



MTG 2005048649



APR 29 2005 14:25 P 26

Instrument Prepared By And  
When Recorded Return To:  
Croker, Huck, Kasher, DeWitt,  
Anderson & Gonderinger, LLC  
2120 South 72<sup>nd</sup> Street, Suite 1200  
Omaha, Nebraska 68124  
Attention: Bryan S. Mick, Esq.

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
4/29/2005 14:25:24.61



2005048649

THIS DEED OF TRUST CONSTITUTES A CONSTRUCTION SECURITY AGREEMENT UNDER THE NEBRASKA CONSTRUCTION LIEN ACT AND CREATES, GRANTS AND CONSTITUTES A CONSTRUCTION SECURITY INTEREST IN THE PROPERTY DESCRIBED HEREIN.

**DEED OF TRUST AND CONSTRUCTION SECURITY AGREEMENT**  
(Douglas County)

THIS DEED OF TRUST ("Deed of Trust") is made as of April 16, 2005, by HEARTHSTONE HOMES, INC., a Nebraska corporation ("Trustor"), with the mailing address of 810 North 96<sup>th</sup> Street, Omaha, Nebraska 68114, to FIRST AMERICAN TITLE INSURANCE COMPANY, with the mailing address of c/o Security Land Title and Escrow Company, P.O. Box 44039, Omaha, Nebraska 68144, as Trustee ("Trustee") for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association ("Beneficiary") with the mailing address of 1919 Douglas Street, Omaha, Nebraska 68102, Attn: Kraig J. Williams, V.P.

**WITNESSETH:**

WHEREAS, Trustor has executed and delivered to Beneficiary a Promissory Note dated on or about this same date in the principal amount of THIRTY-FIVE MILLION AND 00/100 DOLLARS (\$35,000,000), (which Promissory Note, together with all notes issued and accepted in substitution or exchange therefor, and as any of the foregoing may from time to time be modified, extended, renewed, consolidated, restated or replaced, is hereinafter sometimes referred to as the "Note"), which Note provides, among other things, for final payment of principal and interest under the Note, if not sooner paid or payable as provided therein, to be due on or before the 30<sup>th</sup> day of April, 2007 (if not renewed or extended), the Note by this reference thereto being incorporated herein; and

*P* *mtg* 254.50 FB see attached  
26 C/O COMP *mt*  
279 C/O FV

Box 35  
530962.

WHEREAS, Beneficiary is desirous of securing the prompt payment of the Note together with interest and charges thereon in accordance with the terms of the Note, and any additional indebtedness accruing to Beneficiary on account of any future payments, advances or expenditures made by Beneficiary pursuant to the Note or this Deed of Trust and any additional sums with interest thereon which may be loaned to Trustor by Beneficiary or advanced under the Loan Documents (as hereinafter defined) (all hereinafter sometimes collectively referred to as the "Indebtedness").

NOW, THEREFORE, Trustor, to secure payment of the Indebtedness and the performance of the covenants and agreements herein contained to be performed by Trustor, for good and valuable consideration in hand paid, the receipt and sufficiency whereof are hereby acknowledged, and intending to be legally bound, hereby agrees and covenants as follows:

1. **Granting Clauses.** Trustor hereby irrevocably and absolutely does by these presents GRANT AND CONVEY, WARRANT, SET OVER, TRANSFER, ASSIGN, BARGAIN AND SELL to Trustee, and its successors in trust, for the benefit of Beneficiary, its successors and assigns, with all powers of sale and all statutory rights under the laws of Nebraska, and grants to Trustee, for the benefit of Beneficiary, a security interest in, all of Trustor's present and hereafter acquired estate, right, title and interest in, to and under the following (collectively referred to herein as the "Premises"):

(a) That certain real property situated in Douglas County, Nebraska, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Land"), together with all buildings, structures and improvements now or hereafter erected on the Land, together with all fixtures and items that are to become fixtures thereto (collectively, the "Improvements");

(b) All and singular the easements, rights-of-way, licenses, permits, rights of use or occupancy, privileges, tenements, appendages, hereditaments and appurtenances and other rights and privileges attached or belonging to the Land or Improvements or in any wise appertaining thereto, whether now or in the future, and all the rents, issues and profits from the Land or Improvements;

(c) The land lying within any street, alley, avenue, roadway or right-of-way open or proposed or hereafter vacated in front of or adjoining the Land; and all right, title and interest, if any, of Trustor in and to any strips and gores adjoining the Land;

(d) All machinery, apparatus, equipment, goods, systems, building materials, carpentry, furnishings, fixtures and property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the Land or Improvements, or any part thereof, or used or usable in connection with any construction on or any present or future operation of the Land or Improvements, now owned or hereafter acquired by Trustor, including, but without limitation of the generality of the foregoing: all heating, lighting, refrigerating, ventilating, air-conditioning, air-cooling, fire extinguishing, plumbing, cleaning, telephone, communications and power equipment, systems and apparatus; and all elevators, switchboards, motors, pumps, screens, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and all

cranes and craneways, oil storage, sprinkler/fire protection and water service equipment; and also including any of such property stored on the Land or Improvements or in warehouses and intended to be used in connection with or incorporated into the Land or Improvements or for the pursuit of any other activity in which Trustor may be engaged on the Land or Improvements, and including without limitation all tools, musical instruments and systems, cabinets, awnings, window shades, venetian blinds, drapes and drapery rods and brackets, screens, carpeting and other window and floor coverings, decorative fixtures, plants, cleaning apparatus, and cleaning equipment, refrigeration equipment, cables, computers, software, books, supplies, kitchen equipment, appliances, tractors, lawn mowers, ground sweepers and tools, swimming pools, whirlpools, recreational or play equipment together with all substitutions, accessions, repairs, additions and replacements to any of the foregoing; it being understood and agreed that all such machinery, equipment, apparatus, goods, systems, fixtures, and property are a part of the Improvements and are declared to be a portion of the security for the Indebtedness (whether in single units or centrally controlled, and whether physically attached to said real estate or not); and

(c) Any and all awards, payments or insurance proceeds, including interest thereon, and the right to receive the same, which may be paid or payable with respect to the Land or Improvements or other properties described above as a result of: (1) the exercise of the right of eminent domain or action in lieu thereof; or (2) the alteration of the grade of any street; or (3) any fire, casualty, accident, damage or other injury to or decrease in the value of the Land or Improvements or other properties described above, to the extent of all amounts which may be secured by this Deed of Trust at the date of receipt of any such award or payment by Trustor or Beneficiary, and of the reasonable counsel fees, costs and disbursements incurred by Trustor or Beneficiary in connection with the collection of such award or payment. Trustor agrees to execute and deliver, from time to time, such further instruments as may be requested by Beneficiary to confirm such assignment to Beneficiary of any such award or payment.

The parties intend the definition of Premises to be broadly construed and in the case of doubt as to whether a particular item is to be included in the definition of Premises, the doubt should be resolved in favor of inclusion.

TO HAVE AND TO HOLD the Premises with all rights, privileges and appurtenances thereunto belonging, and all income, rents, royalties, revenues, issues, profits and proceeds therefrom, unto Beneficiary, its successors and assigns, forever, for the uses and purposes herein expressed.

THIS DEED OF TRUST IS GIVEN TO SECURE: Payment of the Indebtedness; payment of such additional sums with interest thereon which may hereafter be loaned to Trustor by Beneficiary pursuant to the Loan Agreement, Note or Deed of Trust or otherwise advanced under the Loan Documents (the "Loan"), including without limitation advances made by Beneficiary to protect the Premises or the lien of this Deed of Trust or to pay taxes, assessments, insurance premiums, and all other amounts that Trustor has agreed to pay pursuant to the provisions hereof or that Beneficiary has incurred by reason of the occurrence of an Event of Default (as hereinafter defined), including without limitation, advances made to enable the completion of the Improvements or any restoration thereof, even though the aggregate amount

outstanding at any time may exceed the original principal balance stated herein and in the Note (provided, however, that the Indebtedness shall in no event exceed an amount equal to one hundred fifty percent (150%) of the face amount of the Note); and the due, prompt and complete performance of each and every covenant, condition and agreement contained in this Deed of Trust, the Note, and every other agreement, document and instrument to which reference is expressly made in this Deed of Trust or which at any time evidences or secures the Indebtedness evidenced by the Note (this Deed of Trust, the Note and all such other agreements, documents and instruments, but excluding the certain Environmental Indemnification Agreement executed by Trustor, are hereinafter sometimes collectively referred to as the "Loan Documents"). Trustor hereby warrants that Trustor has good and marketable title to the Premises, is lawfully seized and possessed of the Premises and every part thereof, and has the right to convey same; that Trustor will forever warrant and defend the title to the Premises unto Beneficiary against the claims of all persons whomsoever; and that the Premises are unencumbered except as set forth on Beneficiary's title insurance policy dated on or about even date herewith regarding the Premises.

2. **Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.** Trustor shall: (a) promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed, such Improvements to be of at least equal value and substantially the same character as prior to such damage or destruction; (b) keep the Premises in good condition and repair, without waste, and comply with all requirements in connection with liens against the Premises and all requirements for payment of any indebtedness which may be secured by a lien or charge on the Premises as set forth in the Loan Agreement; (c) complete within Trustor's standard construction schedules, and in any event within a reasonable time, any Improvements now or at any time in process of erection upon the Land, subject to delays caused by or resulting from an act of God, war, civil commotion, fire or other casualty, labor difficulties, general shortages of labor, materials or equipment, governmental regulations, weather or other causes beyond Trustor's reasonable control; (d) comply with all requirements of law (including, without limitation, pollution control and environmental protection laws and laws relating to the accommodation of persons with disabilities), ordinance or other governmental regulation in effect from time to time affecting the Premises and the use thereof, and covenants, easements and restrictions of record with respect to the Premises and the use thereof; (e) except in the ordinary course of Trustor's business as a land developer and house builder, make no material alterations in the Premises; (f) except in the ordinary course of Trustor's business as a land developer and house builder, suffer or permit no material change in the general nature of the use of the Premises, without Beneficiary's written consent; (g) except in the ordinary course of Trustor's business as a developer of residential subdivisions, initiate or acquiesce in no zoning reclassification or variance with respect to the Premises without Beneficiary's written consent; and (h) pay each item of Indebtedness when due according to the terms hereof or of the Note.

3. **Payment of Taxes.** Trustor shall pay all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises of any nature whatsoever in accordance with the terms of the Loan Agreement.

4. **Tax Deposits.** If requested by Beneficiary after an Event of Default, Trustor covenants and agrees to deposit with such depository as the Beneficiary from time to time may in

writing appoint, and in the absence of such appointment, then at the address of Beneficiary set forth above, commencing on the date of disbursement of the loan secured hereby and on the first day of each month following the month in which said disbursement occurred until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of the last total annual taxes and assessments for the last ascertainable year (if the current year's taxes and assessments are not yet ascertainable) (general and special) on the Premises (unless said taxes are based upon assessments which exclude the Improvements or any part thereof now constructed or to be constructed, in which event the amount of such deposits shall be based upon the Beneficiary's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). Such deposits are to be held without any allowance of interest (unless local law requires otherwise) and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. Upon demand by such depository, Trustor shall deliver and pay over to such depository from time to time such additional sums or such additional security as are necessary to make up any deficiency in the amount necessary to enable such depository to fully pay any of the items hereinabove mentioned as they become payable. If the funds so deposited exceed the amount required to pay such items hereinabove mentioned for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of Beneficiary or such depository.

If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other property not covered by the lien of this Deed of Trust, then the computation of any amount to be deposited under this Paragraph 4 shall be based upon the entire amount of such taxes or assessments, and Trustor shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation.

5. **Beneficiary's Interest In and Use of Deposits.** Upon the occurrence of an Event of Default, Beneficiary may at its option, without being required to do so, apply any monies at the time on deposit pursuant to Paragraphs 4 and 7 hereof, on any of Trustor's obligations herein or in the Note or any of the Loan Documents contained, in such order and manner as the Beneficiary may elect. When the Indebtedness has been fully paid, any remaining deposits shall be paid to Trustor or to the then owner or owners of the Premises. A security interest within the meaning of the Nebraska Uniform Commercial Code ("UCC") is hereby granted to the Beneficiary in and to any monies at any time on deposit pursuant to Paragraphs 4 and 7 hereof and such monies and all of Trustor's right, title and interest therein are hereby assigned to Beneficiary, all as additional security for the Indebtedness and shall in the absence of the occurrence of an Event of Default be applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of Trustor; provided, however, that neither Beneficiary nor said depository shall be liable for any failure to apply to the payment of taxes and assessments and insurance premiums any amount so deposited. Neither Beneficiary nor any depository hereunder shall be liable for any act or omission taken in good faith or pursuant to the instruction of any party but only for its willful misconduct. Trustor agrees to cooperate with Beneficiary in executing a control agreement, if necessary, with the depository

chosen to manage the deposit account envisioned by Paragraphs 4 and 7 for the purpose of perfecting the security interest in said account.

6. **Insurance.** Trustor shall at all times maintain insurance in connection with the Premises in accordance with the terms of the Loan Agreement.

7. **Insurance Premium Deposits.** If requested by Beneficiary after an Event of Default, it is further covenanted and agreed that for the purpose of providing funds with which to pay the premiums as the same become due on the policies of insurance as herein covenanted to be furnished by the Trustor, Trustor shall deposit with Beneficiary or the depository referred to in Paragraph 4 hereof on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurred, an amount equal to the annual premiums that will next become due and payable on such policies less any amount then on deposit with the Beneficiary or such depository, divided by the number of months to elapse thirty (30) days prior to the date when such premiums become delinquent. No interest shall be allowed to Trustor on account of any deposit or deposits made hereunder and said deposits need not be kept separate and apart from any other funds of Beneficiary or such depository.

8. **Adjustment of Losses with Insurer and Application of Proceeds of Insurance.**

(a) In case of loss or damage by fire or other casualty, Trustor shall immediately give Beneficiary and the insurance companies that have insured against such risks written notice of such occurrence.

(b) In case of loss or damage by fire or other casualty, Trustor shall, if no Event of Default then exists hereunder, have the sole and exclusive right to settle, compromise or adjust any claim under, and receive, for the purpose of rebuilding and restoration, the proceeds arising from, any and all losses payable under insurance policies to the extent the amount thereof does not exceed \$500,000 for a casualty loss affecting the Premises (provided that in the event that casualty losses in any calendar year exceed \$250,000.00, Trustor shall provide Beneficiary with a monthly claims reconciliation report in form and detail satisfactory to Beneficiary), and all claims for losses in excess of said amounts shall be settled, compromised or adjusted only with the mutual agreement of Trustor and Beneficiary and the proceeds paid as hereinafter provided. In the event insurance proceeds in excess of Five Hundred Thousand and No/100 Dollars (\$500,000) are payable or if an Event of Default exists hereunder, then in either of such events, Beneficiary is authorized to collect and receipt for any insurance proceeds. Insurance proceeds collected by Beneficiary as aforesaid, after deducting therefrom any expenses incurred in the collection thereof, shall, if requested by Trustor in writing within thirty (30) days after the proceeds of insurance covering such damage or destruction become available, be made available to Trustor for the purpose of paying the cost of rebuilding or restoring of the Improvements if (i) the Premises, in Beneficiary's sole and absolute discretion is capable of being restored to that condition which existed immediately prior to the damage or loss, (ii) the insurance proceeds, together with all other funds which are to be provided by Trustor, are sufficient to restore the Premises, (iii) Beneficiary determines that income from the Premises shall not be materially affected following the completion of the restoration or rebuilding; and (iv) no Event of Default

then exists hereunder or under any other Loan Document, and no circumstance or condition exists that would constitute an Event of Default upon the giving of notice or the passage of time, or both. In the event that Beneficiary makes said proceeds available to Trustor to pay the cost of rebuilding or restoring of the Improvements, such proceeds shall be made available in the manner and under the conditions that the Beneficiary may reasonably require to assure proper application of such proceeds. In the event such insurance proceeds are made available by the Beneficiary, the Trustor shall pay all costs incurred by Beneficiary in connection with the application of such insurance proceeds (including but not limited to reasonable costs incurred by Beneficiary, and a title company or agent approved by Beneficiary in overseeing the disbursement of such insurance proceeds). The Improvements shall be restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the projected cost of rebuilding, repairing or restoring of the Improvements exceeds the sum of Five Hundred Thousand and No/100 Dollars (\$500,000), then insurance proceeds shall not be made available to Trustor unless and until Beneficiary has approved plans and specifications for the proposed rebuilding and restoration, which approval shall not be unreasonably withheld. If the proceeds are to be made available by Beneficiary to Trustor to pay the cost of said rebuilding or restoration, any surplus which may remain out of said insurance proceeds after payment of the costs of rebuilding or restoring the Premises shall, at the option of the Beneficiary, be applied on account of the Indebtedness or be paid to any party entitled thereto under such conditions as Beneficiary may reasonably require. No interest shall be allowed to Trustor on any proceeds of insurance held by Beneficiary.

(c) In the event proceeds of insurance are not made available to Trustor for the purpose of paying the cost of the rebuilding or restoring of the Improvements, Beneficiary, after deducting the costs of any collection, adjustment and compromise, shall apply such insurance proceeds in accordance with terms of the Note upon the Indebtedness, provided that any amount so applied by Beneficiary in reduction of the outstanding principal balance of the Note shall be credited to installments of principal in the inverse order of their maturity but no such application shall delay or postpone any installment payment of principal and interest under the Note.

9. **Stamp Tax.** If, by the laws of the United States of America, or of any state having jurisdiction over Trustor, any tax (other than Beneficiary's general income taxes) is due or becomes due in respect of the issuance of the Note hereby secured and this Deed of Trust, Trustor covenants and agrees to pay such tax in the manner required by any such law. Trustor further covenants to reimburse Beneficiary for any sums which Beneficiary reasonably expends by reason of the imposition of any tax on the issuance of the Note secured hereby and this Deed of Trust.

10. **Assignment of Leases and Rents.** As additional security for the payment of the Indebtedness and for the faithful performance of the terms and conditions contained herein, Trustor hereby assigns to Beneficiary, to the fullest extent contemplated by Neb. Rev. Stat. §§ 52-1701 through 1708, all of Trustor's right, title and interest in and to all leases or other rights of use or occupancy of any part of the Premises, both present and future. Trustor will not, without Beneficiary's written consent, enter into any lease or other agreement for the use or occupancy of the Premises.

11. **Effect of Extension of Time.** If the payment of the Indebtedness, or any part thereof, is extended or varied, or if any part of any security for the payment of the Indebtedness is released, or if any person or entity liable for the payment of the Indebtedness is released, or if Beneficiary takes other or additional security for the payment of the Indebtedness, or if Beneficiary waives or fails to exercise any right granted herein, or in the Note secured hereby, or in any other instrument given to secure the payment hereof, then all persons now or at any time hereafter liable for the payment of the Indebtedness, or any part thereof, or interested in the Premises shall be held to assent to such extension, variation, release, waiver, failure to exercise or the taking of additional security, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Beneficiary, notwithstanding such extension, variation, release, waiver, failure to exercise, or the taking of additional security.

12. **Effect of Changes in Laws Regarding Taxation.** In the event of the enactment after this date of any law of the state in which the Premises are located deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon the Beneficiary the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Trustor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Beneficiary's interest in the Premises, or the manner of collection of taxes, so as to affect this Deed of Trust or the debt secured hereby or the holders thereof, then, and in any such event, Trustor, upon demand by Beneficiary, shall pay such taxes or assessments, or reimburse Beneficiary therefor if Beneficiary pays such taxes and submits proof of payment to Trustor; provided, however, that if in the opinion of counsel for Beneficiary: (a) it might be unlawful to require Trustor to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law; then and in such event, Beneficiary may elect, by notice in writing given to Trustor, to declare all of the Indebtedness to be and become due and payable sixty (60) days from the giving of such notice. Notwithstanding anything to the contrary contained herein, Trustor shall not be liable for payment of any portion of the Beneficiary's general income taxes.

13. **Beneficiary's Performance of Defaulted Acts.** Upon the occurrence of an Event of Default herein, Beneficiary may, but need not, and whether electing to declare the whole of the Indebtedness due and payable or not, and without waiver of any other remedy, make any payment or perform any act herein required of Trustor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment or cure any default of Trustor as landlord in any Lease. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Beneficiary in regard to any tax referred to in Paragraphs 9 and 12 hereof or to protect the Premises or the lien hereof, shall be additional Indebtedness and shall become immediately due and payable without notice and with interest thereon at the Default Rate of interest set forth in the Note. Inaction of Beneficiary shall never be considered as a waiver of any right accruing to it on account of any Event of Default on the part of Trustor.



14. **Acceleration of Indebtedness in Event of Default.** It is expressly agreed by Trustor that time is of the essence hereof and that the whole of the Indebtedness shall become immediately due and payable without notice to Trustor at the option of the Beneficiary upon the occurrence of one or more of the following events (hereinbefore and hereinafter collectively referred to as "Events of Default" and individually referred to as an "Event of Default"):

(a) nonpayment of any monetary sum due under the Loan Agreement, Note, hereunder or under any other Loan Document within ten (10) days after the same shall become due; or

(b) default shall be made in the due observance or performance of the terms and conditions of Paragraph 6 hereof (Insurance) or Paragraph 27 hereof (Due on Sale or Further Encumbrance); or

(c) default shall be made in the due observance or performance of any of the other covenants, agreements or conditions hereinbefore or hereinafter contained, or contained in the Loan Agreement, Note or any other Loan Document, required to be kept or performed or observed by the Trustor which does not relate to the nonpayment of any monetary sum, and such default is not cured within thirty (30) days following written notice thereof by Beneficiary to Trustor or within such longer period of time, not exceeding an additional thirty (30) days, as may be reasonably necessary to cure such non-compliance if Trustor is diligently and with continuity of effort pursuing such cure and the failure is susceptible of cure within an additional period of thirty (30) days; or

(d) any warranty, representation, certification, financial statement, or other information furnished or to be furnished to Beneficiary by or on behalf of Trustor or any guarantor of the Note to induce Beneficiary to loan the money evidenced by the Note proves to have been inaccurate or false in any material respect when made; or

(e) any breach, default, event of default or failure of performance (however denominated) under the Note, the Loan Agreement, or any of the other Loan Document and the expiration of any applicable cure period without the same having been cured; or

(f) Trustor shall be in default of, or in violation of, beyond any applicable grace period, any conditions, covenants or restrictions which benefit or burden the Premises.

If, while any insurance proceeds or condemnation awards are being held by Beneficiary to reimburse Trustor for the cost of rebuilding or restoration of buildings or improvements on the Premises, Beneficiary shall accelerate the Indebtedness, then and in such event, the Beneficiary shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the Indebtedness and any excess held by it over the amount of Indebtedness then due hereunder shall be returned to Trustor or any other party entitled thereto without interest.

15. Remedies.

(a) Primary Remedies. If an Event of Default shall occur, Beneficiary may: declare the Indebtedness to be and the same shall be, immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived and without regard to the value of the property held as security for the Indebtedness or the solvency of any person liable for the payment of such Indebtedness; and/or exercise any other right, power or remedy available to it at law or in equity, hereunder or under any other Loan Document without demand, protest or notice of any kind, all of which are hereby expressly waived, except such as is expressly required hereby or by such other Loan Document. Without limiting the generality of the foregoing, Beneficiary may:

(i) When the Indebtedness hereby secured, or any part thereof shall become due, whether by acceleration or otherwise, Beneficiary shall have the right to foreclose the lien hereof for such Indebtedness or part thereof in the manner provided by law for the foreclosure of mortgages on real property; or the Premises secured by the Deed of Trust may be sold in the manner provided in the Nebraska Trust Deeds Act under the power of sale conferred upon the Trustee hereunder. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Beneficiary may deem reasonably necessary either to prosecute such action to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Paragraph mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Deed of Trust, including the reasonable fees of any attorneys employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Note or the Premises, including appellate, probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceedings or threatened suit or proceeding shall be immediately due and payable by Trustor, with interest thereon at the Default Rate of interest as set forth in the Note and shall be secured by this Deed of Trust.

(ii) In the event that the Premises is sold pursuant to the power of sale conferred upon the Trustee hereunder, the Trustee shall cause to be filed of record a written notice of default and election to sell the Premises. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Premises, either as a whole or in separate parcels, and in such order as it or Beneficiary may determine at public

auction to the highest bidder. Trustee may postpone the sale of all or any portion of the Premises by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed shall constitute prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value and without notice. Any person, including Trustor, Trustee or Beneficiary, may purchase at such sale. The Trustee shall apply the proceeds of the Trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's fees actually incurred, not to exceed five percent (5%) of the Indebtedness unpaid at the time of recording the notice of default, second, to the payment of the Indebtedness evidenced by the Note and secured by this Deed of Trust, third, to the payment of junior trust deeds, mortgages or other liens, and the balance, if any, to the person or persons legally entitled thereto.

(iii) Enter and take possession of the Premises or any part thereof, exclude Trustor and all persons claiming under Trustor wholly or partly therefrom, and operate, use, manage and control the same, or cause the same to be operated by a person selected by Beneficiary, either in the name of Trustor or otherwise, and upon such entry, from time to time, at the expense of Trustor and of the Premises, make all such repairs, replacements, alterations, additions or improvements thereto as Beneficiary may deem proper, and to lease the Premises or any part thereof at such rental and to such persons as it may deem proper and collect and receive the rents, revenues, issues, profits, royalties, income and benefits thereof including, without limitation, those past due and those thereafter accruing, with the right of Beneficiary to terminate, cancel or otherwise enforce any Lease or sublease for any default that would entitle Trustor to terminate, cancel or enforce same and apply the same to the payment of all expenses which Beneficiary may be authorized to incur under the provisions of this Deed of Trust and applicable laws, the remainder to be applied to the payment, performance and discharge of the Indebtedness in such order as Beneficiary may determine until the same have been paid in full.

(iv) Institute an action for the foreclosure of this Deed of Trust and the sale of the Premises pursuant to the judgment or decree of a court of competent jurisdiction.

(v) Take all action to protect and enforce the rights of Beneficiary under this Deed of Trust by suit for specific performance of any covenant herein contained, or in aid of the execution of any power herein granted or for the enforcement of any other rights.

(vi) Exercise any or all of the rights and remedies available to a secured party under the UCC, including the right to (A) enter the Premises and

take possession of any personal property without demand or notice and without prior judicial hearing or legal proceedings, which Trustor hereby expressly waives, (B) require Trustor to assemble any personal property, or any portion thereof, and make it available to Beneficiary at a place or places designated by Beneficiary and reasonably convenient to both parties and (C) sell all or any portion of the personal property at public or private sale, without prior notice to Trustor except as otherwise required by law (and if notice is required by law, after ten days' prior written notice), at such place or places and at such time or times and in such manner and upon such terms, whether for cash or on credit, as Beneficiary in its sole discretion may determine. As to any property subject to Article 9 of the UCC included in the Premises, Beneficiary may proceed under the UCC or proceed as to both real and personal property in accordance with the provisions of this Deed of Trust and the rights and remedies that Beneficiary may have at law or in equity, in respect of real property, and treat both the real and personal property included in the Premises as one parcel or package of security. Trustor shall have the burden of proving that any such sale pursuant to the UCC was conducted in a commercially unreasonable manner.

(vii) Terminate any management agreements, contracts, or agents/managers responsible for the property management of the Premises, if in the sole discretion of Beneficiary such property management is unsatisfactory in any respect.

(viii) Foreclose this Deed of Trust, at Beneficiary's option, by judicial or non-judicial foreclosure, for the entire unpaid amount of the Indebtedness, or only as to the sum past due, with interest and costs without injury to this Deed of Trust or the displacement or impairment of the remainder of the lien thereof, and at such foreclosure sale the Premises shall be sold subject to all remaining items of the Indebtedness and Beneficiary may again foreclose, in the same manner, as often as there may be any sum past due. In case of sale in any action or proceeding to foreclose this Deed of Trust, the Beneficiary shall have the right to sell the Premises covered hereby in parts or as an entirety. It is intended hereby to give to the Beneficiary the widest possible discretion permitted by law with respect to all aspects of any such sale or sales.

(ix) If an Event of Default occurs due to the nonpayment of the Indebtedness, or any part thereof, as an alternative to the right of foreclosure for the full Indebtedness after acceleration thereof, Beneficiary shall have the right to institute proceedings, either judicial or non-judicial, at Beneficiary's option, for partial foreclosure with respect to the portion of said Indebtedness so in default, as if under a full foreclosure, and without declaring the entire Indebtedness due (such proceedings being hereinafter referred to as "Partial Foreclosure"), and provided that if a foreclosure sale is made because of an Event of Default in the payment of a part of the Indebtedness, such sale may be made subject to the continuing lien of this Deed of Trust for the unmatured part of the Indebtedness; and it is agreed that such sale pursuant to a Partial Foreclosure, if so made, shall

not in any manner affect the unmatured part of the Indebtedness, but as to such unmatured part, this Deed of Trust and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Paragraph. Notwithstanding any Partial Foreclosure, Beneficiary may elect, at any time prior to sale pursuant to such Partial Foreclosure, to discontinue such Partial Foreclosure and to accelerate the Indebtedness by reason of any Event of Default upon which such Partial Foreclosure was predicated or by reason of any other further Event of Default, and proceed with full foreclosure proceedings. It is further agreed that several foreclosures may be made pursuant to Partial Foreclosure without exhausting the right of full or Partial Foreclosure sale for any unmatured part of the Indebtedness, it being the purpose to provide for a Partial Foreclosure sale of the Indebtedness hereby without exhausting the power to foreclose and to sell the Premises pursuant to any such Partial Foreclosure for any other part of the Indebtedness, whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

(b) Receiver. If an Event of Default shall occur, Beneficiary shall be entitled as a matter of right to the appointment of a receiver of the Premises and the rents, revenues, issues, profits, royalties, income and benefits thereof, without notice or demand, and without regard to the adequacy of the security for the Indebtedness the value of the Premises or the solvency of Trustor, either before or after any sale, and, Beneficiary may be appointed as such receiver. Such receiver shall have the power: (i) to collect the rents, issues and profits of the Premises during the pendency of any foreclosure proceedings whether by judicial or non-judicial foreclosure, and, in case of a sale and a deficiency, for such time when Trustor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, to the maximum time and extent permitted by law; (ii) to extend or modify any then existing Leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to leases to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Trustor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the secured obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and (iii) all other powers which may be necessary or are usual in such case for the protection, possession, control, management, and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in the receiver's hands in payment in whole or in part of: (i) the Indebtedness and all obligations hereunder, or by any decree foreclosing this Deed of Trust, or in accordance with applicable non-judicial foreclosure provisions, any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree; and (ii) if this is a leasehold mortgage, all rents due or which may become due under the underlying lease.

(c) Sales by Parcels. In any sale made under or by virtue of this Deed of Trust or pursuant to any judgment or decree of court, the Premises may be sold in one or more parts or

parcels or as an entirety and in such order as Beneficiary may elect, without regard to the right of Trustor, or any person claiming under it, to the marshaling of assets. To the full extent permitted by law, Trustor waives the marshaling of assets.

(d) Effect of Sale. The purchaser at any sale made under or by virtue of this Deed of Trust or pursuant to any judgment or decree of court shall take title to the Premises or the part thereof so sold free and discharged of the estate of Trustor therein, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including Beneficiary, may purchase at any such sale. Beneficiary is hereby irrevocably appointed the attorney-in-fact of Trustor in its name and stead to make all appropriate transfers and deliveries of the Premises or any portions thereof so sold and, for this purpose, Beneficiary may execute all appropriate instruments of transfer, and may substitute one or more persons with like power, Trustor hereby ratifying and confirming all that its said attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, promptly upon Beneficiary's written request, Trustor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to Beneficiary or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Beneficiary, for the purpose, and as may be designated, in such request. Any sale or sales made under or by virtue of this Deed of Trust, to the extent not prohibited by law, shall operate to divest all the estate, right, title, interest, property, claim and demand whatsoever, whether at law or in equity, of Trustor in, to and under the Premises, or any portions thereof so sold, and shall be a perpetual bar both at law and in equity against Trustor, its successors and assigns, and against any and all persons claiming or who may claim the same, or any part thereof, by, through or under Trustor, or its successors or assigns. The powers and agency herein granted are coupled with an interest and are irrevocable.

(e) Eviction of Trustor After Sale. If Trustor fails or refuses to surrender possession of the Premises after any sale thereof, Trustor shall be deemed a tenant at sufferance, subject to eviction by means of forcible entry and detainer proceedings, provided, that this remedy is not exclusive or in derogation of any other right or remedy available to Beneficiary or any purchaser of the Premises under any provision of this Deed of Trust or pursuant to any judgment or decree of court.

(f) Insurance Policies. In the event of a foreclosure sale pursuant to this Deed of Trust or other transfer of title or assignment of the Premises after an Event of Default in which Beneficiary or an affiliate of Beneficiary takes title, all right, title and interest of Trustor in and to the unexpired terms of all policies of insurance required under the provisions of this Deed of Trust shall inure to the benefit of and pass to the successor in interest of Trustor or the purchaser or grantee of the Premises or any part thereof so transferred and any transferee other than Beneficiary or an affiliate of Beneficiary shall be given the benefit of all such unexpired policies for a period of three (3) business days after such foreclosure or transfer of title or assignment of the Premises after an Event of Default..

16. Application of Proceeds. The proceeds of any sale made either under the power of sale hereby given or under a judgment, order or decree made in any action to foreclose or to enforce this Deed of Trust, shall be applied:

(a) first to the payment of (i) all costs and expenses of such sale, including reasonable attorneys' fees, environmental site assessors fees and costs, appraisers' fees and costs of procuring title searches, title insurance policies and similar items and (ii) all charges, expenses and advances incurred or made by Beneficiary in order to protect the lien or estate created by this Deed of Trust or the security afforded hereby including any expenses of entering, taking possession of and operating the Premises;

(b) then to the payment of any other Indebtedness in such order as Beneficiary may determine until the same have been paid in full; and

(c) any balance thereof shall be paid to Trustor, or to whosoever shall be legally entitled thereto, or as a court of competent jurisdiction may direct.

17. **Rights and Remedies Cumulative.** Each right, power and remedy herein conferred upon Beneficiary is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Beneficiary, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy and no delay or omission of Beneficiary in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

18. **Beneficiary's Right of Inspection.** At all reasonable times, Trustor will provide to Beneficiary, and any third party inspector, architect or engineer hired by Beneficiary, full and unrestricted access to the Premises and will also provide all items which may reasonably be required for analysis of the construction, compliance with construction requirements, laws, regulations, compliance with plans, specifications, cost breakdowns, contracts, and necessary items for approval of draw requests. Beneficiary shall have at all reasonable times access to and the right to make copies of the full set of plans, specifications, change orders and other contract items pertaining to construction or development on any parcel of the Premises. No inspection or review performed or received by Beneficiary shall be deemed to benefit Trustor nor shall Trustor be deemed released from any of its obligations, covenants and agreements herein. Any such inspections by Beneficiary shall be performed at Beneficiary's risk (except for losses or damages caused by the gross negligence or willful misconduct of Borrower or its agents) and Beneficiary's inspections shall not interfere in any material fashion with the work being performed on the Premises by Borrower, its subcontractors, and agents.

19. **Condemnation.** The Beneficiary may, at its option, in its own name (a) appear or proceed in any condemnation proceeding, and (b) make any compromise or settlement thereof, provided that so long as the Trustor promptly prosecutes any compromise or settlement thereof, the Trustor shall control any compromise or settlement proceeding with the result thereof being subject to the Beneficiary's approval. The Trustor shall give the Beneficiary immediate notice of the initiation of any condemnation proceeding, and a copy of every pleading, notice and other

items served in any condemnation proceeding. Trustor hereby assigns, transfers and sets over unto the Beneficiary the entire proceeds of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. Beneficiary may elect to apply the proceeds of the award upon or in reduction of the Indebtedness, whether due or not, or make said proceeds available for restoration or rebuilding of the Premises. In the event that Beneficiary elects, in Beneficiary's sole and absolute discretion, to make said proceeds available to reimburse Trustor for the cost of the rebuilding or restoration of the Improvements, such proceeds shall be made available in the manner and under the conditions that Beneficiary may require. In any event, the Improvements shall be restored or rebuilt in accordance with plans and specifications to be submitted to and approved by Beneficiary prior to commencement of any building or restoration. If the proceeds are made available by Beneficiary to reimburse Trustor for the cost of said rebuilding or restoration, any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall at the option of Beneficiary be applied on account of the Indebtedness or be paid to any party entitled thereto. No interest shall be allowed to Trustor on the proceeds of any award held by the Beneficiary.

20. **Giving of Notice.** (a) All notices, demands, requests, and other communications desired or required to be given hereunder ("Notices"), shall be in writing and shall be given by: (i) hand delivery to the address for Notices; (ii) delivery by overnight courier service to the address for Notices; or (iii) sending the same by United States mail, postage prepaid, certified mail, return receipt requested, addressed to the address for Notices.

(b) All Notices shall be deemed given and effective upon the earlier to occur of: (i) the hand delivery of such Notice to the address for Notices; (ii) one business day after the deposit of such Notice with an overnight courier service by the time deadline for next day delivery addressed to the address for Notices; or (iii) three business days after depositing the Notice in the United States mail as set forth in (a)(iii) above. All Notices shall be addressed to the following addresses:

Trustor:    Hearthstone Homes, Inc.  
  810 North 96<sup>th</sup> Street  
  Omaha, Nebraska 68114  
  Attn: Michael E. Freestone, Controller and Treasurer

With a copy to:    Fullenkamp, Doyle & Jobeun  
  11440 West Center Road  
  Omaha, Nebraska 68144  
  Attn: Larry A. Jobeun, Esq.

Beneficiary:    Wells Fargo Bank, National Association  
  1919 Douglas Street  
  Omaha, Nebraska 68102  
  Attn: Kraig J. Williams, V.P.



Trustee: Croker, Huck, Kasher, DeWitt, Andeson & Gonderinger, L.L.C.  
 2120 South 72nd Street, Suite 1200  
 Omaha, Nebraska 68124  
 Attn: Bryan S. Mick, Esq.

or to such other persons or at such other place as any party hereto may by Notice designate as a place for service of Notice. Provided, that the "copy to" Notice to be given as set forth above is a courtesy copy only; and a Notice given to such person is not sufficient to effect giving a Notice to the principal party, nor does a failure to give such a courtesy copy of a Notice constitute a failure to give Notice to the principal party.

Trustor hereby requests that a copy of any notice of default and notice of sale made or executed by Trustee pursuant to the provisions hereof be sent to Trustor at its mailing address set forth hereinabove.

21. **Waiver of Defense.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law or in equity upon the Note hereby secured. Trustor requests that copies of any notice of an Event of Default and notice of sale hereunder be sent to Trustor at Trustor's address stated above.

22. **Waiver of Statutory Rights.** Trustor shall not, and will not, apply for or avail itself of any homestead, appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but to the extent lawfully allowed hereby waives the benefit of such laws. Trustor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. To the extent permitted by law, Trustor does hereby expressly waive any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust on behalf of Trustor, the trust estate and all persons beneficially interested therein and each and every person, acquiring any interest in or title to the Premises subsequent to the date of this Deed of Trust.

23. **Furnishing of Financial Statements to Beneficiary.** Trustor shall provide Beneficiary with financial statements and other information as required by the terms of the Loan Agreement.

24. **Filing and Recording Fees.** Trustor will pay all filing, registration or recording fees and all reasonable expenses incident to the execution and acknowledgment of this Deed of Trust and all federal, state, county and municipal taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of said Note and this Deed of Trust.

25. **Business Purpose.** Trustor represents, covenants and agrees that all of the proceeds of the Note secured by this Deed of Trust will be used solely for business purposes and in furtherance of the regular business affairs of Trustor.

26. **Security Agreement.** Trustor and Beneficiary agree that this Deed of Trust shall constitute a security agreement within the meaning of the UCC with respect to all sums on deposit with the Beneficiary with respect to insurance proceeds or condemnation proceeds ("Deposits") and with respect to any personal property and fixtures included in the definition herein of the word "Premises", which property may not be deemed to form a part of the real estate described in Exhibit "A" or may not constitute a "fixture" within the meaning of the UCC, and all replacements of such property, substitutions and additions thereto and the proceeds thereof, all such property being sometimes hereinafter collectively referred to as the "Collateral", and that a security interest in and to the Collateral and the Deposits is hereby granted to Beneficiary and the Deposits and all of Trustor's right, title and interest therein are hereby assigned to Beneficiary, all to secure payment of the Indebtedness and to secure performance by Trustor of the terms, covenants and provisions hereof. Upon the occurrence of an Event of Default under this Deed of Trust, Beneficiary, pursuant to the appropriate provisions of the UCC, shall have the option of proceeding with respect to the Collateral in accordance with its rights and remedies with respect to the real property, in which event the default provisions of the UCC shall not apply. The parties agree that, in the event Beneficiary shall elect to proceed with respect to the Collateral separately from the real property, ten (10) days' notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Beneficiary shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Beneficiary. Trustor agrees that, without the written consent of Beneficiary, Trustor will not remove or permit to be removed from the Premises any of the Collateral except that so long as the Trustor is not in default hereunder, Trustor shall be permitted to sell or otherwise dispose of the Collateral, when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, upon replacing the same or substituting for the same other Collateral at least equal in value to the initial value to that disposed of and in such a manner so that said Collateral shall be subject to the security interest created hereby, and so that the security interest of Beneficiary shall be first in priority, it being expressly understood and agreed that all replacements of the Collateral and any additions to the Collateral shall be and become immediately subject to the security interest of this Deed of Trust and covered hereby. Trustor covenants and represents that all Collateral, and all replacements thereof, substitutions therefor or additions thereto, unless Beneficiary otherwise consents, now are and will be free and clear of liens (other than the lien of taxes not yet due or payable), encumbrances or security interests of others. Trustor shall do all such acts and things as Beneficiary may at anytime, or from time to time, reasonably request or as may be necessary or appropriate to establish and maintain a first perfected security interest in the Deposits and Collateral, subject to no liens (other than the lien of taxes not yet due or payable), encumbrances, or security interests of others.

This Deed of Trust also constitutes a financing statement for the purpose of the UCC and shall constitute a "fixture filing" under such statutes and shall be filed in the real estate records of the County in which the Land is located (and Beneficiary shall not file any separate financing statements in the real estate records of the county or counties in which the Premises is located

other than this Deed of Trust). For such purpose the name and address of the debtor and the secured party are as set forth below:

Name of Debtor: HEARTHSTONE HOMES, INC., a Nebraska corporation

Debtor's Mailing Address: 810 N. 96<sup>th</sup> Street, Omaha, Nebraska 68114

Name of Secured Party: WELLS FARGO BANK, NATIONAL ASSOCIATION

Address of Secured Party: 1919 Douglas Street, Omaha, Nebraska 68102

This financing statement covers the Collateral. Some of the items or types of property comprising the Collateral are or are to become fixtures on the real property described in this Deed of Trust. Trustor is the record owner of the real property described herein upon which the foregoing fixtures and other items and types of property are located.

27. **Due on Sale or Further Encumbrance.** (a) Subject to the provisions of subsection (b) below, if, without the Beneficiary's prior written consent, (i) the Premises or any part thereof or any interest in the Premises or the Trustor is sold or conveyed; (ii) title to the Premises or any interest therein is divested; (iii) the Premises or any ownership interest in the Trustor is further encumbered or pledged; (iv) any lease which gives the lessee any option to purchase the Premises or any part thereof is entered into, or, (v) without limiting the generality of clause (i) above, the ownership of shares of the Trustor, if a corporation, or of any corporate general partner of Trustor, if a partnership, or the general partnership interests in any partnership which is a general partner of Trustor, or any membership interest in a Trustor which is a limited liability company, or any beneficial or fiduciary interest in any Trustor which is a trust or trustee, is sold or conveyed, the Beneficiary shall at its sole discretion be entitled to accelerate the Indebtedness and declare the then unpaid principal balance and all accrued interests and other sums due and payable under the Note due and payable and exercise all remedies available to Beneficiary under the Loan Documents. The Trustor understands that the present ownership of the Premises and Improvements will be a material inducement to Beneficiary in the making of the loan secured by this Deed of Trust.

(b) Notwithstanding the foregoing, Beneficiary shall, in connection with sales of individual parcels of the Premises in the ordinary course of Trustor's business, execute partial reconveyances in connection with such sales upon the terms and conditions contained in the Loan Agreement.

28. **Environmental Matters; Notice; Indemnity.** Trustor acknowledges and agrees that Trustor and the guarantors of the note have entered into an Environmental Indemnification Agreement with respect to the Premises, the terms of which are incorporated herein by this reference.

29. **Captions.** The captions or headings preceding the text of the paragraphs or subparagraphs of this Deed of Trust are inserted only for convenience of reference and shall not

constitute a part of this Deed of Trust, nor shall they in any way affect its meaning, construction or effect.

30. **No Waiver; Modifications in Writing.** No failure or delay on the part of Beneficiary in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to any party at law or in equity or otherwise. No amendment, modification, supplement, termination or waiver of or to any provision of this Deed of Trust, nor consent to any departure therefrom, shall be effective unless the same shall be in writing and signed by or on behalf of the party to be charged with the enforcement thereof. Any amendment, modification or supplement of or to any provision of this Deed of Trust, any waiver of any provision of this Deed of Trust, and any consent to any departure from the terms of any provision of this Deed of Trust, shall be effective only in the specific instance and for the specific purpose for which made or given.

31. **Relationship.** Beneficiary is only a lender under the Loan Documents, and nothing contained in this Deed of Trust or the other Loan Documents and no action taken by the parties pursuant hereto shall be deemed to constitute the Beneficiary and any other of the parties to any of the Loan Documents a partnership, an association, a joint venture or other entity, nor constitute Beneficiary as a fiduciary for any of the parties.

32. **Governing Law.** This Deed of Trust shall be governed by the laws (excluding conflicts of laws rules) of Nebraska.

33. **Time of Essence.** Time is of the essence in the performance by the parties of this Deed of Trust.

34. **Construction.** Trustor has been represented by its own counsel in this transaction, and this Deed of Trust shall not be construed more strongly against any party regardless of who was more responsible for its preparation.

35. **Gender; Number; Terms.** Words and phrases herein shall be construed as in the singular or plural number and as masculine, feminine or neuter gender, according to the context. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Deed of Trust and not to any particular section, paragraph or provision. The term "person" and words importing persons as used in this Deed of Trust shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies, and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

36. **Integration.** This Deed of Trust, together with the other Loan Documents and the certain Environmental Indemnification Agreement executed by Trustor, constitute the entire agreement between the parties hereto pertaining to the subject matters hereof and thereof and supersede all negotiations, preliminary agreements and all prior or contemporaneous discussions

and understandings of the parties hereto in connection with the subject matters hereof and thereof.

37. **Substitute Trustee.** If, for any reason, Beneficiary prefers to appoint a substitute Trustee hereunder, Beneficiary may, from time to time, by written instrument, appoint one or more substitute Trustees, who shall succeed to all the estate, rights, powers, and duties of the original Trustee named herein. Such appointment may be executed by anyone acting in a representative capacity, and such appointment shall be conclusively presumed to have been executed with appropriate authority.

38. **Indemnification of Trustee.** Except for willful misconduct, Trustee shall not be liable for any act or omission or error of judgment. Trustee may rely on any document believed by Trustee in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Trustee shall not be liable for interest thereon. Trustor hereby indemnifies Trustee against all liability and expenses that Trustee may incur in the performance of Trustee's duties hereunder.

39. **General Indemnification.** (a) Trustor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties (defined below) from and against any and all Losses (defined below) imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (i) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (ii) any use, nonuse or condition in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof; (iv) any failure of the Premises to be in compliance with any applicable laws; (v) any and all claims, demands or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (vi) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan evidenced by the Note and secured by this Deed of Trust. Any amounts payable to Beneficiary by reason of the application of this Paragraph shall become immediately due and payable and shall bear interest at the Default Rate (as defined in the Note) from the date loss or damage is sustained by Beneficiary until paid. The term "Losses" shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to attorneys' fees and other costs of defense). The term "Indemnified Parties" shall mean (i) Beneficiary, (ii) any prior owner or holder of the Note, (iii) any servicer or prior servicer of the Loan, (iv) any participant or any prior participant in any portion of the Loan, (v) any trustees, custodians or other fiduciaries who hold or who have held a full or partial interest in the Loan for the benefit of any participant or other third party, (vi) any receiver or other fiduciary appointed in a foreclosure or other collection proceeding, (vii) any officers, directors, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates or subsidiaries

of any and all of the foregoing, and (viii) the heirs, legal representatives, successors and assigns of any and all of the foregoing (including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of the Indemnified Parties' assets and business), in all cases whether during the term of the Loan or as part of or following a foreclosure of the Loan.

(b) Upon written request by any Indemnified Party, Trustor shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of the Indemnified Parties, their attorneys shall control the resolution of any claim or proceeding. Upon demand, Trustor shall pay or, in the sole discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

(c) Trustor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Deed of Trust, the Note or any of the other Loan Documents.

(d) Beneficiary shall indemnify Trustor from any losses occurring after Beneficiary takes physical possession of the Premises through foreclosure or a conveyance in lieu of foreclosure and only if such losses result from the willful misconduct or gross negligence of Beneficiary.

40. **Miscellaneous.**

(a) This Deed of Trust and all provisions hereof shall extend to and be binding upon Trustor and its heirs, successors, grantees and assigns, any subsequent owner or owners of the Premises and all persons claiming under or through Trustor (but this clause shall not be construed as constituting the consent by Beneficiary to the transfer of any interest in the Premises), and the word "Trustor" when used herein shall include any such person and all persons liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed said Note or this Deed of Trust. The word "Beneficiary", when used herein, shall include the successors and assigns of Beneficiary, including participant lenders, and the holder or holders, from time to time, of the Note secured hereby. In addition, in the event Trustor is a land trust or similar entity, the term "Trustor" as used herein shall include the beneficiary or beneficiaries of such land trust or similar entity.

(b) In the event one or more of the provisions contained in this Deed of Trust or the Note secured hereby, or in any other security documents given to secure the payment of the Note secured hereby, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Beneficiary, not affect any

other provision of this Deed of Trust, and this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

(c) The Trustor will, from time to time, upon ten (10) business days' prior written request from Beneficiary, make, execute, acknowledge and deliver to Beneficiary such supplemental mortgages, certificates and other documents, including without limitation UCC financing statements, as may be necessary for better assuring and confirming unto Beneficiary any of the Premises, or for more particularly identifying and describing the Premises, or to preserve or protect the priority of this Deed of Trust lien, and generally do and perform such other acts and things and execute and deliver such other instruments and documents as may reasonably be deemed necessary or advisable by Beneficiary to carry out the intentions of this Deed of Trust, provided that Trustor shall not be required to do anything that has the effect of changing the essential economic terms of the Loan set forth in the Loan Documents or increasing the personal liability of Trustor or any guarantor thereunder.

(d) Trustor shall not by act or omission permit any building or other improvement on any premises not subject to the lien of this Deed of Trust to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Trustor hereby assigns to Beneficiary any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other Improvement on the Premises shall rely on any premises not subject to the lien of this Deed of Trust or any interest therein to fulfill any governmental or municipal requirement. Trustor shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Trustor which would result in a violation of any of the provisions of this paragraph shall be void.

(e) Trustor will, from time to time, upon ten (10) business days' prior written request by Beneficiary, execute, acknowledge and deliver to Beneficiary, a certificate stating that this Deed of Trust is unmodified and in full force and effect (or, if there have been modifications, that this Deed of Trust is in full force and effect as modified and setting forth such modifications) and stating the principal amount secured hereby and the interest accrued to date on such principal amount. The estoppel certificate from Trustor shall also state to the best knowledge of Trustor whether any offsets or defenses to the Indebtedness exist and if so shall identify them.

(f) The Note secured hereby includes provisions for the assessment of a Late Charge, as defined therein. Said Late Charge shall be secured hereby as Indebtedness, as that term is used herein.

(g) Beneficiary shall have the right and option to exercise power of sale or to commence a civil action to foreclose this Deed of Trust and to obtain a decree of foreclosure. The failure to join any such tenant or tenants as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Trustor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof, or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(h) At the option of Beneficiary, this Deed of Trust shall become, subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any one or more, or to all, Leases upon the execution by Beneficiary and recording or registration thereof, at any time hereafter, in the Office of the Recorder in and for the county wherein the Premises are situated, or such other office as determined by Beneficiary, of a unilateral declaration to that effect.

(i) All agreements between Trustor and Beneficiary (including, without limitation, those contained in this Deed of Trust and the Note) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Beneficiary exceed the highest lawful rate of interest permissible under the laws of Nebraska. If, from any circumstances whatsoever, fulfillment of any provision hereof or the Note or any other documents securing the Indebtedness at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of Nebraska; and if for any reason whatsoever Beneficiary shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the principal Indebtedness (whether or not then due and payable) and not to the payment of interest.

(j) Trustor covenants and agrees that it shall constitute an Event of Default hereunder if any of the proceeds of the loan for which the Note is given will be used, or were used, as the case may be, for the purpose (whether immediate, incidental or ultimate) of purchasing or "carrying" any "margin stock" as such terms are defined in Regulation U of the Board of Governors of the Federal Reserve System (12 CFR Part 221) or for the purpose of reducing or retiring any indebtedness which was originally incurred for any such purpose.

(k) Trustor agrees and acknowledges that this Deed of Trust contains the power of sale which creates substantially different rights and obligations for Trustor from those contained in a mortgage in case of an Event of Default or breach of any obligation hereunder.

41. **Waiver of Co-Tenancy Rights.** Trustor, and each party comprising Trustor, hereby waive all of their co-tenancy rights provided at law or in equity for tenants in common between, among or against each other, including, without limitation, any right to partition the Premises.

42. **Arbitration.** Trustor acknowledges that all claims, disputes, and controversies among the parties hereto shall be resolved according to arbitration provisions contained in the Loan Agreement, provided that the arbitration requirement does not limit the right of any party to (a) foreclose against real or personal property collateral; (b) exercise self-help remedies relating to collateral or proceeds of the collateral such as setoff or repossession; or (c) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before, during or after the pendency of any arbitration proceeding.



**IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. Trustor ACKNOWLEDGES AND AGREES THAT THERE ARE NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT AND NO SUCH OTHER TERMS AND PROVISIONS MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**

Trustor acknowledges receipt of a copy of this instrument at the time of execution hereof.

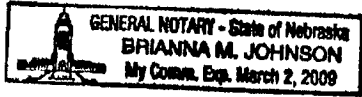
IN WITNESS WHEREOF, the Trustor has executed this instrument the day and year first above written.

HEARTHSTONE HOMES, INC., a Nebraska corporation

By: Michael E. Freestone  
Michael E. Freestone, Treasurer

STATE OF NEBRASKA    )  
                                   ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 25 day of April, 2005 by Michael E. Freestone, Treasurer of Hearthstone Homes, Inc., a Nebraska corporation, on behalf of said corporation.



Brianna M. Johnson  
Notary Public

00258891.DOC

**Exhibit A**  
(Douglas County)

- OS-25059 Lots 99, 100, 101, 102, 103, 104, 105, 106, 108, 110, 119, 120, 121, 122, 123, 124, 125, 128, 129, Meadow Ridge Replat One, a Subdivision in Douglas County, Nebraska.
- OS-25030 Lots 289, 321, 322, 323, 346, 349, 350, 351, 352, 353, 354, 356, 370, 371, 372, 373, 374, 375, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 473, 474, 475, 476, 477, 478, 479, 480, 481, Meadow Ridge, a Subdivision in Douglas County, Nebraska.
- OS-25063 Lots 1 and 2, Meadow Ridge Replat Four, a Subdivision in Douglas County, Nebraska.
- ~~OS-25063~~  
OC-44763 Lots 7-8, 21, 23, 24, 25, 26, 27, 128, 129, 130, 134, 135, 136, 137, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 200, The Woodlands, a Subdivision in Douglas County, Nebraska.
- OU-01358 Lots 172 and 173, Avalon North, a Subdivision in Douglas County, Nebraska.
- OU-08802 Lots 5-7, 14, 15, 16, 17, 18, 20, 36, 49, 50, 69, 70, 82, 83, 84, 85, 103, 104, 105, 106, 107, 108, 117, 118, 119, 120, 121, 122, 123, 126, Deerwood, a Subdivision in Douglas County, Nebraska.
- OU-08803 Lots 13 and 14, Deerwood Replat 1, a Subdivision in Douglas County, Nebraska.
- OU-08804 Lots 1 & 2 Deerwood Replat Two, a Subdivision in Douglas County, Nebraska.
- OC-28221 Lots 39, 40, 41, 42, 43, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 141, 142, 143, 144, 145, 169, 170, 172, 173, 175, 176, 177, 178, 179, 180, Oakmont, a Subdivision in Douglas County, Nebraska.
- OC-28227 Lots 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 45, 46, 47, 48, 49, 51, 54, 56, 57, 58, 59, 60, 61, 62, 63, 65, 66, 67 Oakmont Replat One, a Subdivision in Douglas County, Nebraska.
- ~~OC-28227~~  
~~Lots 11, Oakmont Replat Two, a Subdivision in Douglas County, Nebraska.~~
- OC-43909 Lots 1, 2, 3, 4, 5, 6, 7, 29, 33, 34, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 91, 92, 93, 95, 97, 131, 132, 133, 134, 135, 136, 139, Whispering Ridge, a Subdivision in Douglas County, Nebraska.
- M1-01338 Lots 188, 189, 190, 193, 194, Autumn Grove, a Subdivision in Douglas County, Nebraska.