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Date
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By

RICHARD W. TAKECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE
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RECEIVED

-- SPACE ABOVE RESERVED FOR RECORDER'S USE --

Return to:
Richard Osber
Construction Lending
Commercial Federal Bank
Regency Building 2-E
450 Regency Parkway
Omaha, Nebraska 68114

2/28 (see attached also)
FB 01-6000
31-16-12
BKP 10-15-11 C/O COMP
DEL SCAN DE FY

Loan No. 249125

The Deed of Trust referenced herein is a Construction Security Agreement that secures an obligation that Borrower has incurred for the purpose of making improvements to the property described in the Deed of Trust and herein, and is a construction security interest in said property.

**CONSTRUCTION LOAN DEED OF TRUST
MODIFICATION AGREEMENT (Douglas County)**

THIS CONSTRUCTION LOAN DEED OF TRUST MODIFICATION AGREEMENT (the "Agreement") is made and entered into effective as of March 30th, 2000, between **COMMERCIAL FEDERAL BANK, A Federal Savings Bank** (the "Lender") whose address is Regency Building 2-E, 450 Regency Parkway, Omaha, Nebraska 68114, Attention: Construction Lending Manager, Fax No. 402-898-2390; and **HEARTHSTONE HOMES, INC.**, a Nebraska corporation (the "Borrower"), whose address is 8425 Madison Street, Omaha, Nebraska 68127, Attention: "Chief Financial Officer," Fax No. 402-339-0003.

RECITALS:

- A. Borrower is the maker of a Promissory Note (the "Note") dated June 20, 1998, in the original principal amount of up to Twenty-Three Million Dollars (\$23,000,000), payable to the order of Lender, which Note was executed pursuant to the terms of a Loan Agreement ("Loan Agreement") dated June 20, 1998, executed by Borrower and Lender;
- B. The Note and Loan Agreement are secured by, among other things, a Deed of Trust dated June 20, 1998, and recorded with the office of the Register of Deeds of Douglas County, Nebraska, on June 22, 1998, in Book 5352 of Mortgages at Page 402, encumbering, among other things, certain real property and improvements located in Douglas County, Nebraska described on Exhibit A attached hereto;
- C. The Note and Loan Agreement are further secured by, among other things, an Assignment of Leases and Rents, dated June 20, 1998, and filed for record June 22, 1998, in the office of the Register of Deeds of Douglas County, Nebraska, in Book 1252 of Miscellaneous Records at Page 500;
- D. The Note, Loan Agreement, Deed of Trust and Assignment of Leases have been modified and amended in writing on several occasions (the "Modifications"), including, but not limited to, that Second Amendment to Loan Agreement and that Construction Loan Deed of Trust Second Modification Agreement, each dated as of June 14, 1999, which Modifications, among other things, increased the Loan Limit and Note amount to Twenty-Five Million Dollars (\$25,000,000), and that Construction Loan Deed of Trust Third Modification Agreement (Douglas County), under the terms of which the legal description of the Autumn Grove Property was modified;

E. The Note, Loan Agreement, Deed of Trust, Assignment of Leases, Modifications, and all other documents and Agreements evidencing or securing the obligations under the Note and Loan Agreement shall herein be collectively referred to as the "Loan Documents." Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement; and

F. Borrower has requested, among other things, an increase in the loan amount and certain other concessions, and Lender has agreed, solely as an accommodation to Borrower to honor such request on the terms and conditions contained in this Agreement and a Fourth Amendment to Loan Agreement, Promissory Note and Other Loan Documents executed contemporaneously herewith.

NOW, THEREFORE, for valuable consideration, including the mutual covenants contained herein and in the Loan Documents, the parties hereto agree as follows:

1. **Loan Amount.** The loan amount set forth on page two of the Deed of Trust and paragraph 1 of the Assignment of Leases and Rents is hereby modified to reflect the sum of Twenty-Eight Million Six Hundred Thousand Dollars (\$28,600,000) in each place where the sum of Twenty-Three Million Dollars (\$23,000,000) appears and where Twenty-Five Million Dollars (\$25,000,000) appears in any Modifications.

2. **Representations by Borrower.** Borrower has no defenses to the payment of the Note, the performance of the strict terms of the Loan Documents, or right of offset or claim against Lender and its predecessors-in-interest. Borrower specifically acknowledges and agrees that Lender and its predecessors-in-interest have performed each and all of their respective obligations, commitments, and agreements under the Loan Documents and all other agreements related to the indebtedness, both written and verbal, direct or implied, up to and including the date of this Agreement, that it is not in default in the observance or performance of any obligation, commitment, agreement, or covenant, expressed or implied, including, but not limited to, covenants of good faith and fair dealing, to be observed or performed by any of them under the foregoing, and that no facts exist and no event has occurred which now or hereafter will authorize Borrower to terminate the loan, to fail or refuse to abide by the terms of the Loan Documents, or form the basis, in whole or in part, for a claim of any kind including, but not limited to, lack of good faith or fair dealing against any of them.

3. **No Further Commitment.** Borrower hereby acknowledges and agrees that this Agreement modifies the Note, the Deed of Trust, and the Loan Documents only to the extent and on the terms set forth herein, and this Agreement is not, nor shall it be construed as a commitment by Lender to modify the Note, the Deed of Trust, or any of the Loan Documents in any other respect. Borrower further agrees that Borrower is precluded from claiming that any prior written or oral negotiations, discussions, comments, questions, or representations not specifically incorporated into this Agreement or the Loan Documents are binding upon Lender. Furthermore, none of the same shall in any manner whatsoever be deemed to modify or constitute a waiver of the rights and obligations of the parties as stated in the Loan Documents or this Agreement.

4. **Full Force and Effect.** Except as otherwise modified herein, each and every provision of the Loan Agreement, Note, Deed of Trust, and all other Loan Documents shall be and remain in full force and effect as previously modified. Borrower hereby reaffirms the Loan Documents and agrees to perform the obligations thereunder as they become due, as modified hereby.

5. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and permitted assigns.

6. **Further Assurances.** Borrower agrees to execute and deliver such documents and to perform such other acts promptly upon request, as Lender requests and which are, in Lender's reasonable judgment, necessary or appropriate to effectuate the purposes of this Agreement. This Agreement and any memorandum hereof may be filed and recorded by Lender with any governmental agency or other public office.

7. **Amendment.** This Agreement may be modified, amended, changed, or terminated, in whole or in part, only by an agreement in writing duly authorized and executed by Borrower and Lender.

8. **Waiver.** The waiver of any breach of any of the provisions of this Agreement by any party shall not constitute a continuing waiver or a waiver of any subsequent breach by said party either of the same or of another provision of this Agreement.

9. **Severability.** Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of the remainder of this Agreement.

10. **Time of the Essence.** Time is of the essence for the performance of each and every provision hereof.

11. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Nebraska.

IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused the same to be executed by its representatives hereunto duly authorized.

COMMERCIAL FEDERAL BANK, A
FEDERAL SAVINGS BANK, Lender

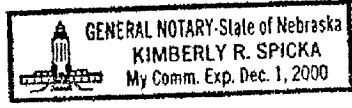
By: [Signature]
Its: Vice President

HEARTHSTONE HOMES, INC., a Nebraska
corporation, Borrower

By: [Signature]
John J. Smith, President

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

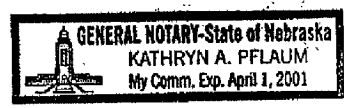
The foregoing Loan Agreement was acknowledged before me on the 30th day of March, 2000, by Richard W. Oshin, who is the Vice President of Commercial Federal Bank, a Federal Savings Bank, on behalf of the corporation.



[Signature]
Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

The foregoing Loan Agreement was acknowledged before me on the 24 day of MARCH, 2000, by JOHN J. SMITH, who is the PRESIDENT of HearthStone Homes, Inc., a Nebraska corporation, on behalf of the corporation.



[Signature]
Notary Public

EXHIBIT "A" (Page 1 of 3)

LEGAL DESCRIPTION

A tract of land located in the South 1/2 of Section 10, Township 15 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Beginning at the Southwest corner of said Section 10; thence N00°20'15"W (assumed bearing) along the West line of said SW1/4 of Section 10, a distance of 1320.54 feet to the Northwest corner of the South 1/2 of said SW1/4 of Section 10; thence S90°00'00"E along the North line of said South 1/2 of the SW1/4 of Section 10, a distance of 1320.13 feet to a point on the West line of the East 1/2 of said SW1/4 of Section 10; thence N00°17'42"W along said West line of the East 1/2 of the SW1/4 of Section 10, a distance of 1320.92 feet to the Northwest corner of said East 1/2 of the SW1/4 of Section 10; thence N89°59'01"E along the North line of said SW1/4 of Section 10, a distance of 1082.43 feet to the Northwest corner of Lot 296, Huntington Park, a subdivision located in said South 1/2 of Section 10; thence S00°07'02"W along the Westerly line of said Lot 296, Huntington Park, a distance of 45.49 feet; thence S20°52'11"E along said Westerly line of Lot 296, Huntington Park, a distance of 242.24 feet; thence S65°18'34"E along said Westerly line of Lot 296, Huntington Park, a distance of 199.15 feet; thence S19°36'33"W along said Westerly line of Lot 296, Huntington Park, a distance of 134.89 feet; thence S00°49'20"W along said Westerly line of Lot 296, Huntington Park, a distance of 143.41 feet; thence S51°21'57"E along said Westerly line of Lot 296, Huntington Park, a distance of 222.20 feet; thence S05°54'13"E along said Westerly line of Lot 296, Huntington Park, a distance of 155.37 feet; thence S00°13'10"E along said Westerly line of Lot 296, Huntington Park, a distance of 324.90 feet; thence S76°01'12"W along said Westerly line of Lot 296, Huntington Park, a distance of 119.95 feet; thence S23°29'47"E along said Westerly line of Lot 296, Huntington Park, a distance of 175.82 feet; thence S12°23'19"W along said Westerly line of Lot 296, Huntington Park, a distance of 198.66 feet; thence S77°17'25"E, along said Westerly line of Lot 296, Huntington Park, a distance of 92.74 feet; thence S81°26'29"E along said Westerly line of Lot 296, Huntington Park, a distance of 117.22 feet; thence S19°20'57"E along said Westerly line of Lot 296, Huntington Park, a distance of 118.36 feet; thence S34°27'26"E along said Westerly line of Lot 296, Huntington Park, a distance of 88.31 feet; thence S04°23'29"W along said Westerly line of Lot 296, Huntington Park, a distance of 38.94 feet; thence S49°14'07"W along said Westerly line of Lot 296, Huntington Park, a distance of 71.61 feet; thence S24°50'55"W along said Westerly line of Lot 296, Huntington Park, a distance of 77.12; thence S30°51'34"W along said Westerly line of Lot 296, Huntington Park, a distance of 221.03 feet; thence S23°41'26"W along said Westerly line of Lot 296, Huntington Park, a distance of 83.47 feet; thence N00°02'10"E, a distance of 86.87 feet; thence S24°47'25"W, a distance of 80.58 feet; thence N89°57'51"W, a distance of 307.40 feet; thence S00°02'09"W, a distance of 343.00 feet to a point on the North right-of-way line of Blondo Street; thence S89°57'51"E along said North right-of-way line of Blondo Street, a distance of 161.60 feet; thence S00°02'09"W, a distance of 33.00 feet to a point on the South line of said SW1/4 of Section 10; thence N89°57'51"W along said South line of the SW1/4 of Section 10, a distance of 2584.92 feet to the point of beginning.

Said tract of land contains an area of 6,385,401 square feet or 123.632 acres, more or less.

Said tract of land contains an area of 127,796 square feet or 2.934 acres, more or less, of 33.00 foot wide 168th Street right-of-way and 33.00 foot wide Blondo Street right-of-way.

LEGAL DESCRIPTION

A tract of land located in the South 1/2 of Section 10, Township 15 North, Range 11 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Commencing at the Southwest corner of the SW 1/4 of Section 10; thence S89°57'51"E (assumed bearing) along the South line of said Section 10, a distance of 2584.92 feet; thence N00°02'09"E a distance of 33.00 feet to a point on the North right-of-way line of Blondo Street, said point also being the Point of Beginning; thence N89°57'51"W along said North right-of-way line of Blondo Street, a distance of 161.60 feet; thence N00°02'09"E, a distance of 343.00 feet; thence S89°57'51"E, a distance of 307.40 feet; thence S24°47'25"W, a distance of 348.20 feet; thence S00°02'09"W, a distance of 26.60 feet to the Point of Beginning.

Said tract of land contains an area of 78,479 square feet or 1.801 acres, more or less.

TOTAL P.02

EXHIBIT "A" (Page 2 of 3)

Part of the South 1/2 of the NW 1/4 of Section 31, Township 16 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Commencing at the Northwest corner of said Section 31; thence S00°07'37"E (assumed bearing) along the West line of said Section 31, a distance of 1318.54 feet to the point of beginning, said point also being the Northwest corner of said South 1/2 of the NW 1/4 of Section 31; thence N89°54'22"E along the North line of said South 1/2 of the NW 1/4 of Section 31, a distance of 2622.44 feet to a point on the East line of said NW 1/4 of Section 31, said point also being the Northeast corner of said South 1/2 of the NW 1/4 of Section 31; thence S00°30'21"W along said East line of the NW 1/4 of Section 31, a distance of 626.69 feet to the Northeast corner of Lot 60, Winchester Heights, a subdivision located in the West 1/2 of said Section 31; thence Southerly along the Northerly line of said Lot 60, Winchester Heights, said line also being the centerline of a creek, on the following described courses; thence S37°22'50"W a distance of 390.65 feet; thence S50°20'42"W, a distance of 359.84 feet; thence S82°53'14"W, a distance of 270.21 feet; thence S42°14'39"W, a distance of 157.43 feet; thence S85°56'26"W, a distance of 60.39 feet to a point on the South line of said NW 1/4 of Section 31; thence S89°56'13"W along said South line of the NW 1/4 of Section 31, said line also being said Northerly line of Lot 60, Winchester Heights, a distance of 374.29 feet to a point on the centerline of a creek; thence along said center line of a creek on the following described courses; thence N44°55'49"W, a distance of 172.96 feet; thence N37°24'14"W, a distance of 183.78 feet; thence S65°28'10"W, a distance of 177.33 feet; thence S61°51'33"W, a distance of 125.91 feet; thence S89°12'16"W, a distance of 121.70 feet; thence S88°52'51"W, a distance of 180.36 feet; thence N67°51'48"W, a distance of 83.45 feet; thence N54°21'45"W, a distance of 99.48 feet; thence N37°48'10"W, a distance of 73.53 feet; thence N68°38'29"W a distance of 85.00 feet; thence S73°59'40"W, a distance of 75.00 feet; thence S67°09'39"W, a distance of 67.92 feet; thence S28°20'44"W, a distance of 18.76 feet; thence N89°55'34"W, a distance of 57.70 feet to a point on the West line of said NW 1/4 of Section 31; thence N00°07'37"W along said West line of the NW 1/4 of Section 31, a distance of 469.23 feet; thence S89°55'47"E, a distance of 390.98 feet; thence N00°04'13"E, a distance of 168.00 feet; thence N37°07'49"W, a distance of 343.32 feet; thence S89°52'05"W, a distance of 184.93 feet to a point on said West line of the NW 1/4 of Section 31; thence N00°07'37"W along said West line of the NW 1/4 of Section 31, a distance of 161.88 feet to the point of beginning, EXCEPT THAT PART PLATTED AS LOTS 1 THROUGH 101 AND OUTLOT A, IN CEDAR BROOK, AS SET FORTH IN PLAT RECORDED IN BOOK 2132 AT PAGE 576, DEED RECORDS, AND EXCEPT THAT PART CONVEYED BY WARRANTY DEED RECORDED IN BOOK 2124 AT PAGE 49, DEED RECORDS, DOUGLAS COUTNY, NEBRASKA.

46/ ²⁴ Lots 14 through 37, 58, 83, 84, 85, 86, 100, 101, 102, 103, 104, 105, 144, 145, 146, 147, 150, 151, and 177, 178, 179, Arbor Oaks, a Subdivision in Douglas County, Nebraska. *mc-00910*

40/ Lots 1 through 70, both inclusive, in Arbor Oaks Replat One, a Subdivision in Douglas County, Nebraska. *mc-00914*

5/ Lots 1 through 8, 11 through 19, 81, 97, 98, 149 through 153 and 174 through 199, in Autumn Grove, a subdivision in Douglas County, Nebraska. *ml-01338*

EXHIBIT "A" Page 3 of 3

- 9 Lots 13 through 20, and Lot 22, in Autumn Grove Replat One, a subdivision in Douglas County, Nebraska. M-01339
- 3 Lots 3,4,5, Brookfield, a Subdivision in Douglas County, Nebraska. OU-04742
- 103 Lots 1, 2, 6, 25, 95, 98, 99, 110 to 205, both inclusive, in Brookfield, a Subdivision in Douglas County, Nebraska. OU-04742
- 102 Lots 1 to 101, both inclusive, and Outlot A, all in Cedar Brook, a subdivision in Douglas County, Nebraska. OS-05991
- 63 Lots 1 through 53, both inclusive, in Glenbrook Replat 2, a subdivision in Douglas County, Nebraska. OU-13672

Douglas County Exhibit
3/30/2000

TOTAL P.04

EXHIBIT "A-2"

Page 1 of 1

4 ft. Picket Fence

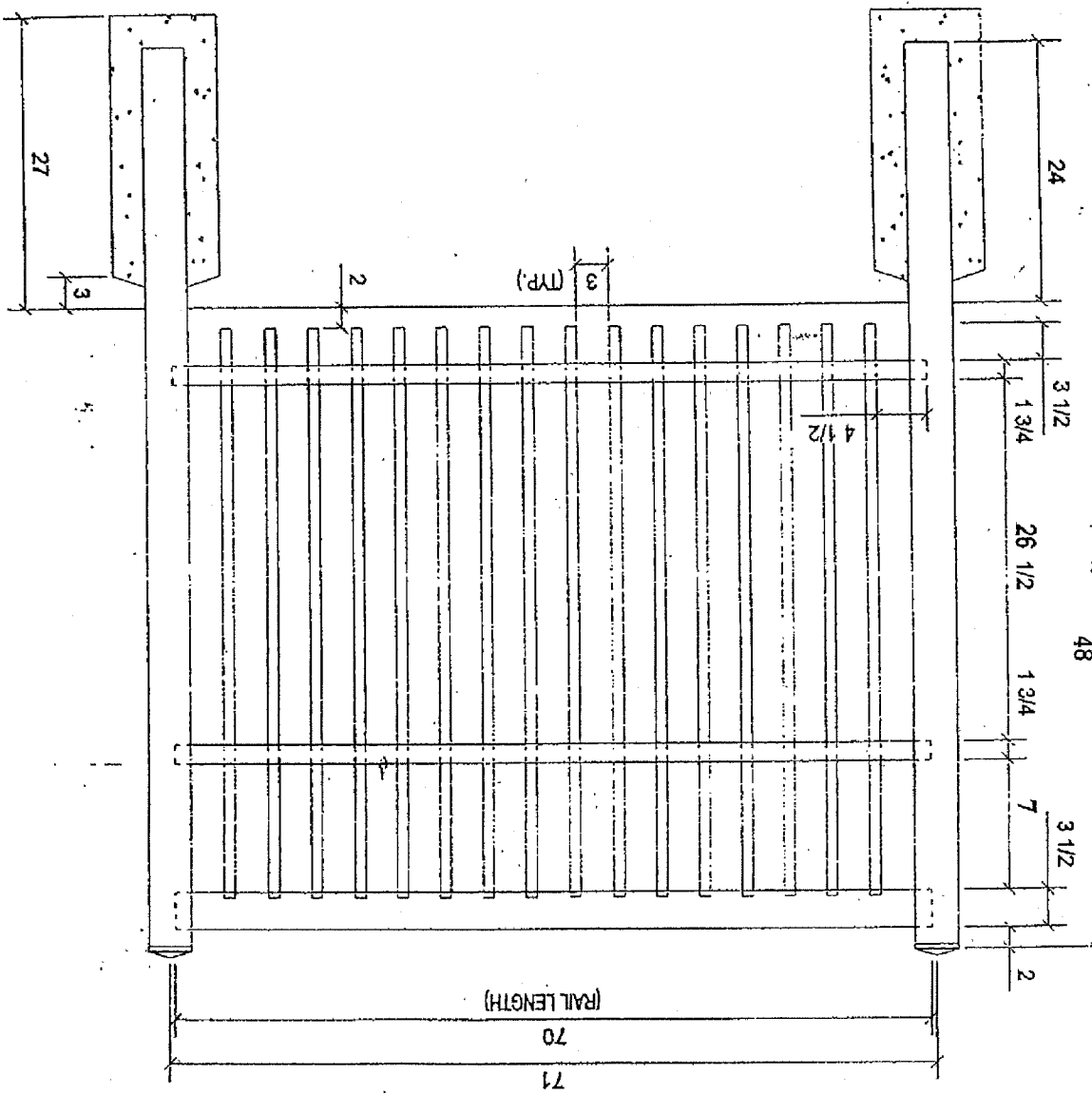
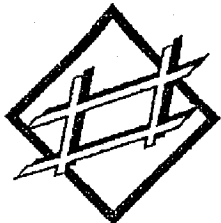
(3 inch Gap)

REQD MATERIAL PER 6' SECTION

- POSTS: (1) 4" X 4" X 84"
- POST CAPS: (1) 4" X 4" PYRAMID
- RAILS: (16) 1" X 1" X 52 7/8"
- (2) 1 3/4" X 1 3/4" X 70"
- (1) 2" X 3 1/2" X 70"

Building Products, Inc.

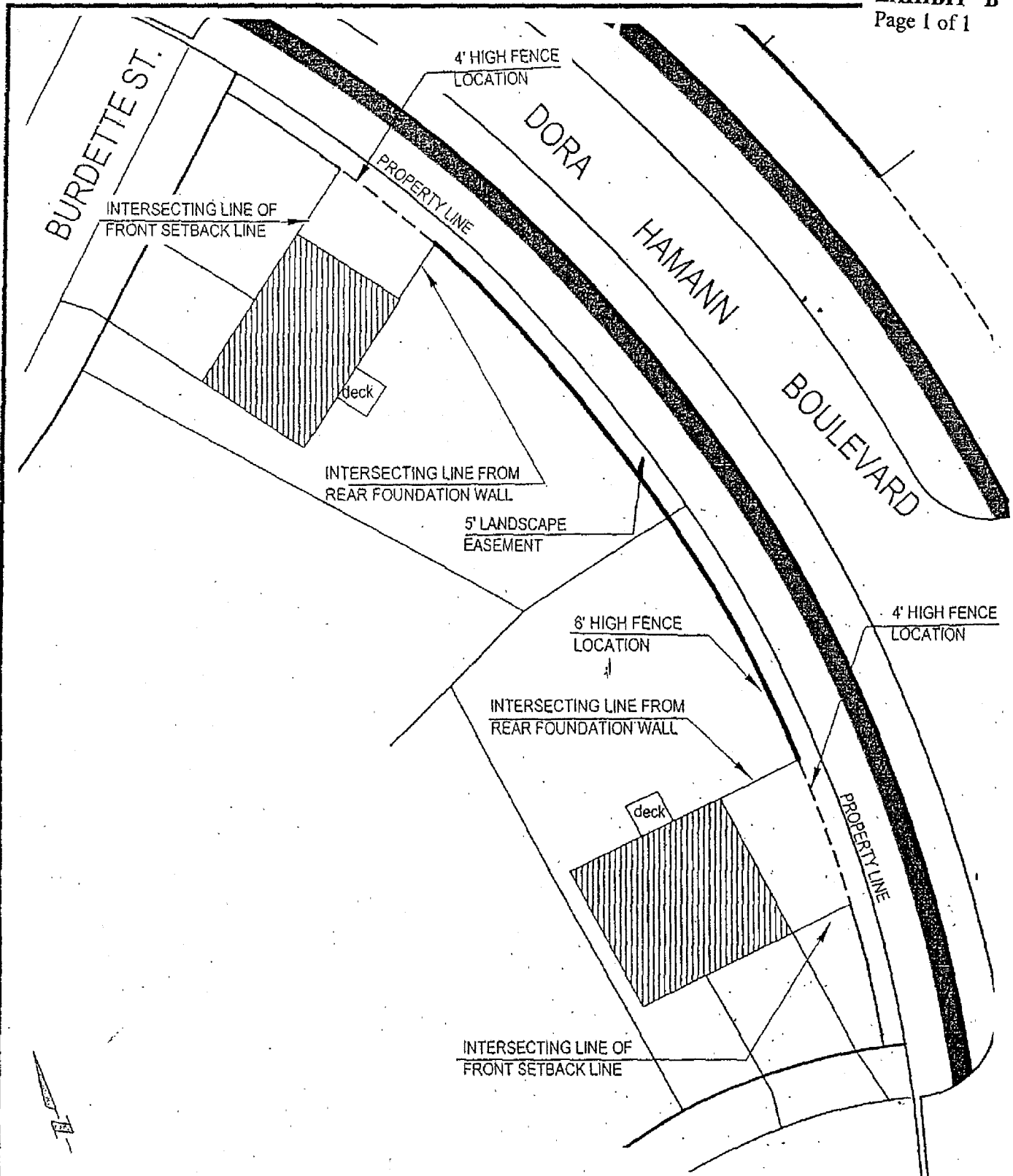
Kroy



DRAWINGS ARE THE PROPERTY OF KROY BUILDING PRODUCTS © JAN 2000 REVISION # 13/00

4-5

K-88



E&A CONSULTING GROUP, INC.
ENGINEERS • PLANNERS • SURVEYORS
12001 Q STREET OMAHA, NE 68137 PHONE: (402) 895-4700

Drawn by: RPB	Chkd by: _____	Date: _____	Chkd by: _____	Date: _____
Job No.: 98128	Date: 03/26/02		Book No.:	

CARRIAGE HILL BOULEVARD TYPICAL FENCE EXHIBIT