Book 2021 Page 693

Document 2021 693 Type 04 001 Pages 8
Date 2/25/2021 Time 11:23:30AM
Rec Amt $42.00

Daneen Schindler, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

REAL ESTATE MORTGAGE
Recorder's Cover Sheet

Preparer Information: Jennifer L Chase, 3324 Kimball Avenue, Waterloo, Iowa 50702 Phone: (319) 234-2638

Taxpayer Information: John A. Bries, 16302 Middle Road, Dubuque, IA 52002

Return Document To: Jennifer L Chase, 3324 Kimball Avenue, Waterloo, Iowa 50702

Grantors:
John A. Bries
Patricia A. Bries

Grantees:
Janet L. Pollock

Legal Description: See Page 2

Document or instrument number of previously recorded documents: _____

REAL ESTATE MORTGAGE

THIS MORTGAGE is made between John A. Bries and Patricia A. Bries ("Mortgagors") and Janet L. Pollock ("Mortgagee").

[X] If this box is checked, this Mortgage is a Purchase Money Mortgage as defined in the Iowa Code.

1. **GRANT OF MORTGAGE AND SECURITY INTEREST.** Mortgagors hereby sell, convey and mortgage unto Mortgagee, and grant a security interest to Mortgagee in the following described property:

   a) LAND. All of Mortgagors' right, title and interest in and to the following described real estate situated in Deleware County, Iowa (the "Land"):

   The North One-Half of the Northwest Quarter of Section 13; the South One-Half of the Southwest Quarter of Section 12; and Lots Nine and Eight of the Subdivision of the North Half of the Southwest Quarter of Section 12 and all that part of Lot Seven of the Subdivision of the North Half of the Southwest Quarter of Section 12, described as commencing at a point 7 chains, 24 1/4 links South of the Northeast corner of the Northwest Quarter of the Southwest Quarter of Section 12, running thence west 2 chains, thence South 1 chain, East 2 chains, North 1 chain to beginning, all in Township 87 North, Range 5, West of the 5th P.M., subject to easements and rights of way; except Parcel 2020-125, part of the SE $^{1}/_{4}$ of the SW$^{1}/_{4}$ of Section 12, and Parcel 2020-126, part of the NE$^{1}/_{4}$ of the NW$^{1}/_{4}$ of Section 13, all in Township 87 North, Range 5, West of the Fifth P.M., Delaware County, Iowa, according to plat recorded in Book 2020, Page 4615 of the records of the Delaware County Recorder.

   and all buildings, structures and improvements now standing or at any time hereafter constructed or placed upon the Land (the "Buildings"), including all hereditament, easements, appurtenances, riparian rights, mineral rights, water rights, rights in and to the lands lying in streets, alleys and roads adjoining the land, estates and other rights and interests now or hereafter belonging to or in any way pertaining to the Land.

   b) REVENUES AND INCOME. All rents, issues, profits, leases, condemnation awards and insurance proceeds now or hereafter arising from the ownership, occupancy or use of the Land, Buildings and Personal Property, or any part thereof (the "Revenues and Income").

TO HAVE AND TO HOLD the Land and Revenues and Income (collectively called the "Mortgaged Property"), together with all privileges, hereditament thereunto now or hereafter belonging, or in any way appertaining and the products and proceeds thereof, unto Mortgagee, its successors and assigns.

2. **Obligations.** This Mortgage secures the following (hereinafter collectively referred to as the "Obligations"):

   a) The payment of the loan made by Mortgagee to John A. Bries evidenced by a Promissory Note dated March 1, 2021 in the principal amount of $100,000 with a due date of April 1, 2026, any renewals, extensions, modifications or refinancing thereof and any promissory notes issued in substitution therefor; and

   b) All other obligations of Mortgagors to Mortgagee, now existing or hereafter arising, whether direct or indirect, contingent or absolute and whether as maker or surety, including, but not limited to, future advances and amounts advanced and expenses incurred by Mortgagee pursuant to this Mortgage.

3. **REPRESENTATIONS AND WARRANTIES OF MORTGAGORS.** Mortgagors represent, warrant and covenant to Mortgagee that (i) Mortgagors hold clear title to the Mortgaged Property and title in fee simple in the Land; (ii) Mortgagors have the right, power and authority to execute this Mortgage and to mortgage, and grant a security interest in the Mortgaged Property; (iii) the Mortgaged Property is free and clear of all liens and encumbrances; (iv) Mortgagors will warrant and defend title to the Mortgaged Property and the lien and priority of this Mortgage against all claims and demands of all persons, whether now existing or hereafter arising; (v) Mortgagor not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order of the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Mortgagor hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

4. **PAYMENT AND PERFORMANCE OF THE OBLIGATIONS.** Mortgagors will pay all amounts payable under the Obligations in accordance with the terms of the Obligations when and as due and will timely perform all other obligations of Mortgagors under the Obligations. The provisions of the Obligations are hereby incorporated by reference into this Mortgage as if fully set forth herein.

5. **TAXES.** Mortgagors shall pay each installment of all taxes and special assessments of every kind, now or hereafter levied against the Mortgaged Property before the same become delinquent.

6. **LIENS.** Mortgagors shall not create, incur or suffer to exist any lien, encumbrance, security interest or charge on the Mortgaged Property or any part thereof which might or could be held to be equal or prior to the lien of this Mortgage, other than the lien of current real estate taxes and installments of special assessments with respect to which no penalty is yet payable. Mortgagors shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.

7. **COMPLIANCE WITH LAWS.** Mortgagors shall comply with all present and future statutes, laws, rules, orders, regulations and ordinances affecting the Mortgaged Property, any part thereof or the use thereof.

8. **PERMITTED CONTESTS.** Mortgagors shall not be required to (i) pay any tax, assessment or other charge referred to in paragraph 5 hereof, (ii) discharge or remove any lien, encumbrance or charge referred to in paragraph 6 hereof, or (iii) comply with any statute, law, rule, regulation or ordinance referred to in paragraph 7 hereof, so long as mortgagors shall contest, in good faith, the existence, amount or the validity thereof, the amount of damages caused thereby or the extent of Mortgagors' liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon the tax, assessment, charge or lien, encumbrances or charge so contested, (B) the sale, forfeiture or loss of the Mortgaged Property or any part thereof, and (C) any interference with the use or occupancy of the Mortgaged Property or any part thereof. Mortgagors shall give prompt written notice to Mortgagee of the commencement of any contest referred to in this paragraph 8.

9. **CARE OF PROPERTY.** Mortgagors shall take good care of the Mortgaged Property. Mortgagors shall not make any material alteration to the Mortgaged Property without the prior written consent of Mortgagee.

10. **INSURANCE.**

    a) RISKS TO BE INSURED. Mortgagors, at their sole cost and expense, shall maintain insurance on the Land against loss by fire, extended coverage perils and such other hazards as Mortgagee may from time to time require.

    b) DELIVERY OF POLICY OR CERTIFICATE. If requested by Mortgagee, Mortgagors will deliver to Mortgagee original policies satisfactory to Mortgagee evidencing the insurance which is required under this Mortgage.

11. **INSPECTION.** Mortgagee, and its agents, shall have the right at all reasonable times, to enter upon the Mortgaged Property for the purpose of inspecting the Mortgaged Property or any part thereof. Mortgagee shall, however, have no duty to make such inspection. Any inspection of the Mortgaged Property by Mortgagee shall be entirely for

its benefit and Mortgagors shall in no way rely on or claim reliance thereon.

12. **PROTECTION OF MORTGAGEE'S SECURITY.** Subject to the rights of Mortgagors under paragraph 8 hereof, if Mortgagors fail to perform any of the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which affects the Mortgaged Property or the interest of the Mortgagee therein, or the title thereto, then Mortgagee, at Mortgagee's option, may perform such covenants and agreements, defend against or investigate such action or proceeding, and take such other action as Mortgagee deems necessary to protect Mortgagee's interest. Any amounts or expenses disbursed or incurred by Mortgagee in good faith pursuant to this paragraph 12 with interest thereon at the rate of 2% per annum, shall become an Obligation of Mortgagors secured by this Mortgage. Such amounts advanced or disbursed by Mortgagee hereunder shall be immediately due and payable by Mortgagors unless Mortgagors and Mortgagee agree in writing to other terms of repayment. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the Obligations or by Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Mortgage. Nothing contained in this paragraph shall require Mortgagee to incur any expense or do any act hereunder, and Mortgagee shall not be liable to Mortgagors for any damage or claims arising out of action taken by Mortgagee pursuant to this paragraph.

13. **CONDEMNATION.** Mortgagors shall give Mortgagee prompt notice of any action, actual or threatened, in condemnation or eminent domain and hereby assign, transfer and set over to Mortgagee the entire proceeds of any award or claim for damages for all or any part of the Mortgaged Property taken or damaged under the power of eminent domain or condemnation. Mortgagee is hereby authorized to intervene in any such action in the names of Mortgagors, to compromise and settle any such action or claim, and to collect and receive from the condemning authorities and give proper receipts and acquittances for such proceeds. Any expenses incurred by Mortgagee in intervening in such action or compromising and settling such action or claim, or collecting such proceeds shall be reimbursed to Mortgagee first out of the proceeds. The remaining proceeds or any part thereof shall be applied to reduction of that portion of the Obligations then most remotely to be paid, whether due or not, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of Mortgagee.

14. **EVENTS OF DEFAULT.** Each of the following occurrences shall constitute an event of default hereunder ("Event of Default"):

    a) Mortgagors shall default in the due observance or performance of or breach its agreement contained in paragraph 4 hereof or shall default in the due observance or performance of or breach any other covenant, condition or agreement on its part to be observed or performed pursuant to the terms of this Mortgage.

    b) Mortgagors shall make an assignment for the benefits of its creditors, or a petition shall be filed by or against Mortgagors under the United States Bankruptcy Code

or Mortgagors shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of its properties or of the Mortgaged Property or shall not, within thirty (30) days after the appointment of a trustee, receiver or liquidator of any material part of its properties or of the Mortgaged Property, have such appointment vacated.

c) A judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien on or be issued or levied against the Mortgaged Property or any part thereof which is not released, vacated or fully bonded within thirty (30) days after its entry, issue or levy.

d) An event of default, however defined, shall occur under any other mortgage, assignment or other security document constituting a lien on the Mortgaged Property or any part thereof.

15. **ACCELERATION; FORECLOSURE.** Upon the occurrence of any Event of Default and at any time thereafter while such Event of Default exists, Mortgagee may, at its option, after such notice as may be required by law, exercise one or more of the following rights and remedies (and any other rights and remedies available to it):

a) Mortgagee may declare immediately due and payable all Obligations secured by this Mortgage, and the same shall thereupon be immediately due and payable, without further notice or demand.

b) Mortgagee may (and is hereby authorized and empowered to) foreclose this Mortgage in accordance with the law of the State of Iowa, and at any time after the commencement of an action in foreclosure, or during the period of redemption, the court having jurisdiction of the case shall at the request of Mortgagee appoint a receiver to take immediate possession of the Mortgaged Property and of the Revenues and Income accruing therefrom, and to rent or cultivate the same as he may deem best for the interest of all parties concerned, and such receiver shall be liable to account to Mortgagors only for the net profits, after application of rents, issues and profits upon the costs and expenses of the receivership and foreclosure and upon the Obligations.

16. **ATTORNEYS' FEES.** Mortgagors shall pay on demand all costs and expenses incurred by Mortgagee in enforcing or protecting its rights and remedies hereunder, including, but not limited to, reasonable attorneys' fees and legal expenses.

17. **FORBEARANCE NOT A WAIVER, RIGHTS AND REMEDIES CUMULATIVE.** No delay by Mortgagee in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by Mortgagee of any particular provisions of this Mortgage shall be deemed effective unless in writing signed by Mortgagee. All such rights and remedies provided for herein or which Mortgagee or the holder of the Obligations may have otherwise, at law or in equity, shall be distinct, separate and

cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion therefor arises.

18. **NOTICES.** All notices required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the United States mail, postage prepaid, sent certified or registered, addressed as follows:

    a) If to Mortgagors, to: Janet L. Pollock, 7774 Old River Road, Rockford, IL 61103

    b) If to Mortgagee, to: John A. Bries, 16302 Middle Road, Dubuque, IA 52002

    or to such other address or person as hereafter designated in writing by the applicable party in the manner provided in this paragraph for the giving of notices.

19. **SEVERABILITY.** In the event any portion of this Mortgage shall, for any reason, be held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Mortgage is invalid, illegal, or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable then such provision shall be deemed to be written, construed and enforced as so limited.

20. **FURTHER ASSURANCES.** At any time and from time to time until payment in full of the Obligations, Mortgagors will, at the request of Mortgagee, promptly execute and deliver to Mortgagee such additional instruments as may be reasonably required to further evidence the lien of this Mortgage and to further protect the security interest of Mortgagee with respect to the Mortgaged Property, including, but not limited to, additional security agreements, financing statements and continuation statements. Any expenses incurred by Mortgagee in connection with the recordation of any such instruments shall become additional Obligations of Mortgagors secured by this Mortgage. Such amounts shall be immediately due and payable by Mortgagors to Mortgagee.

21. **SUCCESSORS AND ASSIGNS BOUND; NUMBER; GENDER; AGENTS; CAPTIONS.** The rights, covenants and agreements contained herein shall be binding upon and inure to the benefit of the respective legal representatives, successors and assigns of the parties. Words and phrases contained herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the contexts. 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.

22. **GOVERNING LAW.** This Mortgage shall be governed by and construed in accordance with the laws of the State of Iowa.

23. **RELEASE OF RIGHTS OF DOWER, HOMESTEAD AND DISTRIBUTIVE SHARE.** Each of the undersigned hereby relinquishes all rights of dower, homestead

and distributive share in and to the Mortgaged Property and waives all rights of exemption as to any of the Mortgaged Property.

24. **ACKNOWLEDGMENT OF RECEIPT OF COPIES OF DEBT INSTRUMENT.** Mortgagors hereby acknowledge the receipt of a copy of this Mortgage together with a copy of each promissory note secured hereby.

Dated: 2-19-21 John A. Bries
John A. Bries, Mortgagor

Dated: 2/19/2021 Patricia A. Bries
Patricia A. Bries, Mortgagor

I UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE; AND THAT BY SIGNING THIS MORTGAGE, I VOLUNTARILY GIVE UP MY RIGHT TO THIS PROTECTION FOR THIS MORTGAGED PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS MORTGAGE.

Dated: 2-19-21

John A. Bries
John A. Bries, Mortgagor

Patricia A. Bries
Patricia A. Bries, Mortgagor

STATE OF IOWA. COUNTY OF DUBUQUE

This record was acknowledged before me on Feb 19, 2021, by John A. Bries and Patricia A. Bries.

NOTARIAL SEAL IOWA
JAYMES BILLMYER
Commission Number 809032
My Commission Expires
2-19-2024

Signature of Notary Public