

# UNOFFICIAL COPY

445  
Nos  
MD  
825-3534  
CT7

After Recording Return to:

BILTMORE FINANCIAL BANCORP, INC.  
1530 EAST DUNDEE ROAD-SUITE 100  
PALATINE, ILLINOIS 60074



Doc#: 0508702216  
Eugene "Gene" Moore Fee: \$42.00  
Cook County Recorder of Deeds  
Date: 03/28/2005 09:42 AM Pg: 1 of 10

Prepared By:

Mindi Norton  
1530 East Dundee Road  
Palatine, IL 60074

THE SPACE ABOVE THIS LINE IS RESERVED FOR RECORDING DATA

## MORTGAGE [THIS IS A FUTURE ADVANCE MORTGAGE]

### 1. DEFINITIONS.

a. Lender: The Lender in this Mortgage is BILTMORE FINANCIAL BANCORP, INC.

also referred to as "Mortgagee."

b. Borrower: The Borrower(s) in this Mortgage is/are Brian W Scruggs  
AND Marilyn J Scruggs, HUSBAND AND WIFE

also referred to as "Mortgagor(s)."

c. Agreement: Means the Home Equity Loan Agreement and Disclosure Statement dated  
March 8, 2005

d. Property: Means the property described in Section 2 titled, "Grant and Conveyance of Mortgage."

e. Mortgage: Means this document, which, together with all Riders, will be given to Lender by the  
Borrower(s) to secure the Loan Amount provided to Borrower(s) under the terms of the  
Agreement.

BOX  
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THIS MORTGAGE is made this 8th day of March, 2005, between the Mortgagor(s), **Brian W Scruggs AND Marilyn J Scruggs, HUSBAND AND WIFE**

and the Mortgagee, **BILTMORE FINANCIAL BANCORP, INC.**

which is organized under the laws of: **THE STATE OF ILLINOIS** and has an address of: **1530 EAST DUNDEE ROAD-SUITE 100 PALATINE, ILLINOIS 60074**

**2. GRANT AND CONVEYANCE OF MORTGAGE.** To secure (i) the payment of all sums that Borrower may owe to Lender under the Agreement and this Mortgage, and (ii) the performance of all promises, covenants and agreements made by Borrower in the Agreement and this Mortgage; and for good and valuable consideration, the receipt and sufficiency of which is acknowledged, Borrower hereby mortgages, warrants, grants, sells, conveys, and transfers to Lender and its successors and assigns the described Property located in the COUNTY [Type of Recording Jurisdiction] of Cook [Name of Recording Jurisdiction]:

**SEE ATTACHED EXHIBIT A AND MADE A PART HEREOF**

which currently has an address of: **1831 South Prairie Avenue Chicago, ILLINOIS 60616**

("Property Address"):

TOGETHER with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, riparian rights, all existing and future improvements, structures, fixtures, replacements and additions. All of these shall be referred to as the "Property" in this Mortgage.

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**3. SECURED DEBT AND LOAN AMOUNT.** This Mortgage secures the amount that Borrower is indebted to Lender, in the sum of \$ 200,000.00 , which is the maximum principal loan amount evidenced by the Agreement Borrower signed on **March 8, 2005** and that matures on **March 8, 2020** . This Mortgage also secures the debt, interest, finance charges, and other fees incurred under the terms of the Agreement and any amount incurred and paid by Lender under the terms of this Mortgage.

**4. REVOLVING NATURE OF THE AGREEMENT.** This is a future advance mortgage. The Agreement provides that, as long as Borrower is not in Default and as long as the total amount outstanding at any time does not exceed the maximum loan amount, Borrower may request advances of principal from time to time during the Draw Period, in which period of time, Borrower will be obligated to make payments of the Finance Charge that do not pay down or amortize the amount of principal then outstanding.

**5. OWNERSHIP.** Borrower covenants that Borrower is the sole owner, lawfully seized of the Property, and that Borrower has the full legal right to mortgage, warrant, grant, sell, convey, and transfer to Lender and its successors and assigns. Borrower further covenants that the Property is unencumbered, except for encumbrances of record.

**6. INSURANCE.** Borrower shall keep all existing and future improvements on the Property insured against loss by fire and other risks, in an amount and by such insurers satisfactory to Lender, and shall maintain this insurance for Lender's benefit and payable to Lender in case of loss, subject to the rights of any first mortgagee, and Borrower shall not cancel or return any policy except after Borrower's redemption of this Mortgage. Borrower can obtain this required Property insurance (including any required flood insurance) from anyone Borrower wants, provided the insurer is satisfactory to Lender. Borrower will provide Lender with satisfactory evidence of the continued existence of the insurance. In the event that Borrower does not keep the Property so insured or does not provide Lender with evidence of such insurance coverage within five days after Lender's written demand, Lender may place insurance coverage, and any amount Lender spends for such coverage will become additional debt secured by this Mortgage or will be, at Lender's option, immediately due in full. Borrower understands that the amount Lender pays for such coverage will likely exceed what such insurance would cost if Borrower purchased it, that it would not cover anything other than the improvements on the Property, and that it would be in an amount equal to the maximum loan amount as stated in the Agreement.

**7. CHARGES; LIENS.** Borrower shall pay all taxes, assessments, water rates, sewer rents, utility charges, and any other charges and liens having priority over the lien of this Mortgage now or hereafter assessed. The Property is subject only to the mortgage(s) that Borrower previously disclosed to Lender [the "Prior Mortgage(s)"]. Borrower shall not commit any act of Default under the Prior Mortgage(s). Upon demand, Borrower shall furnish satisfactory evidence of payment of all taxes, assessments, water rates, sewer rents, utility charges, and any other charges and prior liens.

**8. PRESERVATION AND MAINTENANCE OF PROPERTY.** Borrower shall not destroy, damage, or impair the Property, allow it to deteriorate, or commit waste on the Property. Borrower shall maintain the Property in order to prevent it from deteriorating or decreasing in value because of its condition. Lender may make reasonable entries upon and inspections of the Property. If Lender has reason to believe the interior of the Property may be damaged or impaired, Lender may inspect the interior after reasonable (under the circumstances) Notice to Borrower. If Borrower has abandoned or left the Property vacant, Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property by securing the Property, including, but not limited to, changing locks, boarding windows, draining pipes, turning off utilities and eliminating building or other code violations. Lender may also protect the priority of this Mortgage and Lender's interest in the Property, including paying any sums secured by a lien that has priority over this Mortgage, appearing in court (including bankruptcy hearings), and paying reasonable attorneys' fees incurred in such efforts. Any sums expended by Lender under this paragraph shall become additional debt secured by this Mortgage and shall bear interest at the rate (or applicable variable rate) as set forth in the Agreement.

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ILLINOIS HELOC Mortgage

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**9. OCCUPANCY CLAUSE.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence (or second home, if agreed to by Lender) and shall continue to so occupy the Property for the duration of the Agreement.

**10. PROTECTION OF LENDER'S SECURITY.** Borrower shall pay all costs, charges, and expenses, including reasonable attorneys' fees, incurred by Lender in any foreclosure, or in protecting or sustaining the lien of this Mortgage, or in any litigation or controversy arising from or connected with the Agreement, upon demand. Without limiting this paragraph, Lender has the right to redeem the Property from a foreclosure sale conducted by or for the holder of any senior mortgage loan. Any amount Lender spends to do so shall become additional debt under the Agreement secured by this Mortgage and shall, at Lender's sole option, be immediately due and payable without Notice or demand.

**11. CONDEMNATION.** Borrower shall give prompt Notice to Lender of any condemnation or eminent domain proceeding or action pending or threatened against the Property. In the event that Borrower is awarded damages for any such claim, Borrower hereby assigns all awarded money to Lender, and the awarded money shall be applied to the Secured Debt, with the excess, if any, to be paid to Borrower.

**12. JOINT AND SEVERAL LIABILITY.** If more than one Borrower signs this Mortgage, the liability and obligations of the Borrowers under this Mortgage are joint and several. If anyone cosigns this Mortgage but not the Agreement, the cosigner (a) is signing this Mortgage only to mortgage, warrant, grant, sell, convey, and transfer the cosigner's individual interest in the Property under the terms of this Mortgage; (b) is not personally obligated to pay the sums secured by this Mortgage; and (c) agrees that the Lender and Borrower may agree to extend, modify, forbear, or make any accommodations with regard to the terms of this Mortgage or the Agreement without the cosigner's consent.

**13. HAZARDOUS SUBSTANCES.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Hazardous Substances are substances, pollutants, or wastes as defined by Environmental Law pursuant to federal law and the laws of the jurisdiction where the Property is located. Hazardous Substances include, but are not limited to, the following: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials.

**14. DUE ON SALE.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in the Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at Lender's option, require immediate payment in full of all sums secured by this Mortgage. However, Lender shall not exercise this option if Governing Law as of the date of this Mortgage prohibits such exercise.

**15. DEFAULT.** Borrower shall be in Default under the terms of the Agreement and this Mortgage if any of the following occur: (a) Borrower engages in fraud or material misrepresentation with respect to the Agreement or the process of applying for the loan secured by this Mortgage, (b) Borrower does not meet the agreed upon repayment terms in the Agreement, (c) Any action or inaction of Borrower adversely affects the collateral for the Agreement or Lender's right in the collateral including without limitation: (i) Borrower fails to maintain insurance under the terms of this Mortgage, (ii) All or any part of the Property is sold or transferred without Lender's prior written consent, (iii) Borrower fails to maintain the Property or uses the Property, or permits the Property to be used, in a destructive manner, (iv) Waste has been committed on the Property, (v) Borrower fails to pay taxes due on the Property, (vi) Every Borrower who signed this Mortgage as a Mortgagor dies, (vii) The Property is taken by condemnation or eminent domain, (viii) A judgment is filed against Borrower that subjects the Property to action that adversely affects the Lender's interest in the Property, (ix) A lien on the Property is created without the Lender's permission, or (x) A superior lienholder forecloses on the Property such that the Lender's interest in the Property is adversely affected.

**16. ESCROW FOR TAXES AND INSURANCE.** Unless provided for in a separate agreement, Borrower shall not be required to pay to Lender funds in escrow for taxes, insurance, and other assessments.

**17. GOVERNING LAW; SEVERABILITY.** Borrower agrees that federal law and the laws of the State of Illinois, to the extent not preempted by federal law, govern this Agreement. If any court declares any portion of this Agreement unenforceable or invalid, then the portion declared unenforceable or invalid shall be severed and the remainder of the Agreement enforced as if the severed portion did not exist.

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**18. CONDOMINIUM RESTRICTIONS.** If the Property is a Condominium Unit, Borrower must follow the requirements of the declaration, regulations, by-laws and any other documents that created or govern the Condominium Project. Without first obtaining Lender's written approval, Borrower cannot act or vote in favor of any effort to transfer the ownership of the common areas or against the repair or restoration of any part of the Condominium Project that is damaged, destroyed, or taken by condemnation.

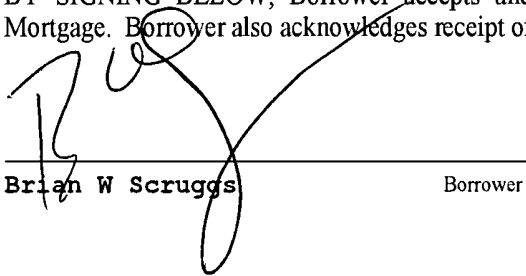
**19. RELEASE.** If Borrower shall repay Lender all sums advanced by Lender to Borrower or on Borrower's behalf pursuant to the terms of the Agreement, with interest, and shall otherwise fully perform all of Borrower's agreements and obligations under the Agreement and this Mortgage, and Borrower asks in writing that the Agreement be terminated, then this Mortgage shall be null and void; otherwise, this Mortgage shall remain in full force and effect. If this Mortgage is released, Borrower shall pay all costs incurred for recordation.

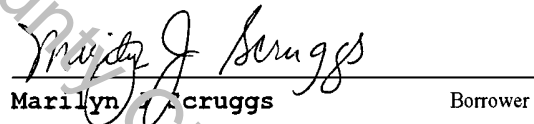
**20. WAIVER OF HOMESTEAD.** In accordance with the laws of the State of Illinois, Borrower hereby releases and waives all rights under and by virtue of the Illinois homestead exemption laws.

**21. BINDING EFFECT.** The provisions of this Mortgage shall be binding upon and inure to the benefits of Borrower's respective heirs, successors, executors, administrators and assigns.

**22. NOTICES.** Any Notice that is given by either party under the terms of this Mortgage shall be given by delivering it or mailing it by first class mail to the addresses stated in this Mortgage, or to such other location that either party may specify in writing.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Mortgage. Borrower also acknowledges receipt of a copy of this Mortgage.

  
\_\_\_\_\_  
Brian W Scruggs Borrower

  
\_\_\_\_\_  
Marilyn J Scruggs Borrower

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Borrower

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\_\_\_ THE SPACE BELOW THIS LINE IS RESERVED FOR THE NOTARY ACKNOWLEDGMENT \_\_\_

STATE OF ILLINOIS                    ))  
COUNTY OF COOK                    ))

The foregoing instrument was acknowledged before me this **8th** day of **March**, 2005  
by **Brian V Scruggs and Marilyn J Scruggs**



*[Handwritten Signature]*

Notary Public

*Patrick H Kennedy*

(Printed Name)

My commission expires:  
01-03-07



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**STREET ADDRESS:** 1831 S. PRAIRIE AVENUE UNIT 8  
**CITY:** CHICAGO **COUNTY:** COOK  
**TAX NUMBER:** 17-22-309-035-0000

**LEGAL DESCRIPTION:**

PARCEL 1 (8) THAT PART OF LOT 8 IN A.B. MEEKER'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF SUB-LOTS 5 AND 6 IN C. M. CLARK'S SUBDIVISION LOTS 51 AND 56 AND THE NORTH 55 FEET OF LOT 52 AND 55 IN ASSESSOR'S DIVISION OF THE FRACTIONAL SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED BY A LINE DESCRIBED AS FOLLOWS, TO WIT: COMMENCING AT THE NORTHWEST CORNER OF THE SOUTH 36.00 FEET OF LOT 3 IN CULVER AND OTHER'S SUBDIVISION IN THE AFORESAID FRACTIONAL QUARTER SECTION, TOWNSHIP AND RANGE; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST (ASSUMED BEARING) ALONG THE EAST LINE OF SOUTH PRAIRIE AVENUE, 249.61 FEET TO THE SOUTHWEST CORNER OF SAID LOT 8, SAID POINT BEING THE POINT OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG SAID EAST LINE, 10.44 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST, PERPENDICUALR TO THE LAST DESCRIBED COURSE, 85.84 FEET TO THE WEST LINE OF A PRIVATE STREET (SOUTH PRAIRIE PARKWAY) ACCORDING TO THE PLAT RECORDED AUGUST 29, 2003 AS DOCUMENT NUMBER 0324118012 AS CORRETED BY CERTIFICATE RECORDED OCTOBER 22, 2003 AS DOCUMENT 0329510075; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG SAID WEST LINE PARALLEL WITH THE EAST LINE OF SOUTH PRAIRIE AVENUE, 10.27 FEET TO A POINT IN THE SOUTH LINE OF AFORESAID LOT 8; THENCE SOUTH 89 DEGREES 53 MINUTES 09 SECONDS WEST, ALONG SAID SOUTH LINE, 85.85 FEET TO THE POINT OF BEGINNING; TOGETHER WITH

THAT PART OF OF SUB-LOT 1 IN COUNTY CLERK'S DIVISION OF THAT PART WEST OF ALLEY OF LOT 1 OF BLOCK 5 IN WILLIAM JONES' ADDITION TO CHICAGO IN THE FRACTIONAL SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANCE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED BY A LINE DESCRIBED AS FOLLOWS, TO WIT: COMMENCING AT THE NORTHWEST CORNER OF THE SOUTH 36.00 FEET OF LOT 3 IN CULVER AND OTHER'S SUBDIVISION IN THE AFORESAID FRACTIONAL QUARTER SECTION, TOWNSHIP AND RANGE; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST (ASSUMED BEARING) ALONG THE EAST LINE OF SOUTH PRAIRIE AVENUE, 249.61 FEET TO THE NORTHWEST CORNER OF SAID SUB-LOT 1, SAID POINT BFING THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 53 MINUTES 09 SECONDS EAST, ALONG THE NORTH LINE OF SAID SUB-LOT 1, SAID POINT BEING THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 53 MINUTES 09 SECONDS EAST, ALONG THE NORTH LINE OF SAID SUB-LOT 1, 85.84 FEET TO THE WEST LINE OF A PRIVATE STREET (SOUTH PRAIRIE PARKWAY) ACCORDING TO THE PLAT RECORDED AUGUST 29, 2003 AS DOCUMENT NO. 0324118012 AS CORRECTED BY CERTIFICATE RECORDED OCTOBER 22, 2003 AS DOCUMENT 0329510075; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG SAID WEST LINE, PARALLEL WITH THE EAST LINE OF SOUTH PRAIRIE AVENUE, 9.73 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, PERPENDICUALR TO THE LAST DESCRIBED COURSE, 85.84 FEET TO A POINT IN THE EAST LINE OF AFORESAID SOUTH PRAIRIE AVENUE THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG SAID EAST LINE, 9.56 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2: EASEMENTS FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AFORESAID AS CREATED BY DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MANSIONS OF PRAIRIE PLACE TOWNHOME HOMEOWNERS ASSOCIATION RECORDED AS DOCUMENT NUMBER 0324118012.

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## PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 8<sup>th</sup> day of March, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to **BILTMORE FINANCIAL BANCORP, INC.**

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

1831 South Prairie Avenue, Chicago, ILLINOIS 60616

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in **THE COVENANTS, CONDITIONS AND RESTRICTIONS OF RECORD**

(the "Declaration"). The Property is a part of a planned unit development known as **MANSIONS OF PRAIRIE PLACE**

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

**PUD COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the: (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

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MULTISTATE PUD RIDER - Single Family/Second Mortgage

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Initials: *[Handwritten initials]*

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**B. Hazard Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Uniform Covenant 2 for the monthly payment to Lender of the yearly premium installments for hazard insurance on the Property; and (ii) Borrower's obligation under Uniform Covenant 5 to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage provided by the master or blanket policy.

In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

**C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

**D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Uniform Covenant 9.

**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

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VMP-207R (0411)

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Initials:

*[Handwritten initials]*

3/99

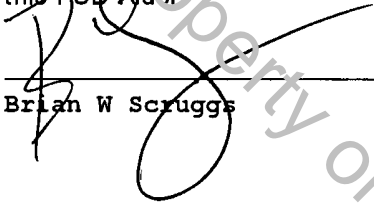


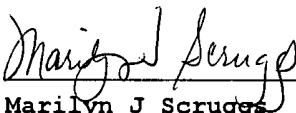
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**F. Remedies.** If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower 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.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this RUD Rider

  
\_\_\_\_\_  
Brian W Scruggs (Seal)  
-Borrower

  
\_\_\_\_\_  
Marilyn J Scruggs (Seal)  
-Borrower

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(Seal)  
-Borrower

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