

098-3472

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1252 500 MISC



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RECEIVED

JUN 22 4 02 PM '98

RICHARD H. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

SPACE ABOVE RESERVED FOR RECORDER'S USE

RETURN TO:
Thomas L. Saladino
Fitzgerald, Schorr,
Barnettiller & Brennan, P.C.
1000 Commercial Federal Tower
Omaha, NE 68124

8385 MB
10-14-11 FEE 218.50 See attached
35-16-12
BKS 35-16-12 C/O V. COMEDC
CEL SCARY DS FY

Loan No. 259125

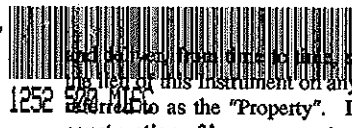
ASSIGNMENT OF LEASES AND RENTS

FOR VALUE RECEIVED, HEARTHSTONE HOMES, INC., a Nebraska corporation, f/k/a CONSTRUCTION SCIENCES, INC., whose address is 8425 Madison Street, Omaha, Nebraska 68127-4122 ("Assignor"), hereby grants, transfers and assigns to COMMERCIAL FEDERAL BANK, A FEDERAL SAVINGS BANK, whose address is 8707 West Center Road, Omaha, Nebraska, Attn: Construction Lending Manager ("Assignee"), the entire interest of Assignor as Lessor in and to all leases, subleases, licenses, concessions or other agreements hereafter entered into (collectively "Leases") for all or any part of the real property more particularly described on Exhibit "A" attached hereto (the "Property"), together with all rents, income, issues and profits arising therefrom, and any renewals and modifications thereof, and together with all rents, income, issues and profits arising from the use and occupation of the Property and from any property covered by the Leases, whether real, personal, mixed or intangible.

This Assignment is intended to be, and shall be construed as, creating an absolute assignment unto Assignee, and not as an assignment as security, and to such extent shall be unconditional and irrevocable except as hereinafter provided to the contrary. This Assignment shall be deemed to be perfected when recorded in the real estate records of the county in which the Property is located. In connection with and as a part of this Assignment, Assignor hereby warrants, represents, and agrees to and with Assignee as follows:

1. **Assignee Rights.** Assignor has contemporaneously herewith executed and delivered to Assignee a Loan Agreement ("Loan Agreement") and a Promissory Note in the principal amount of Twenty-Three Million Dollars (\$23,000,000.00) ("Note"). In order to secure payment of the Note, Assignor, as trustor, has contemporaneously herewith executed certain Deeds of Trust to Commercial Federal Bank, as Trustee, in favor of Assignee as Beneficiary ("Deeds of Trust"). Unless and until there shall have occurred a default in the performance by Assignor of any of its duties or obligations, including, but without limitation, the payment of money, arising under the Loan Agreement, the Note or the Deeds of Trust, Assignor is hereby granted a revocable license and may collect at the time of, but in no event more than one (1) month before, the date provided for payment, all rents, income, issues and profits arising under the Leases and retain the use of and enjoy the same subject to the provisions contained in the Deeds of Trust. Upon or at any time after any such default, Assignee may, at its option, by giving written notice thereof to Assignor and without regard to the adequacy of any security for the payment or performance of any duties and obligations arising under the Loan Agreement, the Note and the Deeds of Trust, either in person or by agent, with or without bringing any action or proceeding, or by receiver appointed by a court, revoke the foregoing license, take possession of the rents, income, issues and profits and/or the Property and hold, manage, let and operate the same on such terms and for such period of time as Assignee may deem proper in its sole discretion and, with or without taking possession of the Property, demand, sue for, or otherwise collect all

RECEIVED



...each further instruments as may be requested by Lender to evidence or confirm this instrument on any such properties. The properties conveyed to Trust hereinafter referred to as the "Property". It is understood that this Deed of Trust secures a loan to be used for the construction of improvements and this Deed of Trust expressly covers all buildings and improvements, now or hereafter erected or located on this Property and this Deed of Trust shall contain a first mortgage on the subject property, and any improvements erected thereon.

FOR THE PURPOSE OF SECURING:

(1) Payment of the sum of up to TWENTY-THREE MILLION DOLLARS (\$23,000,000.00) with interest thereon, according to the terms of a Loan Agreement ("Loan Agreement") and a Promissory Note ("Note") even date herewith and having a final maturity date of June 30, 2001, made by Borrower payable to Lender, on the order, and all modifications, extensions or renewals thereof, together with any future advances and interest thereon, made by Lender.
1000 Commercial Federal Tower
Omaha, NE 68124

(2) Payment of such additional sums with interest thereon (a) as may be hereafter advanced by Lender pursuant to this Instrument (herein "Future Advances"); and (b) as may be incurred by Lender, or may otherwise be due to Trustee or Lender under any provision of this Instrument.

ASSIGNMENT OF LEASES AND RENTS

(3) Performance of each agreement of Borrower contained herein or incorporated herein by reference or contained in the Loan Agreement and in any other agreements or covenants executed by Borrower relating to the loan secured hereby (together with the Loan Agreement and the Note and this Instrument, are referred to as the "Loan Documents").
HEARTHSTONE HOMES, INC., a Nebraska corporation, f/k/a CONSTRUCTION SCIENCES, INC., whose address is 8425 Madison Street, Omaha, Nebraska 68127-4132 ("Assignor"), hereby grants, transfers and assigns to COMMERCIAL FEDERAL BANK and FEDERAL SAVINGS BANK, whose address is 8707 West Center Road, Omaha, Nebraska, Attn: Construction Lending Manager ("Assignee"), the entire interest of Assignor, pursuant to the Leases, and licenses, concessions or other agreements hereafter entered into (collectively "Leases") for all or any part of the real property more particularly described on Exhibit "A" attached hereto (the "Property"), together with all rents, income, issues and profits arising therefrom, and any renewals and modifications thereof, and together with all rents, income, issues and profits arising from the use and occupation of the Property and from any property covered by the Leases, whether real, personal, mixed or intangible.

This Assignment is intended to be, and shall be construed as, creating an absolute assignment unto Assignee, and not as an assignment as security, and to such extent shall be unconditional and irrevocable except as hereinafter provided to the contrary. This Assignment shall be deemed to be perfected when recorded in the real estate records of the county in which the Property is located. In connection with and as a part of this Assignment, Assignor hereby warrants, represents, and agrees to and with Assignee as follows:

1. Assignee Rights. Assignor has contemporaneously herewith executed and delivered to Assignee a Loan Agreement ("Loan Agreement") and a Promissory Note in the principal amount of Twenty-Three Million Dollars (\$23,000,000.00) ("Note"). In order to secure payment of the Note, Assignor, as trustor, has contemporaneously herewith executed certain Deeds of Trust to Commercial Federal Bank, as Trustee, in favor of Assignee as Beneficiary ("Deeds of Trust"). Unless and until there shall have occurred a default in the performance by Assignor of any of its duties or obligations, including, but without limitation, the payment of money, arising under the Loan Agreement, the Note or the Deeds of Trust, Assignor is hereby granted a revocable license and may collect at the time of, but in no event more than one (1) month before, the date provided for payment, all rents, income, issues and profits arising under the Leases and retain the use of and enjoy the same subject to the provisions contained in the Deeds of Trust. Upon or at any time after any such default, Assignee may, at its option, by giving written notice thereof to Assignor and without regard to the adequacy of any security for the payment or performance of any duties and obligations arising under the Loan Agreement, the Note and the Deeds of Trust, either in person or by agent, with or without bringing any action or proceeding, or by receiver appointed by a court, revoke the foregoing license, take possession of the rents, income, issues and profits and/or the Property and hold, manage, let and operate the same on such terms and for such period of time as Assignee may deem proper in its sole discretion and, with or without taking possession of the Property, demand, sue for, or otherwise collect all

rents, income and profits of the Leases and the Property, including those past due and unpaid, with full power to modify, extend or terminate existing Leases, to execute new Leases, and to make from time to time such alterations, renovations, repairs and replacements as may seem proper to Assignee, and apply such rents, income and profits to the payment of all expenses of managing, operating and maintaining the Leases and the Property, all expenses incident to taking and retaining possession of the Property, and the principal, interest, and other indebtedness evidenced and/or secured by the Loan Agreement, the Note and the Deeds of Trust together with all costs and attorneys' fees incurred by Assignee in connection with any of the foregoing matters, in the order of priority set forth in the Deeds of Trust, any statute, law, custom, or use to the contrary notwithstanding. Exercise or nonexercise by Assignee of the options granted in this paragraph, or collection and application of rents, income and profits by Assignee or its agent shall not be considered a waiver of any default by Assignor under this Assignment, the Loan Agreement, the Note or the Deeds of Trust.

2. Non-Liability and Indemnification of Assignee. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property or any part thereof or from any other act or omission of Assignee in managing the Property, unless such loss is caused by the gross negligence, willful misconduct or bad faith of Assignee. Assignee shall not be obligated to perform or discharge nor does Assignee undertake to perform or discharge any obligation, duty or liability under the Leases or under or by reason of this Assignment and Assignor agrees to indemnify Assignee for, and to hold Assignee harmless from, any liability, loss or damage which may be incurred under the Leases or under or by reason of this Assignment and from any claims and demands which may be asserted against Assignee by reason of any alleged obligations or undertakings to perform or discharge any of the terms, covenants or agreements contained in the Leases or in operation of the Property, unless such liability, loss or damage is caused by the gross negligence, willful misconduct or bad faith of Assignee. Should Assignee incur any such liability under the Leases or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses, and reasonable attorneys' fees, shall be reimbursed by Assignor to Assignee immediately upon demand, and upon failure of Assignor to make such reimbursement on the date of such demand, the unpaid portion thereof, while still immediately due and payable, shall bear interest at the default rate of interest provided in the Loan Agreement and the Note until paid, and the Loan Agreement and the Note shall be deemed to be in default due to such nonpayment. This Assignment shall not operate to place responsibility for the control, care, maintenance, or repair of the Property upon Assignee, nor shall it operate to make Assignee responsible or liable for any waste committed on the Property by any lessees or any other parties, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property.

3. Termination/Lessee Directives. Upon payment in full of the principal, interest and all other indebtedness evidenced by the Loan Agreement, the Note and the Deeds of Trust, this Assignment shall cease, terminate and be of no further effect; provided, however, that the affidavit, certificate, letter or statement of Assignee or any officer, agent or attorney of Assignee showing any part of the principal, interest or other indebtedness as being unpaid shall constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. Assignor hereby authorizes and directs each and every lessee named in a Lease or any other or future lessee or occupant of the Property or any part thereof, upon receipt of written notice from Assignee, to pay to Assignee all rents, income, issues and profits accruing under the Leases or from the Property, and to continue to do so until otherwise notified in writing by Assignee.

4. Absolute Assignment. Subject only to the provisions of Paragraph 3 of this Assignment, no action undertaken by Assignee with respect to any of the obligations of Assignor evidenced by the Loan Agreement, the Note and the Deeds of Trust, to any security or guarantee given for the payment or performance thereof, or to any other document or instrument evidencing or relating to said obligations shall in any manner affect, impair or prejudice any of Assignee's rights and privileges under this Assignment or discharge, release or modify any of Assignor's duties or obligations hereunder. This Assignment is intended by Assignor and Assignee to create, and shall be construed as

creating, an absolute assignment unto Assignee, subject only to the license, terms and provisions hereof, and not as an assignment as security for the performance of the obligations evidenced by the Loan Agreement, the Note and the Deeds of Trust or any other indebtedness of Assignor.

5. Warranties of Assignor. Assignor warrants to Assignee, each of which warranties shall remain in full force and effect until all obligations of Assignor to Assignee under the Loan Agreement, the Note and Deeds of Trust have been fulfilled, that:

(a) Assignor is the record owner and holder of legal title to the Property and to the improvements located on the Property.

(b) Assignor has good and clear title to the Leases, rents, income, issues, and profits hereby assigned and good right to assign same, and no other person, firm or corporation has any right, title or interest therein.

(c) There has been no prior assignment of the Leases, rents, income, issues, or profits which is now in effect.

(d) There are currently no outstanding Leases affecting the Property.

6. Negative Covenants of Assignor. Assignor agrees that, so long as any obligation to Assignee remains unfulfilled under the Note or Deed of Trust, Assignor will not without the express prior written consent of Assignee, which consent may be granted or withheld in Assignee's sole discretion:

(a) Enter into any Leases without the prior written approval of Assignee as to the form and substance of the proposed lease and the proposed lessee.

(b) Modify, either orally or in writing, any Lease now or hereafter existing so as to render the same not in compliance with (a) above, or allow any lessee to surrender or terminate its Lease, or permit an assignment or sublease under any Lease, or request or consent to the subordination of any Lease to any lien subordinate to this Agreement, except in the exercise of sound business judgment.

(c) Collect any rents, income, issues, or profits accruing under the Leases or from the Property more than one (1) month in advance of the time when they shall become due.

(d) Execute any other assignment of lessor's interest in the Leases or assignment of rents accruing under the Leases or from the Property.

(e) Do or permit anything to be done, the doing of which, or omit or refrain from doing anything, the omission of which will or could be a breach or default in the terms of any of the Leases or create or produce grounds for termination thereof by any lessee.

7. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be given by mailing such notice by United States mail, certified or registered, postage prepaid and return receipt requested, to the party entitled thereto at the address provided on page 1 hereof, or at such other addresses as may have been furnished in writing. Any notice provided for in this Assignment shall be deemed to have been given to Assignor or Assignee when given in the manner designated herein and shall be considered delivered and received by the party to whom it is addressed on the earlier of the day on which such notice is actually received by the party to whom it is addressed or the third day after such notice is deposited in the United States mail.

8. Successors and Assigns. This Assignment, together with the agreements and warranties herein contained, shall inure to the benefit of Assignee and its successors and assigns and shall be binding upon Assignor and its successors and assigns as to all or any part of the Property.

9. Miscellaneous Provisions. This Assignment is made pursuant to and shall be construed and governed by the laws of the State of Nebraska and the rules and regulations promulgated thereunder. If any paragraph, clause or provision of this Assignment is construed or interpreted by a court of competent jurisdiction to be void, invalid or unenforceable, such decision shall affect only those paragraphs, clauses or provisions so construed or interpreted and shall not affect the remaining paragraphs, clauses and provisions of this Assignment.

IN WITNESS WHEREOF, this Assignment has been executed this 20th day of June, 1998.

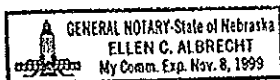
HEARTHSTONE HOMES, INC., a
Nebraska corporation, f/k/a
CONSTRUCTION SCIENCES, INC., a
Nebraska corporation, Assignor

By: 
John J. Smith, President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 20 day of June, 1998, by JOHN J. SMITH, who is known to be the President of HEARTHSTONE HOMES, INC., a Nebraska corporation, f/k/a Construction Sciences, Inc., a Nebraska corporation,, for and on behalf of the corporation.

Witness my hand and official seal this 20th day of June, 1998.




Notary Public

EXHIBIT "A" (PAGE 1 OF 3)

Lots 13 through 58, both inclusive, Lot 64, Lot 67 through 75, both inclusive, Lot 79, Lot 83 through 86, both inclusive, Lots 100 through 197, both inclusive, Lots 222 through 252, both inclusive, in Arbor Oaks, a Subdivision in Douglas County, Nebraska. MC-00910

Lots 1 and 2, Lots 6 through 109, both inclusive, in Brookfield, a Subdivision in Douglas County, Nebraska. OU-04742

Lot 83, in Lake Cunningham Hills, a Subdivision in Douglas County, Nebraska. OU-21490

Lots 1 and 2, in Wynnewood Replat II, an Addition to the City of Omaha, Douglas County, Nebraska. 67-44895

Lot 63, in Wynnewood 1st Addition, an Addition to the City of Omaha, Douglas County, Nebraska. 67-44887

Lots 2 through 12, both inclusive, Lots 59 through 63, both inclusive, Lots 65 and 66, Lots 76 through 78, both inclusive, Lots 80 through 82, both inclusive, Lots 87 through 99, both inclusive, Lots 199, 201, 204 through 221, both inclusive, in Arbor Oaks, a Subdivision in Douglas County, Nebraska. MC-00910

Lots 3, 4 and 5, in Brookfield, a Subdivision in Douglas County, Nebraska. OU-04742

Lot 34, in Wynnewood 3rd Addition, an Addition to the City of Omaha, Douglas County, Nebraska. 67-44889

Lots 4 and 5, in Stonegate, an Addition to the City of Omaha, Douglas County, Nebraska. 69-37090

All of Tax Lot 7 in the East half of the East half of the Northwest Quarter of Section 35, Township 16 North, Range 12, East of the 6 P.M. in Douglas County, Nebraska; 35-16-12

EXCEPT THE FOLLOWING:

NE NW
SE NW

Sublots 1, 2 and 3 of said Tax Lot 7; the 15.9 foot strip between Sublots 1 and 2 and the East 305.68 feet of the North 285 feet of the South 659.18 feet of Tax Lot 7, also that part of Tax Lot 7 taken for Wynnewood Addition, Wynnewood 2nd Addition, and Lots 1 through 109, inclusive, in Brookfield and except that part annexed into SID #362, all in Douglas County, Nebraska.

EXHIBIT "A" (PAGE 2 OF 3)

10-14-11

A tract of land located in the Northeast Quarter of Section 10, Township 14 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Commencing at the Southwest corner of said Northeast Quarter of Section 10, said point also being the Northwest corner of Lot 214 Western Oaks, a subdivision located in the Southeast Quarter of said Section 10, said point also being the Northeast corner of Lot 188, Mission Ridge, a subdivision located in the Southwest Quarter of said Section 10; thence North 00°06'05" East (assumed bearing) along the West line of said Northeast Quarter of Section 10, a distance of 314.69 feet to the Point of Beginning; thence continuing North 00°06'05" East along said West line of the Northeast Quarter of Section 10, a distance of 2204.23 feet; thence North 88°36'31" East, a distance of 35.01 feet; thence North 00°06'05" East, a distance of 92.03 feet to a point on the South right-of-way line of "Q" Street; thence North 88°36'31" East along said South right-of-way line of "Q" Street, a distance of 444.83 feet; thence South 01°23'29" East, a distance of 127.53 feet; thence South 11°09'33" East, a distance of 162.70 feet; thence South 14°59'04" East, a distance of 124.78 feet; thence Southeasterly on a curve to the right with a radius of 616.35 feet, a distance of 397.90 feet, said curve having a long chord which bears South 86°29'25" East, a distance of 391.03 feet; thence South 67°59'46" East, a distance of 267.43 feet; thence Southeasterly on a curve to the right with a radius of 637.60 feet, a distance of 80.87 feet, said curve having a long chord which bears South 64°21'46" East, a distance of 80.81 feet; thence North 29°16'14" East, a distance of 31.50 feet; thence Northeasterly on a curve to the left with a radius of 290.87 feet, a distance of 96.65 feet, said curve having a long chord which bears North 19°45'04" East, a distance of 96.21 feet; thence South 73°04'29" East, a distance of 321.53 feet; thence South 60°45'26" East, a distance of 84.06 feet; thence South 47°18'05" East, a distance of 80.63 feet; thence South 33°50'43" East, a distance of 80.06 feet; thence South 20°23'22" East, a distance of 40.03 feet; thence North 69°36'38" East, a distance of 190.00 feet; thence South 19°13'45" East, a distance of 1810.92 feet; thence South 89°59'58" East, a distance of 17.00 feet to a point on the West right-of-way line of 156th Street; thence South 00°00'02" West along said West right-of-way line of 156th Street, a distance of 150.87 feet; thence South 88°52'39" West, a distance of 92.02 feet; thence South 00°00'02" West, a distance of 35.01 feet to a point on the South line of said Northeast Quarter of Section 10, said point also being on the North line of Millard Oaks, a subdivision located in the Southeast Quarter of Section 10; thence South 88°52'39" West along said South line of the Northeast Quarter of Section 10, said line also being said North line of Millard Oaks and Western Oaks, a distance of 1924.12 feet; thence North 00°06'05" East, a distance of 10.00 feet; thence Northeasterly on a curve to the right with a radius of 630.00 feet, a distance of 278.71 feet, said curve having a long chord which bears North 12°46'31" East, a distance of 276.45 feet; thence North 64°33'03" West, a distance of 30.00 feet; thence North 78°49'26" West, a distance of 50.21 feet; thence North 89°53'55" West, a distance of 261.41 feet; thence North 00°06'05" East, a distance of 120.00 feet; thence North 89°53'55" West, a distance of 43.53 feet; thence South 00°06'05" West, a distance of 120.00 feet; thence North 89°53'55" West, a distance of 264.00 feet to the Point of Beginning; EXCEPT that part conveyed in the Warranty Deed filed in Book 2090 at Page 521, Deed Records, Douglas County, Nebraska.

NE NE
NW NE
SE NE
SW NE

EXHIBIT "A" (PAGE 3 OF 3)

36-16-12

The Northwest Quarter(1/4) of the Southwest Quarter (1/4) in Section Thirty-six (36), and also vacated 71st Circle, and also part of the Southwest Quarter (SW 1/4) of the Northwest Quarter (NW 1/4) of Section Thirty-six (36), all being in Township Sixteen (16) North, Range Twelve (12) East of the 6th P.M., in Douglas County, Nebraska, more particularly described as follows:

Commencing at the Northwest corner of said SW 1/4 of Section 36; thence N89°52'27"E (assumed bearing) along the North line of said SW 1/4 of Section 36, a distance of 50.00 feet to a point on the East right-of-way line of 72nd Street, said point being the point of beginning; thence N00°00'01"E along said East right-of-way line of 72nd Street, a distance of 132.88 feet; thence East right-of-way line of 72nd Street, a distance of 132.88 feet; thence N89°52'27"E, a distance of 1281.38 feet to a point on the East line of said SW 1/4 of the NW 1/4 of Section 36; thence S00°13'00"W along said East line of the SW 1/4 of the NW 1/4 of Section 36, a distance of 132.88 feet to a point on the North line of said SW 1/4 of Section 36, said point also being the Northwest corner of Lot 65, Orchard Park, a subdivision located in said SW 1/4 of Section 36; thence S00°09'35"E along the East line of said NW 1/4 of the SW 1/4 of Section 36, a distance of 1268.62 feet to a point on the Northerly right-of-way line of Crown Point Avenue; thence Northwesterly along said Northerly right-of-way line of Crown Point Avenue on the following described courses; thence Northwesterly on a curve to the right with a radius of 850.00 feet, a distance of 678.10 feet, said curve having a long chord which bears N54°10'42"W, a distance of 647.77 feet; thence N24°17'31"W, a distance of 50.38 feet; thence Northwesterly on a curve to the left with a radius of 750.00 feet, a distance of 860.11 feet, said curve having a long chord which bears N57°08'45"W, a distance of 813.76 feet; thence N89°59'69"W, a distance of 21.82 feet; thence Northwesterly on a curve to the right with a radius of 45.00 feet, a distance of 17.24 feet, said curve having a long chord which bears N50°37'17"W a distance of 17.13 feet to the point of intersection of said Northerly right-of-way line of Crown Point Avenue and said East right-of-way line of 72nd Street; thence N00°00'01"E along said East right-of-way line of 72nd Street, a distance of 988.48 feet to the point of beginning.