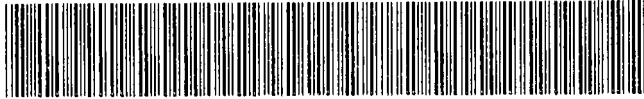




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**SECOND AMENDMENT TO THE DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF ARBOR GATE**

This Second Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements of Arbor Gate ("Second Amendment") is made effective on this 12 day of April, 2010 (the "Effective Date"), by and HEARTHSTONE HOMES, INC., a Nebraska corporation, successor-in-interest to BOYER YOUNG EQUITIES III, L.L.C., a Nebraska limited Liability Company (hereinafter referred to as the "Declarant").

**RECITALS**

A. Pursuant to Article II, Section 2(a) of the Declaration of Covenants, Conditions, Restrictions and Easements of Arbor Gate dated January 6, 2006, which was recorded in the office of the Register of Deeds of Douglas County, Nebraska, Instrument No. 2006002759, as amended by that First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements of Arbor Gate dated July 24, 2006, which was recorded in the office of the Register of Deeds of Douglas County, Nebraska, Instrument No. 2006083816 (collectively the "Declaration"), the Declarant has the power and authority to amend the Declaration to include additional property into the residential subdivision known as "Arbor Gate".

B. Declarant desires to amend the Declaration for the purposes of including Lots 469 through 632, inclusive, Arbor Gate, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska (the "Additional Lots"), into the residential subdivision known as "Arbor Gate". By virtue of this Second Amendment, the Additional Lots are intended to be included within the definition of "Properties" as set forth in Article II, Section 1(c) of the Declaration.

C. Declarant intends by this Second Amendment to impose upon the Additional Lots covenants, conditions, restrictions for the improvement, development, maintenance and use of the Additional Lots in accordance with the terms and conditions of the Declaration as if fully set forth herein.

D. Declarant further intends by this Second Amendment to include the Owners of the Additional Lots into the Association as automatic mandatory members therein.

E. By virtue of the recording of this Second Amendment, the Additional Lots shall be owned, held, transferred, sold, leased, conveyed, developed, used, occupied, improved and

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mortgaged or otherwise encumbered subject to the provisions of the Declaration and every grantee of any interest in the Additional Lots or any portion thereof, by acceptance of a deed or other conveyance of such interest, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of the Declaration and shall be deemed to have consented to the terms hereof.

F. Declarant does hereby specify, agree, designate and direct that this Declaration and all of its provisions shall be and are covenants to run with the Properties, including the Additional Lots, and shall be binding on the present owners of the Properties, including the Additional Lots, and all its successors and assigns and all subsequent owners of the Properties, including the Additional Lots, together with their grantees successors, heirs, executors, administrators, devisees and assigns.

NOW, THEREFORE, the Declarant hereby declares that the Declaration should be and hereby is amended as follows:

1. Definitions. Unless otherwise defined in this Second Amendment, all capitalized terms used in this Second Amendment shall have the same meanings ascribed to such terms in the Declaration.

2. Additional Lots. The Additional Lots shall be subject to all of the terms and conditions of the Declaration, and all of the terms and conditions of the Declaration and the Recitals set forth above, are hereby incorporated into this Second Amendment as if fully set forth herein.

3. Amendments.

A. By deleting in its entirety the legal description in the first paragraph of the "Preliminary Statement" of the Declaration, and replacing it with the following:

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Lots 1 through 23, inclusive, Lots 26 through 69, inclusive, Lots 72 through 633, inclusive, and Outlots "A" through "F", inclusive, Arbor Gate, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska; and Lots 1 through 5, inclusive, and Outlot "A", Arbor Gate Replat One, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

B. By deleting Article II, Section 1(c) in its entirety and replacing it with the following:

"Properties" shall mean and refer to Lots 1 through 23, inclusive, Lots 26 through 69, inclusive, Lots 72 through 633, inclusive, and Outlots "A" through "F", inclusive, Arbor Gate, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska; and Lots 1 through 5, inclusive, and Outlot "A", Arbor Gate Replat

One, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

4. No Other Amendments. Except as set forth herein, all of the other terms and conditions of the Declaration shall remain the same and in full force and effect.

5. Indexing of this Second Amendment. This Second Amendment shall be recorded and indexed against all the Properties legally described in Section 3B, above.

IN WITNESS WHEREOF, the Declarant has caused this Second Amendment to be executed this 12<sup>th</sup> day of April, 2010.

DECLARANT:

HEARTHSTONE HOMES, INC., a Nebraska corporation,

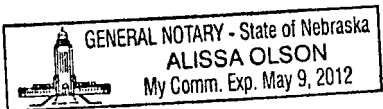
By: [Signature]  
Its: Secretary

STATE OF NEBRASKA    )  
                                  )ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 12 day of April, 2010, by Neil Smith, the Secretary of Hearthstone Homes, Inc. a Nebraska corporation, on behalf of the corporation.

SEAL

[Signature]  
Notary Public

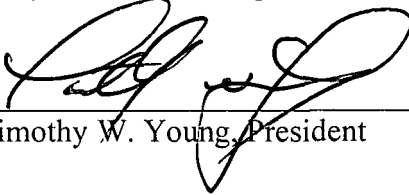


**CONSENT OF BYE VIII – ARBOR GATE, LLC**

In accordance with the terms and conditions of that Revocable Assignment and Assumption of Declarant Rights and Notice dated January 6, 2006, and recorded in the office of the Douglas County Register of Deeds, Instrument No. 2006002760, BYE VIII – Arbor Gate, LLC, a Nebraska limited liability company, as successor-in-interest to Boyer Young Equities III, L.L.C., a Nebraska limited liability company, hereby consents to the foregoing Second Amendment.

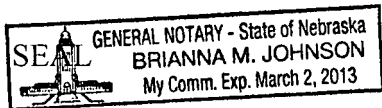
Executed this 3<sup>rd</sup> day of May, 2010.

BYE VIII – ARBOR GATE, LLC, a Nebraska limited liability company, as successor-in-interest to Boyer Young Equities III, L.L.C., a Nebraska limited liability company, by its Administrative Member, Boyer Young Development Company, a Nebraska corporation,

By:   
\_\_\_\_\_  
Timothy W. Young, President

STATE OF NEBRASKA    )  
  )ss.  
COUNTY OF SARPY    )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of May, 2010, by Timothy W. Young, President of Boyer Young Development Company, a Nebraska corporation, as Administrative Member of BYE VIII – Arbor Gate, LLC, a Nebraska limited liability company, on behalf of said limited liability company.



  
\_\_\_\_\_  
Notary Public

**CONSENT OF TRUSTEE AND BENEFICIARY UNDER DEEDS OF TRUST**

In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, GREAT WESTERN BANK, as Trustee and Beneficiary, under that certain Construction Deed of Trust filed August 21, 2008, as Instrument No. 2008083361 (the "Trust Deed"), in the of the Office of the Register of Deeds of Douglas County, Nebraska (the "Recorder's Office"), hereby consents to the foregoing Second Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Arbor Gate (the "Second Amendment") such that the Trust Deed shall be subject to said Second Amendment, and that for itself and its successors and assigns, hereby agrees that in the event of foreclosure of any of the Deeds of Trust, it shall not take any action to terminate the foregoing Second Amendment.

Executed this 10<sup>th</sup> day of MAY, 2010.

GREAT WESTERN BANK, as Trustee and Beneficiary,

By: *Kent A. Schneider* V.P.  
 Name: KENT A. SCHNEIDER  
 Its: Vice President

STATE OF NE )  
 ) ss.  
 COUNTY OF Douglas )

The foregoing instrument was acknowledged before me on this 10<sup>th</sup> day of MAY, 2010, by Kent A. Schneider, as Vice President of GREAT WESTERN BANK, as Trustee and Beneficiary, on behalf of said banking association.



*Dixie L. Nelson*  
 Notary Public

**CONSENT OF TRUSTEE AND BENEFICIARY UNDER DEEDS OF TRUST**

In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, as FIRST AMERICAN TITLE INSURANCE COMPANY as Trustee and WELLS FARGO BANK, N.A. as Beneficiary, under that certain Deed of Trust and Construction Security Agreement filed April 29, 2005, as Instrument No. 2005048649 (the "Trust Deed"), in the of the Office of the Register of Deeds of Douglas County, Nebraska (the "Recorder's Office"), hereby consents to the foregoing Second Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Arbor Gate (the "Second Amendment") such that the Trust Deed shall be subject to said Second Amendment, and that for itself and its successors and assigns, hereby agrees that in the event of foreclosure of any of the Deeds of Trust, it shall not take any action to terminate the foregoing Second Amendment.


Executed this 2 day of June, 2010.

FIRST AMERICAN TITLE INSURANCE  
COMPANY, as Trustee

By: *Ellen Albrecht*  
Name: Ellen Albrecht  
Its: Vice President

STATE OF Nebraska )  
  ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me on this 2 day of June, 2010, by Ellen Albrecht, as Vice President of FIRST AMERICAN TITLE INSURANCE COMPANY, as Trustee, on behalf of said company.

 <p>GENERAL NOTARY - State of Nebraska MONICA K. HIXSON My Comm. Exp. June 30, 2010</p>
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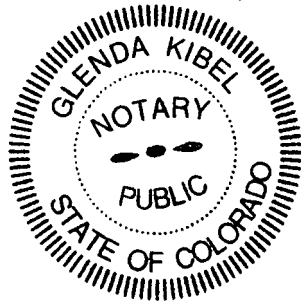
*Monica K. Hixson*  
Notary Public

WELLS FARGO BANK, N.A., as Beneficiary,

By: *Scott Horton*  
Name: Scott Horton  
Its: Vice President

STATE OF Colorado )  
  ) ss.  
COUNTY OF Denver )

The foregoing instrument was acknowledged before me on this 18<sup>th</sup> day of May, 2010, by Scott Horton, as Vice President of WELLS FARGO BANK, N.A., as Beneficiary, on behalf of said national association.



*Glenda Kibel*  
Notary Public  
05-06-2011