirectly resulting from, arising out of, or based upon (i) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, (ii) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, or (iii) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Mortgagor shall immediately notify Lender in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance on, in, under or about the Property.

10. Authority of Lender to Perform for Mortgagor. If Mortgagor fails to perform any of Mortgagor's duties set forth in this Mortgage, Lender may after giving Mortgagor any notice and opportunity to perform which are required by law, perform the duties or cause them to be performed, including without limitation signing Mortgagor's name or paying any amount so required, and the cost shall be due on demand and secured by this Mortgage, bearing interest at the highest rate stated in any document evidencing an Obligation, but not in excess of the maximum rate permitted by law, from the date of expenditure by Lender to the date of payment by Mortgagor.

11. Default; Acceleration; Remedies. If (a) there is a default under any Obligation secured by this Mortgage, (b) Mortgagor fails timely to observe or perform any of Mortgagor's covenants or duties contained in this Mortgage, or (c) Lender deems itself insecure then, at the option of Lender each Obligation will become immediately payable. If Lender exercises its option to accelerate, the unpaid principal and interest owed on the Obligation, together with all sums paid by Lender as authorized or required under this Mortgage or any Obligation, shall be collectible in a suit at law or by foreclosure of this Mortgage by action, or both, or by the exercise of any other remedy available at law or equity.

12. Waiver. Lender may waive any default without waiving any other subsequent or prior default by Mortgagor.

13. Waiver of Right of Reinstatement and Redemption. Unless the Property is residential real estate or agricultural real estate as defined in the Illinois Mortgage Foreclosure Law, Mortgagor hereby waives any and all rights of reinstatement and redemption from sale in any foreclosure of the Mortgage. If the Property is agricultural real estate and the Mortgagor is a corporation or corporation trustee, Mortgagor hereby waives any and all rights of reinstatement and redemption from sale in any foreclosure of this Mortgage.

14. Possession of Property. Mortgagor agrees that upon the occurrence of an event of default, Lender shall be entitled, but is not required, to possession of the Property, without bond, subject to applicable law. Lender shall have all of the rights and privileges of a Mortgagee in possession provided by law, and shall be entitled to reimbursement for reasonable costs, expenses and third party management fees incurred in connection with such possession.

15. Assignment of Rents and Leases. Mortgagor assigns and transfers to Lender, as additional security for the Obligations, all rents which become or remain due or are paid under any agreement or lease for the use or occupancy of any part or all of the Property. Until the occurrence of an event of default under this Mortgage or any Obligation, Mortgagor has the right to collect the rents, issues and profits from the Property, but upon the occurrence of such an event of default, Mortgagor's license to collect is terminated and Lender shall be entitled to such rents, issues and profits and may, after giving Mortgagor any notice and opportunity to perform required by law, notify any or all tenants to pay all such rents directly to Lender. All such payments shall be applied in such manner as Lender determines to payments required under this Mortgage and the Obligations. This assignment shall be enforceable and Lender shall be entitled to take any action to enforce the assignment (including notice to the tenants to pay directly to Lender or the commencement of a foreclosure action) without seeking or obtaining the appointment of a receiver.

16. Receiver. Upon the commencement or during the pendency of an action to foreclose this Mortgage, or enforce any other remedies of Lender under it, without regard to the adequacy or inadequacy of the Property as security for the Obligations if the Mortgagee is entitled to possession of the Property pursuant to applicable law, then upon request of the Mortgagee, the court shall appoint a receiver of the Property (including homestead interest) designated by Lender without bond, and may empower the receiver to take possession of the Property and collect the rents, issues and profits of the Property and exercise such other powers as the court may grant until the confirmation of sale and the expiration of the redemption period, if any, and may order the rents, issues and profits, when so collected, to be held and applied as required by law.

17. Revolving Line of Credit. If this Mortgage secures a revolving line of credit then the revolving line of credit obligates Lender to make advances to Borrower provided that Borrower complies with all of the terms of the Borrower's note(s) or agreement. Such advances may be made, repaid and remade from time to time subject to the provisions of the Borrower's note(s) or agreement. Without limiting other provisions of this Mortgage addressing Obligations secured by this Mortgage, it is the intention of the Mortgagor and Lender that this Mortgage secures the balance outstanding under the Borrower's note(s) or agreement from time to time from zero up to the credit limit.

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18. Expenses. To the extent not prohibited by law, Mortgagor shall pay all reasonable costs and expenses before and after judgment, including without limitation, attorneys' fees, fees and expenses for environmental assessments, inspections and audits, and fees and expenses for obtaining title evidence incurred by Lender in protecting or enforcing its rights under this Mortgage.

19. Severability; Governing Law. Invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of any other provision. The validity, construction and enforcement of this Mortgage are governed by the laws of Illinois.

20. Successors and Assigns. The obligations of all Mortgagors are joint and several. This Mortgage benefits Lender, its successors and assigns, and binds Mortgagor(s) and their respective heirs, personal representatives, successors and assigns.

21. Entire Agreement. This Mortgage is intended by the Mortgagor and Lender as a final expression of this Mortgage and as a complete and exclusive statement of its terms, there being no conditions to the full effectiveness of this Mortgage. No parol evidence of any nature shall be used to supplement or modify any terms.

Mortgagor acknowledges receipt of an exact copy of this Mortgage. Signed and Sealed January 12, 2004
(Date)

(SEAL)

(Type of Organization)

(SEAL) Roseann Benes (SEAL)
ROSEANN BENES

(SEAL) David Benes (SEAL)
DAVID BENES

(SEAL) _____ (SEAL)

(SEAL) _____ (SEAL)

ACKNOWLEDGMENT

STATE OF ILLINOIS }
County of Cook } ss

The foregoing instrument was acknowledged before me on _____,

by ROSEANN BENES AND DAVID BENES

as HUSBAND AND WIFE of _____

a _____

* Diane Marie Acton
Notary Public, Illinois
My Commission (Expires) (Is) _____

*Type or print name signed above.

