



MISC 2004060464



MAY 11 2004 14:04 P 4

misc

TTG

FEE 3800 FB *see attached*

4 BKP _____ C/O _____ COMP *B*

36 DEL *PJ* SCAN _____ FY *A*

P

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

Return to:
Stacey Doty
Construction Lending
Commercial Federal Bank
13220 California Street, 1st Floor
Omaha, Nebraska 68154

Received - RICHARD TAKECHI
Register of Deeds, Douglas County, NE

5/11/2004 14:04:10.66



2004060464

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 "Instrument") is made and entered into effective as of **April 9, 2004**, between **COMMERCIAL FEDERAL BANK, A FEDERAL SAVINGS BANK** (the "Lender"), whose address is 13220 California Street, 1st Floor, Omaha, Nebraska 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, Nebraska 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 June 30, 2003, in the original principal amount of up to Thirty Million Dollars (\$30,000,000.00), 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 June 30, 2003, 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 (the "Mortgage"), 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 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 Construction Loan Deed of Trust and Assignment of Leases and Rents Modification Agreement dated as of July 1, 2001, and recorded in Douglas County, Nebraska on July 2, 2001, in Book 1388, Page 062-071;

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

37 *103.4724*

encumbered by the Loan Documents. The new real property acquired by Borrower is legally described on Exhibit A attached hereto (herein "New Property").

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.

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**

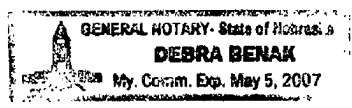
By: *Richard D. Osher*
Richard D. Osher, Vice President

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

By: *John J. Smith*
*John J. Smith, President of Hearthstone Homes, Inc.
Michael Freestone, Controller and Asst. Secretary of
Hearthstone Homes, Inc.*

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

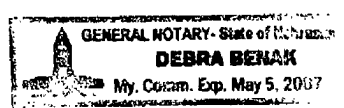
The foregoing Loan Agreement was acknowledged before me on the 9th day of April, 2004, by Richard D. Osher, who is the Vice President of Commercial Federal Bank, a Federal Savings Bank, on behalf of the corporation.



Debra Benak
Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

The foregoing Loan Agreement was acknowledged before me on the 9th day of April, 2004, by John J. Smith, President of Hearthstone Homes, Inc., a Nebraska corporation, on behalf of the corporation.



Debra Benak
Notary Public

Attachment

⁰⁵⁻²⁵⁰³⁰
Lots 165, 235-238, and 268-274 in Meadow Ridge, a Subdivision in Douglas County, Nebraska.

⁰⁵⁻²⁵⁰⁵⁹
Lots 39-44, 51 and 52 in Meadow Ridge Replat One, Subdivision in Douglas County, Nebraska.

⁰²⁻²⁸²²⁷
Lots 32-36 in Oakmont Replat 1, Subdivision in Douglas County, Nebraska.

⁰²⁻²⁸²²³
Lots 54-56 in Oakmont Replat 2, Subdivision in Douglas County, Nebraska.

⁰⁴⁻⁰⁸⁸⁰²
Lots 37-41 in Deerwood, Subdivision in Douglas County, Nebraska.

⁰⁴⁻⁰⁸⁸⁰³
Lots 10-12 in Deerwood Replat One, Subdivision in Douglas County, Nebraska.