



MISC 2008013756



FEB 13 2008 11:10 P 12

misc
FEE 440.00
128 27-16-12 FB See Attached
PKP 7-14-10 MB
760 3-13-10 DEL _____ SCAN _____ FV _____

When Recorded Return To:
Wells Fargo Bank, National Association
1919 Douglas Street
Omaha, Nebraska 68102
Attention: Real Estate Banking Department

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
2/13/2008 11:10:18.71

2008013756

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.

MODIFICATION TO DEED OF TRUST AND CONSTRUCTION SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES (DOUGLAS COUNTY)

8 THIS MODIFICATION TO DEED OF TRUST AND CONSTRUCTION SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES ("Modification") is made as of February ~~5~~, 2008 by HEARTHSTONE HOMES, INC., a Nebraska corporation ("Trustor"), with the mailing address of 810 North 96th Street, Omaha, Nebraska 68114, to FIRST AMERICAN TITLE INSURANCE COMPANY, with the mailing address 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.

RECITALS:

A. Trustor is the maker of a Promissory Note dated September 6, 2007, in the original principal amount of Forty-Five Million Dollars (\$45,000,000.00) (which is an amendment and restatement of an Amended and Restated Promissory Note dated August 7, 2006, which was an amendment and restatement of a Promissory Note dated April 16, 2005 in the original principal amount of Thirty-Five Million Dollars (\$35,000,000.00)), a portion of which indebtedness is separately evidenced by a Term Note dated on or about July 28, 2005 in the original principal amount of Five Million Four Hundred Seventy-Three Thousand One Hundred Three and 00/100ths Dollars (\$5,473,103.00), a portion of which is separately evidenced by a Term Note dated on or about July 28, 2005 in the original principal amount of Two Million Two Hundred Seventy-Three Thousand Two Hundred Six and 00/100ths Dollars

Box 1571

(\$2,273,206.00), and a portion of which is separately evidenced by a Term Note dated on or about July 28, 2006 in the original principal amount of Four Million Four Hundred Thirty-Five Thousand Seven Hundred Seventy-Nine and 00/100ths Dollars (\$4,435,779.00)(which Promissory Note and which three Term Notes which separately evidence portions of the same indebtedness evidenced by the 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, are hereinafter referred to collectively as the "Note"), payable to the order of Beneficiary, which Note was executed pursuant to the terms of an Amended and Restated Loan Agreement dated September 6, 2007 (the "Loan Agreement"), executed by Trustor and Beneficiary. The Note, the Loan Agreement, the Deed of Trust, the Assignment and all other documents and agreements evidencing, securing or relating to the obligations under the Note and Loan Agreement shall herein be collectively referred to as the ALoan Documents@;

B. The obligations of Trustor under the Note and Loan Agreement are secured by, among other things, a Deed of Trust and Construction Security Agreement dated April 16, 2005 and recorded with the office of the Register of Deeds of Douglas County, Nebraska, on April 29, 2005 as Instrument Number 2005048649 (as amended, the "Deed of Trust"), encumbering, among other things, certain real property and improvements located in Douglas County, Nebraska described therein, which Deed of Trust was amended by a Modification to Deed of Trust dated July 28, 2005 and recorded with the office of the Register of Deeds of Douglas County, Nebraska, on August 8, 2005 as Instrument Number 2005096344, a Modification to Deed of Trust and Construction Security Agreement and Assignment of Rents and Leases dated July 28, 2006 and recorded with the office of the Register of Deeds of Douglas County, Nebraska, on July 28, 2006 as Instrument Number 2006085282, a Modification to Deed of Trust and Construction Security Agreement and Assignment of Rents and Leases dated August 7, 2006 and recorded with the office of the Register of Deeds of Douglas County, Nebraska, on August 21, 2006 as Instrument Number 2006095292, a Modification to Deed of Trust and Construction Security Agreement and Assignment of Rents and Leases dated September 6, 2007 and recorded with the office of the Register of Deeds of Douglas County, Nebraska, on October 1, 2007 as Instrument Number 2007111437, and was otherwise amended from time to time to add additional real estate to the lien thereof;

C. The obligations of Trustor under the Note and Loan Agreement are further secured by, among other things, an Assignment of Rents and Leases dated April 16, 2005 (the "Assignment") and filed for record April 29, 2005, in the office of the Register of Deeds of Douglas County, Nebraska as Instrument Number 2005048650, which Assignment was amended by a Modification to Deed of Trust and Construction Security Agreement and Assignment of Rents and Leases dated July 28, 2006 and recorded with the office of the Register of Deeds of Douglas County, Nebraska, on July 28, 2006 as Instrument Number 2006085282, a Modification to Deed of Trust and Construction Security Agreement and Assignment of Rents and Leases dated August 7, 2006 and recorded with the office of the Register of Deeds of Douglas County, Nebraska, on August 21, 2006 as Instrument Number 2006095292, a Modification to Deed of Trust and Construction Security Agreement and Assignment of Rents and Leases dated September 6, 2007 and recorded with the office of the Register of Deeds of Douglas County,

thence N02°29'12"W, a distance of 12.72 feet; thence N02°21'19"W, a distance of 98.67 feet; thence N02°29'42"W, a distance of 276.21 feet; thence S87°39'09"W, a distance of 23.37 feet to a point of the West line of said NE1/4 of Section 7, said point also being a point on the East line of said NW1/4 of Section 7; thence N02°20'51"W along said West line of the NE1/4 of Section 7, said line also being said East line of the NW1/4 of Section 7, a distance of 9.73 feet to a point on the centerline of a creek as described in a survey by William A. Fell, dated March 19, 1965; thence, a long said centerline of a creek as described in a survey by William A. Fell, dated March 19, 1965, on the following described courses; thence N22°27'40"E, a distance of 60.12 feet; thence N37°15'31"E, a distance of 101.79 feet; thence N24°34'20"E, a distance of 267.29 feet; thence N48°39'22"E, a distance of 79.45 feet; thence N59°31'18"E, a distance of 100.48 feet; thence N81°48'38"E, a distance of 77.70 feet; thence N38°00'04"E, a distance of 30.21 feet; thence N03°38'38"E, a distance of 100.70 feet; thence N14°66'44"E, a distance of 65.00 feet to a point on the South right-of-way line of "Q" Street; thence along said South right-of-way line of "Q" Street on the following described courses; thence N86°40'42"E, a distance of 32.08; thence N03°18'18"W, a distance of 40.00 feet; thence S86°40'42"W, a distance of 15.41; thence N35°26'19"E, a distance of 42.32 feet to the point of beginning EXCEPTING THEREFROM THAT PART PLATTED AS Lots 401 through 468 inclusive, in Arbor Gate, a Subdivision in Douglas County, Nebraska.

(Gottsch tract)

A tract of land located in the Northeast Quarter (NE¼) of Section 13, and also the Southeast Quarter (SE¼) of said Section 13, all located in Township 15 North, Range 10 East of the 6th P.M., in Douglas County, Nebraska, more particularly described as follows: Commencing at the Northeast corner of said Section 13; thence South 87°47'22" West (assumed bearing), along the North line of said Northeast Quarter of Section 13, a distance of 1,484.29 feet to the Northeast corner of Tax Lot 3, a Tax Lot located in said NE1/4 of Section 13; thence South 02°20'44"E along the East line of said Tax Lot 3, a distance of 165.00 feet to the Southeast corner of said Tax Lot 3, said point also being the point of Beginning; thence South 02° 16'57" East, a distance of 203.19 feet; thence South 30°49'48" East, a distance of 70.90 feet; thence South 23°52'44" East, a distance of 102.73 feet; thence South 18° 13'55" East, a distance of 319.63 feet; thence South 17°47'18 East, a distance of 145.68 feet; thence South 21°30'55" East, a distance of 105.68 feet; thence South 29°30'36" East, a distance of 13.00 feet; thence South 42°25'41" East, a distance of 46.10 feet; thence South 60°43'48" East, a distance of 114.90 feet; thence South 70°56'11" East, a distance of 240.59 feet; thence South 50°33'39" East, a distance of 28.84 feet; thence South 45° 12'50" East, a distance of 42.37 feet; thence South 31°34'22" East, a distance of 77.40 feet; thence South 18°33'19" East, a distance of 95.41 feet; thence South 35°08'44" East, a distance of 50.47 feet; thence South 45°57'01" East, a distance of 71.06 feet; thence South 08°45'43" East, a distance of 109.72 feet; thence South 31°45'59" East, a distance of 25.09 feet; thence South 38°02'08" East, a distance of 37.49 feet; thence South 16° 32'28" East, a distance of 87.38 feet; thence South 04°31'49" West, a distance of 80.81 feet; thence South 24° 19'12" West, a distance of 59.59 feet; thence South 02°31'06" West, a distance of 277.52 feet; thence South 03°00'49" East, a distance of 183.08 feet; thence South 09° 10'38" West, a distance of 100.38 feet; thence South 21° 22'04" West, a distance of 204.89 feet,

13-15-10