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BK 8196 PG 592

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
2/17/2023 1:52:00 PM
FEE \$98.00 Pgs: 9
DEP eCASH REC'D FOR FIRST AMERICAN TITLE

Recording Requested By;
After Recording Return to:

BANNER BANK
Attn: Commercial Collateral Dept.
110 South Ferrall Street
Spokane, WA 99202

U87438M

Tax Parcel Number(s):

Initial Property: 11-842-0102, 11-842-0116, 11-842-0124, 11-842-0113, 11-862-0203,
11-862-0204, 11-862-0211, 11-862-0222, 11-862-0224, 11-862-0225

Additional Property: Tax Parcel Nos. 11-904-0301 through 11-904-0323 and 11-904-0325 through 11-904-0330

**FIRST AMENDMENT TO
SHORT FORM DEED OF TRUST
(including Spreading Amendment)**



NOTICE TO RECORDER: THE SHORT FORM DEED OF TRUST MODIFIED BY THIS AMENDMENT IS A SECURITY AGREEMENT, FIXTURE FILING, AND FINANCING STATEMENT UNDER ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, WITH GRANTOR AS DEBTOR AND GRANTEE/BENEFICIARY AS SECURED PARTY, AND SHOULD BE FILED AND INDEXED IN THE REAL ESTATE RECORDS NOT ONLY AS A DEED OF TRUST, BUT ALSO AS A FIXTURE FILING.

THIS FIRST AMENDMENT TO SHORT FORM DEED OF TRUST (this "**Amendment**") is made effective as of February 1, 2023, by and among SYMPHONY HOMES LLC, a Utah limited liability company ("**Borrower**"), whose address is 111 S. Frontage Road, Centerville, UT 84014; THE PRESERVE 2018 LLC, a Utah limited liability company ("**Third-Party Grantor**") and, together with Borrower, individually and collectively, "**Grantor**", whose address is 526 North 400 West, North Salt Lake, Utah 84054; FIRST AMERICAN TITLE INSURANCE COMPANY ("**Trustee**"), whose address is 215 S State Street, Suite 280, Salt Lake City, UT 84111; and BANNER BANK, a Washington state chartered commercial bank ("**Beneficiary**" or "**Lender**"), whose address is Attn: Commercial Collateral Dept., 110 South Ferrall Street, Spokane, WA 99202, and its successors, participants, and assigns.

Notice to Grantor: The Note secured by the deed of trust amended hereby contains provisions for a variable interest rate and includes a revolving line of credit. Under the revolving line, Lender will make

periodic advances to Borrower, which may be repaid and subsequently re-advanced, subject to the terms and conditions of the Note and the other Loan Documents referenced below. The unpaid balance may from time to time be reduced to zero. A zero balance does not terminate the revolving line and the lien of the deed of trust will remain in full force notwithstanding such reductions.

RECITALS

A. Borrower previously obtained a gross master revolving loan from Lender in the maximum principal amount of \$15,000,000.00 (the "**Loan**") to be used solely to finance: (i) the acquisition or refinance of finished separately conveyable single family lots (each a "**Lot**" and collectively, the "**Lots**") on which residences are to be constructed; and (ii) the construction of fee simple residential units and related amenities (each a "**Unit**" and, collectively, the "**Units**", which include the Lot on which any such residence is constructed) by Borrower in Davis, Salt Lake, Utah, and Tooele counties in the State of Utah, and such other counties in the State of Utah as may subsequently be approved by Lender.

B. The Loan is evidenced and governed by a Revolving Loan Agreement dated January 10, 2022, (including the Standard Conditions and Terms incorporated by reference therein, the "**Loan Agreement**") and is further evidenced by a Revolving Promissory Note dated January 10, 2022, in the maximum principal amount of \$15,000,000.00 (the "**Note**").

C. Although Borrower is the only borrower under the Loan, title to individual Lots, or to parcels being developed into Lots, may be held initially by one or more Affiliates of Borrower (each a "**Development Entity**" and collectively the "**Development Entities**") at the time such property is granted as security for the Loan. The Lots are ultimately to be purchased and conveyed to Borrower free and clear of liens for residential construction thereon.

D. Borrower's obligations under the Loan Agreement and Note are secured by Short Form Deeds of Trust (each of which incorporates the related Master Form Deed of Trust recorded in the applicable county) against various properties in Utah granted by Borrower and the applicable Development Entity in title to such property and on which residential construction projects funded under the Loan are now proceeding, or will be proceeding in the future (collectively, the "**Deeds of Trust**"), including, without limitation, the Short Form Deed of Trust, Assignment of Leases and Rent, Assignment of Contracts, Security Agreement and Fixture Filing granted by Borrower and Third-Party Grantor dated January 20, 2022, and recorded on February 3, 2022, with the Davis County Recorder as Entry No. 3454509 in Book 7939 on Pages 302-310 against the real property described therein (the "**Preserve Deed Trust**"). The real and personal property legally described in the Preserve Deed of Trust that secures the Loan that has not previously been reconveyed from the lien of the Deeds of Trust is referred to herein as the "**Initial Property**".

E. Third-Party Grantor has acquired or will be acquiring additional real property located near the Initial Property that is to be financed with the Loan and encumbered by the Preserve Deed of Trust. The additional property is legally described on SCHEDULE 1 attached hereto (the "**Additional Property**"). The Additional Property and the Initial Property that has not previously been reconveyed from the lien of the Preserve Deed of Trust are described herein collectively as the "**Combined Property**".

F. Grantor also desires to grant a security interest in all personal property relating to the Additional Property to further secure the obligations owing to, or to become owing to, Beneficiary under the Primary Obligation Documents.

G. The Loan Agreement, First Amendment, Note, Deeds of Trust, and all other documents evidencing, securing, or otherwise governing the Loan are referred to herein collectively as the "**Loan Documents**."

H. Borrower has requested that Lender (i) increase the maximum principal amount of the Loan from \$15,000,000.00 to \$25,000,000.00; (ii) change the interest rate applicable to the Loan; and (iii) modify certain other terms of the Loan.

I. To accommodate Borrower's request, Borrower has entered into a First Amendment to Loan Documents (the "**Modification Agreement**") and an Amended and Restated Promissory Note (the "**Restated Note**") contemporaneously herewith to increase the maximum principal amount of the Loan and otherwise modify the terms of the Loan Documents as set forth in the Modification Agreement and the Restated Note.

J. Borrower is entering into this Amendment pursuant to the terms of the Modification Agreement to modify the terms of the Preserve Deed of Trust to secure Borrower's obligations under the Loan Documents, as modified by this Amendment, the Restated Note, and the Modification Agreement (collectively, the "**Modification Documents**").

K. Grantor also desires to amend the Preserve Deed of Trust to encumber the Additional Property with the Preserve Deed of Trust to allow Borrower to obtain financing available under the Loan for the construction of single-family residences on the Additional Property. Consequently, this amendment is also intended to extend the Preserve Deed of Trust to the entire Combined Property.

AGREEMENTS

In consideration of the mutual promises, covenants, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. TERMINOLOGY. All capitalized terms used herein shall have the meaning given to them in the Loan Documents, unless a different meaning is assigned herein or required from the context in which such term is used.

2. AMENDMENT TO PRESERVE DEED OF TRUST.

2.1 Obligations Secured. The Preserve Deed of Trust is hereby amended and modified to secure, without limitation, and in addition to all obligations currently secured thereby, the making of all payments and the performance of all obligations under the Loan Documents as modified and amended by the Modification Agreement and the Restated Note, including, without limitation, an increase in the maximum principal amount of the Loan to TWENTY-FIVE MILLION AND 00/100THS U.S. DOLLARS (U.S. \$25,000,000.00), and the performance of all other covenants, agreements, and obligations of Borrower contained in the Loan Documents as amended by the Modification Documents.

2.2 Amendment of Collateral. Exhibit A of the Preserve Deed of Trust is hereby amended and replaced in its entirety with replacement EXHIBIT A attached hereto to include the Additional Property and to extend to all the Combined Property. For this purpose, Grantor hereby irrevocably and unconditionally grants, transfers, bargains, conveys, and assigns to Trustee, in trust, with power of sale and right of entry and possession, and grants a security interest in, all estate, right, title and interest that Grantor

now has or may later acquire in and to the Additional Property and all personal property, including fixtures, associated therewith, upon the same terms as are set forth in the Preserve Deed of Trust and already applicable to the Initial Property. For avoidance of doubt, the definition of the term **Collateral** and all other defined terms used in the Preserve Deed of Trust are hereby amended to be consistent with replacement EXHIBIT A attached hereto.

2.3 Defined Terms. The definition of **"Note"** as defined in the Preserve Deed of Trust is hereby modified to mean the Restated Note and the definition of the term **"Loan Documents"** as used in the Preserve Deed of Trust is hereby modified to include all the Modification Documents.

3. LIEN PRIORITY. The Property not previously reconveyed from the lien of the Preserve Deed of Trust shall remain and continue in all respects subject to the Preserve Deed of Trust, and nothing in this Amendment, or done pursuant to this Amendment, shall affect or be construed to affect the lien of the Preserve Deed of Trust or the priority thereof as to such Property. Borrower shall provide, at Borrower's sole cost and expense, such endorsements to Lender's existing ALTA Extended Coverage Policy of Title Insurance as Lender may request insuring the first-lien position of the Preserve Deed of Trust as to all of the Property, with priority over all encumbrances not agreed to by Lender in writing. Borrower shall obtain such priority agreements, lien waivers, or other instruments from all parties who have performed work on or supplied materials to the Property, and shall execute such indemnity agreements, as may be required by the title company in connection with the issuance of such endorsements or policy.

4. GRANTOR WAIVERS. Grantor hereby specifically, unconditionally, and irrevocably waives and releases, to the extent permitted by applicable law, all rights and claims it may have in or to the Combined Property as a homestead exemption or other exemption under and by virtue of any act or law now existing or that may hereinafter be passed in relation thereto, as well as all rights of a property owner granted under any statute or judicial decision that provides for allocation of condemnation proceeds between a property owner and a lienholder.

5. PAYMENT OF LENDER'S EXPENSES. Grantor agrees to reimburse Lender for all out-of-pocket expenses incurred by Lender relating to the drafting, negotiation, execution, delivery, and performance of this Amendment and all related documents, including, without limitation, reasonable attorneys' fees and costs incurred by Lender, premiums for any title endorsements to Lender's existing title policy, appraisal fees, recording charges, escrow fees, and any other costs.

6. BINDING EFFECT. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

7. APPLICABLE LAW. This Amendment is to be construed in all respects and enforced according to the laws of the State of Utah, without regard to that state's choice of law rules.

8. NO ORAL AGREEMENTS.

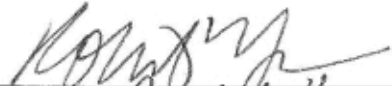
PURSUANT TO UTAH CODE SECTION §25-5-4, BORROWER IS HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS, THE INDEMNITY AGREEMENT, AND OTHER RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

ORAL AGREEMENTS, PROMISES OR COMMITMENTS TO: (1) LOAN MONEY, (2) EXTEND CREDIT, (3) MODIFY OR AMEND ANY TERMS OF ANY COMMITMENT OR THE LOAN DOCUMENTS, (4) RELEASE ANY GUARANTOR, (5) FORBEAR FROM ENFORCING REPAYMENT OF ANY LOAN OR THE EXERCISE OF ANY REMEDY UNDER THE LOAN DOCUMENTS, OR (6) MAKE ANY OTHER FINANCIAL ACCOMMODATION RELATING TO ANY LOAN ARE NOT ENFORCEABLE.

DATED as of the day and year first above written.

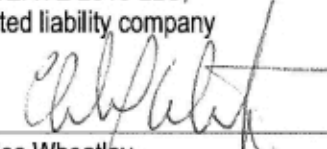
GRANTOR/BORROWER:


SYMPHONY HOMES LLC,
a Utah limited liability company


By: 
Name: Robert C. Miller
Its: Manager

GRANTOR/THIRD-PARTY GRANTOR:

THE PRESERVE 2018 LLC,
a Utah limited liability company

By: 
Charles Wheatley
Its Manager

By: 
Robert C. Miller
Its Manager

By: 
Bruce G. Robinson
Its Manager

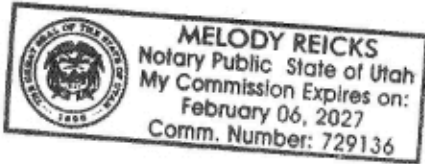
STATE OF UTAH

COUNTY OF Davis

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ss.

The foregoing instrument was acknowledged before me on February 15th, 2023, by Robert Miller, the Manager of SYMPHONY HOMES LLC, a Utah limited liability company.



Melody Reicks
Printed Name Melody Reicks

NOTARY PUBLIC in and for the State of Utah,
residing at Utah County

My Commission Expires 2/6/27

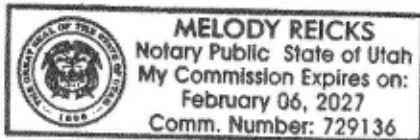
STATE OF UTAH

COUNTY OF Davis

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ss.

The foregoing instrument was acknowledged before me on February 15th, 2023, by Charles Wheatley, a Manager of THE PRESERVE 2018 LLC, a Utah limited liability company.



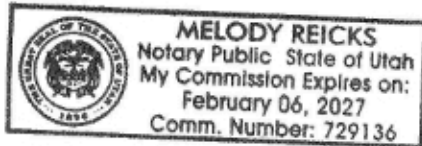
Melody Reicks
Printed Name Melody Reicks

NOTARY PUBLIC in and for the State of Utah,
residing at Utah County

My Commission Expires 2/6/27

STATE OF UTAH
COUNTY OF Davis } ss.

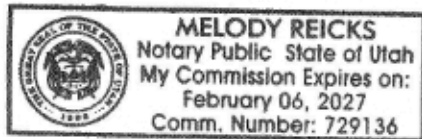
The foregoing instrument was acknowledged before me on February 15th, 2023, by Robert C. Miller, a Manager of THE PRESERVE 2018 LLC, a Utah limited liability company.



Melody Reicks
Printed Name Melody Reicks
NOTARY PUBLIC in and for the State of Utah,
residing at Utah County
My Commission Expires 2/6/27

STATE OF UTAH
COUNTY OF Davis } ss.

The foregoing instrument was acknowledged before me on February 15th, 2023, by Bruce G. Robinson, a Manager of THE PRESERVE 2018 LLC, a Utah limited liability company.



Melody Reicks
Printed Name Melody Reicks
NOTARY PUBLIC in and for the State of Utah,
residing at Utah County
My Commission Expires 2/6/27

SCHEDULE 1

LEGAL DESCRIPTION OF ADDITIONAL PROPERTY

LOTS 301 THROUGH 323 AND LOTS 325 THROUGH 330, INCLUSIVE, THE PRESERVE PHASE 3 P.R.U.D. SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE.

EXHIBIT A

LEGAL DESCRIPTION OF COMBINED PROPERTY

The Land referred to herein below is situated in the County of Davis, State of Utah, and is described as follows:

PARCEL 1:

LOTS 301 THROUGH 323 AND LOTS 325 THROUGH 330, INCLUSIVE, THE PRESERVE PHASE 3 P.R.U.D. SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE.

PARCEL 2:

LOTS 102, 116, 124 AND 113, THE PRESERVE PHASE 1 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE.

PARCEL 3:

LOTS 203, 204, 211, 222, 224 AND 225, THE PRESERVE PHASE 2 PRUD SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE.