



200910280005

Skagit County Auditor

10/28/2009 Page

1 of

12 8:37AM

Return Address:

JEREMY NEWSOM
AMEGY BANK NA
5 POST OAK PARK
4400 POST OAK PARKWAY
HOUSTON TX 77027

LAND TITLE OF SKAGIT COUNTY

Document Title(s) (for transactions contained therein):

1. SECOND MODIFICATION AND EXTENSION TO NOTE AND DEED OF TRUST
- 2.
- 3.
- 4.

**Reference Number(s) of Documents assigned or released:
(on page of documents(s))**

200509220186

Grantor(s)

1. DUBOSE MODEL HOME INVESTMENTS #114, LTD
- 2.
- 3.
- 4.

Additional Names on page _____ of document.

Grantee(s)

1. AMEGY BANK NA
- 2.
- 3.
- 4.

Additional Names on page _____ of document.

Legal Description (abbreviated i.e. lot, block, plat or section, township, range)

LOT 5, SKAGIT HIGHLANDS DIV 1,

Additional legal is on page _____ of document.

Assessor's Property Tax Parcel/Account Number

P123145

The Auditor/Recorder will rely on information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

After Recording Return To:
Jeremy Newsom
Amegy Bank National Association
5 Post Oak Park
4400 Post Oak Parkway
Houston, Texas 77027

[802 Pyramid Peak - WA]

SECOND MODIFICATION AND EXTENSION TO NOTE AND DEED OF TRUST

Borrower: Dubose Model Home Investments #114, Ltd.

Agent: Amegy Bank National Association, a national banking association

Abbreviated Legal: Lot 5, Skagit Highlands Div. 1.

Full Legal: Page 9

Tax Parcel No.: 4867-000-005-0000/P123145

AF#: 200509220186



SECOND MODIFICATION AND EXTENSION TO NOTE
AND DEED OF TRUST

This SECOND MODIFICATION AND EXTENSION TO NOTE AND DEED OF TRUST (this "Agreement") dated as of October 5, 2009, is by and among AMEGY BANK NATIONAL ASSOCIATION, a national banking association (formerly known as Southwest Bank of Texas N.A.), as agent (the "Agent") for the Lenders (hereinafter defined), DUBOSE MODEL HOME INVESTMENTS #114, LTD., a Texas limited partnership (the "Borrower") and TREFCO FINANCE COMPANY II, LLC, a Texas limited liability company ("Trefco II").

WITNESSETH:

WHEREAS, Trefco II and Amegy Bank National Association, a national banking association (formerly known as Southwest Bank of Texas N.A.), Bank of Texas, N.A., a national banking association, First Bank, Wachovia Bank, National Association, Trustmark National Bank, Commercebank, NA and each other of the financial institutions which is or may from time to time become a party thereto (collectively, the "Lenders") entered into that certain Loan Agreement dated as of September 18, 2007, as amended by First Amendment to Loan Agreement dated as of September 18, 2007, and Second Amendment to Loan Agreement dated as of April 30, 2009 (as amended, the "Loan Agreement").

WHEREAS, Trefco II has extended credit to Borrower evidenced by that certain promissory note in the original principal amount of \$181,545.00 dated September 22, 2005, executed by Borrower and payable to the order of Trefco II (the "Note").

WHEREAS, to secure the Note, Borrower has executed that certain Deed of Trust dated as of September 22, 2005, for the benefit of Trefco II and recorded in the records of Skagit County, Washington, under Auditor's No. 200509220186 covering the real property described on Exhibit "A" attached hereto (collectively, the "Deed of Trust").

WHEREAS, to secure among other things, the Note, Borrower has executed the Loan Documents, as defined in the Note.

WHEREAS, pursuant to that certain Loan Agreement among Trefco II, Agent and certain of the Lenders dated as of September 23, 2004 (as amended by First Amendment to Loan Agreement dated as of November 29, 2004, and Second Amendment to Loan Agreement dated as of March 21, 2005), Trefco II has assigned its right to receive payment under the Note to Agent for the benefit of Lenders pursuant to that certain Assignment of Note and Liens dated as of September 22, 2005, and recorded in the records of Skagit County, Washington, under Auditor's No. 200509220188 (the "Assignment").



WHEREAS, the Note is now governed by the Loan Agreement.

WHEREAS, Borrower, Agent and Trefco II executed that certain First Modification and Extension to Note and Deed of Trust dated as of October 5, 2008, and recorded in the records of Skagit County, Washington, under Auditor's No. 200811140056, whereby the maturity of the Note was extended until October 5, 2009.

WHEREAS, Borrower, Agent and Trefco II now wish to further amend and modify certain provisions of the Note as hereinafter set forth.

NOW THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower, Agent and Trefco II hereby agree as follows:

1. Modification of the Note. (a) Effective as of the date hereof, the second paragraph contained on the first page of the Note is amended to read in its entirety as follows:

The outstanding principal balance hereof shall bear interest prior to maturity at a rate equal to two and forty-seven one hundredths of one percent (2.47%) per annum. If an Event of Default (hereinafter defined) has occurred and is existing, the principal hereof and any past due interest hereon shall bear interest at the Default Rate (hereinafter defined).

(b) Effective as of the date hereof, the repayment terms contained on the first page of the Note are hereby amended and modified in their entirety to read as follows:

Principal of and interest on this Note shall be due and payable as follows:

(a) Monthly installments in the amount of One Thousand Ninety-Three and 12/100 Dollars (\$1,093.12) each, shall be due and payable on the fifth (5th) day of each month, commencing October 5, 2009, until and including September 5, 2010, and such installments shall be applied first to accrued interest on this Note and then to principal of this Note; and

(b) A final installment in the amount of all outstanding principal, plus accrued and unpaid interest, shall be due and payable on October 5, 2010.

(c) Effective as of the date hereof, the definition of the term "Arbitration Agreement" is hereby deleted in its entirety from the Note.



2. Extension of the Note. The maturity of the Note is extended to October 5, 2010.
3. Modification of Deed of Trust. The phrase "Borrower has promised to pay this debt in regular Period Payments and to pay the debt in full not later than October 5, 2009" in clause (e) of the "Definitions" section of the Deed of Trust is revised to read "Borrower has promised to pay this debt in regular Period Payments and to pay the debt in full not later than October 5, 2010."
4. Fees. The Borrower shall pay to the Agent an extension fee in the amount of \$250.00.
5. Extension of Lien. The Borrower hereby modifies, renews and extends, but does not extinguish, the liens, security interests and assignments created and evidenced by the Deed of Trust.
6. Acknowledgment by Borrower. Except as otherwise specified herein, the terms and provisions hereof shall in no manner impair, limit, restrict or otherwise affect the obligations of Borrower, Trefco II or any third party to Lenders, as evidenced by the Loan Agreement, the Note and the Deed of Trust. Borrower and Trefco II hereby acknowledge, agree and represent that (a) Borrower is indebted to Trefco II pursuant to the terms of the Note, as modified hereby, (b) the Note has been assigned to Agent for the benefit of Lenders pursuant to the Assignment which remains a valid and subsisting assignment of the Note, and (c) the liens, security interests and assignments created and evidenced by the Deed of Trust are valid and subsisting liens, security interests and assignments of the respective priority recited in the Deed of Trust. Except as expressly modified by the terms and provisions hereof each of the terms and provisions of the Note, the Deed of Trust and the Loan Documents are hereby ratified and remain in full force and effect.
7. No Waiver of Remedies. Nothing contained in this Agreement shall prejudice, act as, or be deemed to be a waiver of any right or remedy available to Lenders by reason of the occurrence or existence of any fact, circumstance or event constituting an Event of Default under the Loan Agreement or the Note.
8. Effectiveness of Documents. Except as expressly modified by the terms and provisions hereof, each of the terms and provisions of the Loan Documents (as defined in the Loan Agreement and the Note), including the Deed of Trust, are hereby ratified and remain in full force and effect.
9. Governing Law. **THE TERMS AND PROVISIONS HEREOF SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.**



10. Binding Agreement. This Agreement shall be binding upon the successors and assigns of the parties hereto.

11. Severability. Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

12. Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

13. Dispute Resolution. This Section contains a jury waiver, arbitration clause and a class action waiver. This section should be carefully read.

(a) JURY TRIAL WAIVER. AS PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGHTS TO A TRIAL BEFORE A JURY IN CONNECTION WITH ANY DISPUTE (HEREINAFTER DEFINED), AND DISPUTES SHALL BE RESOLVED BY A JUDGE SITTING WITHOUT A JURY. IF A COURT DETERMINES THAT THIS PROVISION IS NOT ENFORCEABLE FOR ANY REASON, THEN AT ANY TIME PRIOR TO TRIAL OF THE DISPUTE, BUT NOT LATER THAN THIRTY (30) DAYS AFTER ENTRY OF THE ORDER DETERMINING THIS PROVISION IS UNENFORCEABLE, ANY PARTY SHALL BE ENTITLED TO MOVE THE COURT FOR AN ORDER COMPELLING ARBITRATION AND STAYING OR DISMISSING SUCH LITIGATION PENDING ARBITRATION ("ARBITRATION ORDER").

(b) ARBITRATION. If a claim, dispute, or controversy arises between any of the parties hereto with respect to this Agreement, the Note, Deed of Trust or Assignment, related agreements, or any other agreement or business relationship between any of the parties hereto whether or not related to the subject matter of this Agreement, the Note, Deed of Trust or Assignment (all of the foregoing, a "Dispute"), and only if a jury trial waiver is not permitted by applicable law or ruling by a court, any party may require that the Dispute be resolved by binding arbitration before a single arbitrator at the request of any party. By agreeing to arbitrate a Dispute, each party gives up any right such party may have to a jury trial, as well as other rights such party would have in court that are not available or are more limited in arbitration, such as the rights to discovery and to appeal.

Arbitration shall be commenced by filing a petition with, and in accordance with the applicable arbitration rules of, JAMS or National Arbitration Forum ("Administrator") as selected by the initiating party. If the parties agree, arbitration may be commenced by appointment of a licensed attorney who is selected by the parties and who agrees to conduct the arbitration without an Administrator. Disputes include matters (i) relating to a deposit account, application for or denial of credit, enforcement of any of the obligations any party



has to any other party, compliance with applicable laws and/or regulations, performance or services provided under any agreement by any party, (ii) based on or arising from an alleged tort, or (iii) involving any party's employees, agents, affiliates, or assigns. However, Disputes do not include the validity, enforceability, meaning, or scope of this arbitration provision and such matters may be determined only by a court. If a third party is a party to a Dispute, each party will consent to including the third party in the arbitration proceeding for resolving the Dispute with the third party. Venue for the arbitration proceeding shall be at a location determined by mutual agreement of the parties or, if no agreement, in the city and state where lender or bank is headquartered.

After entry of an Arbitration Order, the non-moving party shall commence arbitration. The moving party shall, at its discretion, also be entitled to commence arbitration but is under no obligation to do so, and the moving party shall not in any way be adversely prejudiced by electing not to commence arbitration. The arbitrator: (i) will hear and rule on appropriate dispositive motions for judgment on the pleadings, for failure to state a claim, or for full or partial summary judgment; (ii) will render a decision and any award applying applicable law; (iii) will give effect to any limitations period in determining any Dispute or defense; (iv) shall enforce the doctrines of compulsory counterclaim, res judicata, and collateral estoppel, if applicable; (v) with regard to motions and the arbitration hearing, shall apply rules of evidence governing civil cases; and (vi) will apply the law of the state specified in the agreement giving rise to the Dispute. Filing of a petition for arbitration shall not prevent any party from (i) seeking and obtaining from a court of competent jurisdiction (notwithstanding ongoing arbitration) provisional or ancillary remedies including but not limited to injunctive relief, property preservation orders, foreclosure, eviction, attachment, replevin, garnishment, and/or the appointment of a receiver, (ii) pursuing non-judicial foreclosure, or (iii) availing itself of any self-help remedies such as setoff and repossession. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration.

Judgment upon an arbitration award may be entered in any court having jurisdiction except that, if the arbitration award exceeds \$4,000,000.00, any party shall be entitled to a de novo appeal of the award before a panel of three arbitrators. To allow for such appeal, if the award (including Administrator, arbitrator, and attorney's fees and costs) exceeds \$4,000,000.00, the arbitrator will issue a written, reasoned decision supporting the award, including a statement of authority and its application to the Dispute. A request for de novo appeal must be filed with the arbitrator within thirty (30) days following the date of the arbitration award; if such a request is not made within that time period, the arbitration decision shall become final and binding. On appeal, the arbitrators shall review the award de novo, meaning that they shall reach their own findings of fact and conclusions of law rather than deferring in any manner to the original arbitrator. Appeal of an arbitration award shall be pursuant to the rules of the Administrator or, if the Administrator has no such rules, then the JAMS arbitration appellate rules shall apply.



Arbitration under this provision concerns a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. This arbitration provision shall survive any termination, amendment, or expiration of this Agreement, the Note, Deed of Trust and Assignment. If the terms of this provision vary from the Administrator's rules, this arbitration provision shall control.

(c) **CLASS ACTION WAIVER.** EACH PARTY WAIVES THE RIGHT TO LITIGATE IN COURT OR ARBITRATE ANY CLAIM OR DISPUTE AS A CLASS ACTION, EITHER AS A MEMBER OF A CLASS OR AS A REPRESENTATIVE, OR TO ACT AS A PRIVATE ATTORNEY GENERAL.

(d) **RELIANCE.** Each party (i) certifies that no one has represented to such party that the other parties would not seek to enforce jury and class action waivers in the event of suit, and (ii) acknowledges that it and the other parties have been induced to enter into this Agreement, the Note, Deed of Trust, and Assignment by, among other things, the mutual waivers, agreements, and certifications in this section.

(e) **Replacement.** Each party agrees that this section replaces all prior dispute resolution language contained in the Note and all other instruments, documents, and agreements executed and delivered in connection therewith.

14. ORAL AGREEMENTS. THIS AGREEMENT EMBODIES THE FINAL, ENTIRE AGREEMENT AMONG BORROWER, LENDERS AND TREFCO II WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDES ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF OR THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF BORROWER, LENDERS AND TREFCO II. THERE ARE NO ORAL AGREEMENTS BETWEEN BORROWER, LENDERS AND TREFCO II.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



EXECUTED and effective as of, although not necessarily on, the day and year first above written.

BORROWER:

DUBOSE MODEL HOME INVESTMENTS #114, LTD.

By: Dubose GP Management III, L.P., its sole general partner

By: _____
Larry G. Dubose
President

TREFCO II:

TREFCO FINANCE COMPANY II, LLC

By: _____
Larry G. Dubose
President

AGENT:

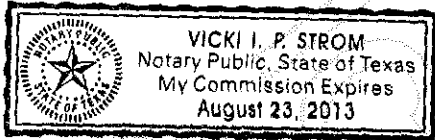
AMEGY BANK NATIONAL ASSOCIATION, as Agent

By: _____
Jeremy Newsom
Senior Vice President



THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on October 13, 2009, by Larry G. Dubose, President of Dubose GP Management III, L.P., a Texas limited partnership, as the general partner of Dubose Model Home Investments #114, Ltd., a Texas limited partnership, on behalf of said partnership.

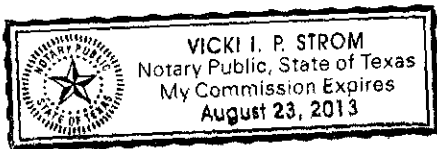


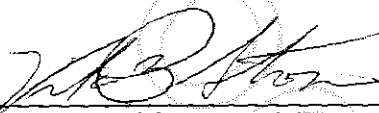


Notary Public in and for
The State of T E X A S

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on October 13, 2009, by Larry G. Dubose, President of Trefco Finance Company II, LLC, a Texas limited liability company, on behalf of said company.





Notary Public in and for
The State of T E X A S



THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on October 17, 2009, by Jeremy Newsom, Senior Vice President of Amegy Bank National Association, a national banking association, on behalf of said association.



Notary Public in and for
The State of T E X A S

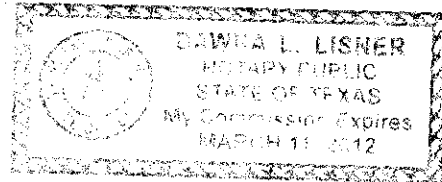


EXHIBIT "A"

Real Property

Lot 5, "Skagit Highlands, Division 1", a Planned Unit Development, recorded on August 16, 2005, under Auditor's File No. 200508160182, records of Skagit County, Washington.

Situated in the City of Mt. Vernon, County of Skagit, State of Washington

