

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2003-31017
2003 JUN -6 P 12:30
Sloan J. Lowrey
REGISTER OF DEEDS

Counter a
Verify lm
D.E. _____
Proof [Signature]
Fee \$ 16.00
Ck Cash Chg
stamped copy SEC

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

Return to:
Richard Osher
Construction Lending
Commercial Federal Bank
Regency Building 2-E
13220 California Street, 1st Floor
Omaha, Nebraska 68154

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 (Sarpy County)**

THIS CONSTRUCTION LOAN DEED OF TRUST MODIFICATION AGREEMENT (the "Instrument") is made and entered into effective as of May 1, 2003, between **COMMERCIAL FEDERAL BANK, A FEDERAL SAVINGS BANK** (the "Lender"), whose address is 13220 California Street, 1st Floor, Omaha, NE 68154; Attention: Construction Lending Manager, Fax No. 402-514-5481; and **HEARTHSTONE HOMES, INC.**, a Nebraska corporation (the "Borrower"), whose address is 810 N. 96th Street, 3rd Floor, Omaha, NE 68114 Attention: "Chief Financial Officer," Fax No. 402-339-0003.

RECITALS:

A. Borrower is the maker of an Amended and Restated Promissory Note (the "Note") dated as of July 1, 2001, in the original principal amount of up to Thirty-Five Million Dollars (\$35,000,000.00), payable to the order of Lender, which Note was executed pursuant to the terms of an Amended and Restated Loan Agreement ("Loan Agreement") dated as of July 1, 2001, 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 Sarpy County, Nebraska, on June 22, 1998, as Instrument No. 98-016525 (the "Deed of Trust"), encumbering, among other things, certain real property and improvements located in Douglas County, Nebraska;

C. The Note and Loan Agreement are further secured by, among other things, an Assignment of Leases, Rents, and Other Income, dated June 20, 1998, and filed for record June 22, 1998, in the office of the Register of Deeds of Sarpy County, Nebraska, as Instrument No. 98-016524;

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 Construction Loan Deed of Trust and Assignment of Leases and Rents Modification Agreement dated as of July 1, 2001, and recorded in Sarpy County, Nebraska on July 2, 2001, as Instrument No. 2001-19989;

E. The Note, Loan Agreement, Deed of Trust, Assignment of Leases, the 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";

F. Pursuant to Section 3(t)(1) of the Loan Agreement, any time the Borrower acquires new real property (with Lender's approval) the new real property shall be added to the Property secured by the Deed of Trust and other Loan Documents; and

G. Borrower has acquired with Lender's consent new real property and the parties have entered into this Agreement for purposes of adding such new property to the description of the Property encumbered by the Loan Documents. The new real property acquired by Borrower is legally described on Exhibit A attached hereto (herein "New Property").

A

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

1. Consent. Lender hereby consents to Borrower's acquisition of the New Property provided that Borrower otherwise complies with the terms and provisions of the Loan Agreement and other Loan Documents.

2. Agreement. Borrower hereby agrees that the New Property shall be and constitute a part of the Property described in the Deed of Trust and the other Loan Documents, and shall be subject to all terms, provisions, and covenants therein. For purposes hereof Borrower, as Trustor, hereby irrevocably grants, conveys, transfers, and assigns to Trustee (as defined in the Deed of Trust), in trust, with power of sale, the New Property under the terms, covenants, and provisions of the Deed of Trust.

3. 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.

4. 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 securing the Note 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.

5. Full Force and Effect. Except as otherwise modified herein, each and every provision of the Note, the 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

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

B

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: *Richard D. Osher*
Richard D. Osher, Vice President

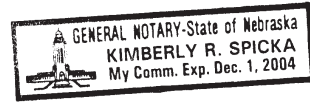
**HEARTHSTONE HOMES, INC., a Nebraska
corporation, Borrower**

By: *Bruce Bahe*
Bruce Bahe, Chief Financial Officer

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

The foregoing Loan Agreement was acknowledged before me on the 1st day of May, 2003, by Richard D. Osher, who is the Vice President of Commercial Federal Bank, a Federal Savings Bank, on behalf of the corporation.

Kimberly R. Spicka
Notary Public



STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

The foregoing Loan Agreement was acknowledged before me on the 1st day of May, 2003, by Bruce Bahe, who is the Chief Financial Office of Hearthstone Homes, Inc., a Nebraska corporation, on behalf of the corporation.

Kimberly R. Spicka
Notary Public

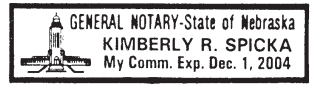


Exhibit "A"

LEGAL DESCRIPTION - SCHRAM PROPERTY

A TRACT OF LAND LOCATED IN PART OF TAX LOT D1, A TAX LOT LOCATED IN THE NE1/4 OF SECTION 4, TOWNSHIP 13 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID NE1/4 OF SECTION 4, SAID POINT ALSO BEING THE NORTHWEST CORNER OF SAID TAX LOT D2, A TAX LOT LOCATED IN SAID NE1/4 OF SECTION 4; THENCE S03°03'26"E (ASSUMED BEARING) ALONG THE WEST LINE OF SAID NE1/4 OF SECTION 4, SAID LINE ALSO BEING THE WEST LINE OF SAID TAX LOT D2, A DISTANCE OF 50.00 FEET TO THE NORTHWEST CORNER OF SAID TAX LOT D1, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID TAX LOT D2; THENCE SAID POINT ALSO BEING THE POINT OF INTERSECTION OF SAID WEST LINE OF THE NE1/4 OF SECTION 4 AND THE SOUTH RIGHT-OF-WAY LINE OF SCHRAM ROAD; THENCE N87°20'05"E ALONG THE NORTH LINE OF SAID TAX LOT D1, SAID LINE ALSO BEING THE SOUTH LINE OF SAID TAX LOT D2, SAID LINE ALSO BEING SAID SOUTH RIGHT-OF-WAY LINE OF SCHRAM ROAD, A DISTANCE OF 4.59 FEET TO THE POINT OF BEGINNING; THENCE N87°20'05"E ALONG SAID NORTH LINE OF TAX LOT D1, SAID LINE ALSO BEING SAID SOUTH LINE OF TAX LOT D2, AND ALSO SAID SOUTH RIGHT-OF-WAY LINE OF SCHRAM ROAD, A DISTANCE OF 1411.89 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID TAX LOT D2; THENCE S11°34'48"E ALONG SAID SOUTHERLY LINE OF TAX LOT D2, A DISTANCE OF 69.96 FEET; THENCE S40°24'06"E ALONG SAID SOUTHERLY LINE OF TAX LOT D2, A DISTANCE OF 533.95 FEET; THENCE S26°39'52"E ALONG SAID SOUTHERLY LINE OF TAX LOT D2, A DISTANCE OF 26.95 FEET TO A POINT ON THE NORTH LINE OF TAX LOT C, A TAX LOT LOCATED IN SAID NE1/4 OF SECTION 4; THENCE S87°20'05"W ALONG THE EASTERLY LINE OF SAID TAX LOT D1, SAID LINE ALSO BEING SAID NORTH LINE OF TAX LOT C, A DISTANCE OF 383.61 FEET TO THE NORTHWEST CORNER OF SAID TAX LOT C; THENCE S03°10'59"E ALONG SAID EASTERLY LINE OF TAX LOT D1, SAID LINE ALSO BEING THE WEST LINE OF SAID TAX LOT C, A DISTANCE OF 2090.85 FEET TO THE SOUTHEAST CORNER OF SAID TAX LOT D1, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID TAX LOT C, SAID POINT ALSO BEING ON THE SOUTH LINE OF SAID NE1/4 OF SECTION 4; THENCE S87°18'06"W ALONG THE SOUTH LINE OF SAID TAX LOT D1, SAID LINE ALSO BEING SAID SOUTH LINE OF THE NE1/4 OF SECTION 4, A DISTANCE OF 1382.52 FEET TO THE SOUTHWEST CORNER OF SAID NE1/4 OF SECTION 4, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID TAX LOT D1; THENCE N03°03'26"W ALONG SAID WEST LINE OF TAX LOT D1, SAID LINE ALSO BEING SAID WEST LINE OF THE NE1/4 OF SECTION 4, A DISTANCE OF 884.66 FEET; THENCE N86°26'04"E, A DISTANCE OF 4.43 FEET; THENCE N03°21'42"W, A DISTANCE OF 257.52 FEET; THENCE N02°41'31"W, A DISTANCE OF 309.32 FEET; THENCE N02°54'56"W, A DISTANCE OF 104.52 FEET; THENCE N03°08'05"W, A DISTANCE OF 312.87 FEET; THENCE N03°18'01"W, A DISTANCE OF 392.33 FEET; THENCE N02°51'03"W, A DISTANCE OF 306.09 FEET; THENCE N02°39'55"W, A DISTANCE OF 40.27 TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 3,691,478 SQUARE FEET OR 84.745 ACRES MORE OR LESS.

JOB#2003020.01
4-30-03
bvs
E&A CONSULTING GROUP, INC.
12001 "Q" STREET
OMAHA, NE 68137
402-895-4700

2003-31017 D

Exhibit B

LEGAL DESCRIPTION

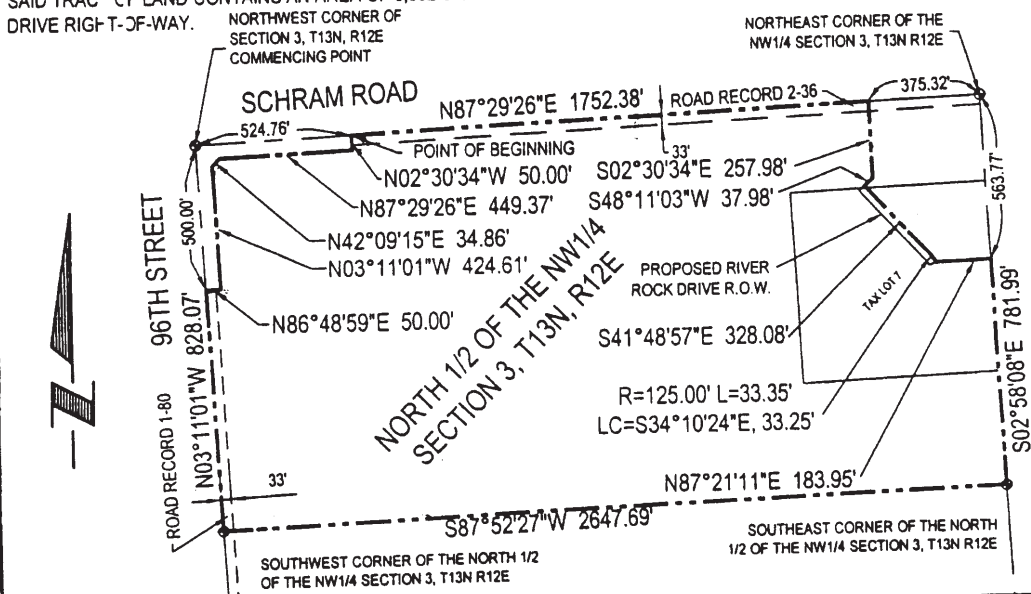
A TRACT OF LAND LOCATED IN PART OF THE NORTH 1/2 OF THE NW 1/4 OF SECTION 3; AND ALSO TOGETHER WITH PART OF TAX LOT 7, A TAX LOT LOCATED IN THE NE 1/4 OF SAID NW 1/4 OF SECTION 3; ALL LOCATED IN TOWNSHIP 13 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 3; THENCE N87°29'26"E (ASSUMED BEARING) ALONG THE NORTH LINE OF SAID NW 1/4 OF SECTION 3, A DISTANCE OF 524.76 FEET TO THE POINT INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF SCHRAM ROAD AND SAID NORTH LINE OF THE NW 1/4 OF SECTION 3, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUING N87°29'26"E ALONG SAID NORTH LINE OF THE NW 1/4 OF SECTION 3, A DISTANCE OF 1752.38 FEET; THENCE S02°30'34"E, A DISTANCE OF 257.98 FEET; THENCE S48°11'03"W, A DISTANCE OF 37.98 FEET; THENCE S41°48'57"E, A DISTANCE OF 328.08 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 125.00 FEET, A DISTANCE OF 33.35 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S34°10'24"E, A DISTANCE OF 33.25 FEET; THENCE N87°21'11"E, A DISTANCE OF 183.95 FEET TO A POINT ON THE EAST LINE OF SAID NORTH 1/2 OF THE NW 1/4 OF SECTION 3; THENCE S02°58'08"E ALONG THE EAST LINE OF SAID NORTH 1/2 OF THE NW 1/4 OF SECTION 3, A DISTANCE OF 781.99 FEET TO THE SOUTHEAST CORNER OF SAID NORTH 1/2 OF THE NW 1/4 OF SECTION 3; THENCE S87°52'27"W ALONG THE SOUTH LINE OF SAID NORTH 1/2 OF THE NW 1/4 OF SECTION 3, A DISTANCE OF 2647.69 FEET TO THE SOUTHWEST CORNER OF SAID NORTH 1/2 OF THE NW 1/4 OF SECTION 3; THENCE N03°11'01"W ALONG THE WEST LINE OF SAID NW 1/4 OF SECTION 3, A DISTANCE OF 828.07 FEET TO THE POINT OF INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF 96TH STREET AND SAID WEST LINE OF THE NW 1/4 OF SECTION 3; THENCE N86°48'59"E ALONG SAID EAST RIGHT-OF-WAY LINE OF 96TH STREET, A DISTANCE OF 50.00 FEET; THENCE N03°11'01"W ALONG SAID EAST RIGHT-OF-WAY LINE OF 96TH STREET, A DISTANCE OF 424.61 FEET; THENCE N42°09'15"E, ALONG SAID EAST RIGHT-OF-WAY LINE OF 96TH STREET, A DISTANCE OF 34.86 FEET TO THE POINT OF INTERSECTION OF SAID EAST RIGHT-OF-WAY LINE OF 96TH STREET AND SAID SOUTH RIGHT-OF-WAY LINE OF SCHRAM ROAD; THENCE N87°29'26"E ALONG SAID SOUTH RIGHT-OF-WAY LINE OF SCHRAM ROAD, A DISTANCE OF 449.37 FEET; THENCE N02°30'34"W ALONG SAID SOUTH RIGHT-OF-WAY LINE OF SCHRAM ROAD, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 3,304,472 SQUARE FEET OR 75.860 ACRES, MORE OR LESS.

SAID TRACT OF LAND CONTAINS AN AREA OF 85,165 SQUARE FEET OR 1.955 ACRES OF 33.00 FOOT WIDE 96TH STREET AND SCHRAM ROAD RIGHT-OF-WAY.

SAID TRACT OF LAND CONTAINS AN AREA OF 8,952 SQUARE FEET OR 0.206 ACRES OF 25.00 FOOT WIDE PROPOSED RIVER ROCK DRIVE RIGHT-OF-WAY.



E&A CONSULTING GROUP, INC.
 ENGINEERS • PLANNERS • SURVEYORS
 12091 G STREET OMAHA, NE 68137 PHONE: (402) 895-4700

Drawn by: EAS Chkd by: _____ Date: _____ Date: _____

Job No.: 2003019.01 Date: 04/03/03 SHEET 1 OF 1

PART OF THE NORTH 1/2 OF THE
 NW 1/4 OF SECTION 3, T13N, R12E
 SARPY COUNTY, NEBRASKA