

Loan No. 2111B
E 134646 B 318 P 1811
Date 13-Apr-2015 10:20AM
Fee: \$32.00 ACH
Filed By: CB
BRENDA NELSON, Recorder
MORGAN COUNTY
FOR: BONNEVILLE SUPERIOR TITLE COMPANY
Recorded Electronically by Simplifile

RECORDED BY
U.S. BANK NATIONAL ASSOCIATION,
D/B/A HOUSING CAPITAL COMPANY
265 E. RIVER PARK CIRCLE, STE. 460
FRESNO, CA 93720

- 7808

MODIFICATION AGREEMENT

This MODIFICATION AGREEMENT (this "Agreement") is made and entered into as of April 10, 2015, by and between (i) **OAKWOOD HOMES OF UTAH LLC**, a Delaware limited liability ("Trustor"), and (ii) **U.S. BANK NATIONAL ASSOCIATION, d/b/a HOUSING CAPITAL COMPANY** and its successors or assigns ("Lender").

WITNESSETH:

WHEREAS, pursuant to a certain Master Loan Agreement (the "Original Loan Agreement") dated as of August 12, 2013, between Lender and **OAKWOOD HOMES LLC**, a Colorado limited liability company ("Oakwood Colorado"), Lender made a loan (the "\$60MM Loan") to Oakwood Colorado, evidenced by a certain Revolving Promissory Note Secured by Security Instruments (the "Original Note") dated as of the same date, executed by Oakwood Colorado and payable to Lender in the stated principal amount of SIXTY MILLION AND NO/100 DOLLARS (\$60,000,000.00), with interest and principal payable as set forth therein; and

WHEREAS, pursuant to a certain Master Loan Agreement (First Amended and Restated) (the "Amended and Restated Loan Agreement") dated as of June 12, 2014, between Lender, Trustor and Oakwood Colorado, Lender modified and increased the \$60MM Loan (the "\$100MM Loan") to Trustor and Oakwood Colorado, evidenced by a certain Revolving Promissory Note Secured by Security Instruments (the "Amended and Restated Note") dated as of the same date, executed by Trustor and Oakwood Colorado and payable to Lender in the stated principal amount of ONE HUNDRED MILLION AND NO/100 DOLLARS (\$100,000,000.00), with interest and principal payable as set forth therein (the Original Loan Agreement and First Amended and Restated Loan Agreement shall be collectively referred to herein as the "Loan Agreement", the Original Note and First Amended and Restated Note shall be collectively referred to herein as the "Note", and the \$60MM Loan and \$100MM Loan shall be collectively referred to herein as the "Loan").

WHEREAS, to secure the Note and Loan, Trustor executed and delivered (for the benefit of Lender) certain Master Form Deed(s) of Trust (With Security Agreement and Assignment of Rents and Leases) (hereinafter collectively referred to as the "Master Deeds of Trust", whether one or more), which Master Deeds of Trust have been recorded in certain counties in the State of Colorado as more particularly described on Exhibit A attached hereto; and which Master Deeds of Trust are incorporated by reference pursuant to the terms and provisions of certain Supplemental Deeds of Trust Incorporating by Reference a Master Form Deed of Trust (With Security Agreement and Assignment of Rents and Leases) (hereafter collectively referred to as

the "Supplemental Deeds of Trust," whether one or more) recorded in such counties and encumbering certain real and other property (the "Property") described in such Supplemental Deeds of Trust (such Master Deeds of Trust and Supplemental Deeds of Trust hereafter collectively referred to as the "Deeds of Trust," whether one or more); and

WHEREAS, the Loan Agreement, the Note, the Deeds of Trust and all other documents evidencing and/or securing the Loan are hereinafter collectively called the "Loan Instruments"; and

WHEREAS, Lender, the owner and holder of the Note and the Deeds of Trust and all rights and titles evidenced thereby, and Trustor, the record owner of the Property and being liable for the payment of the Note and Loan, desire to modify the Loan Documents as herein provided.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Maximum Facility Amount is hereby increased from \$100,000,000.00 to \$125,000,000.00. All references in the Loan Documents to the amount of \$100,000,000.00 are hereby increased to \$125,000,000.00.

2. Trustor and Lender acknowledge and agree that Section 1.1 of the Deeds of Trust shall be deleted and replaced with the following:

1.1 Note. Payment of the indebtedness evidenced by that certain Revolving Promissory Note Secured by Security Instruments (the "Note"), dated April 9, 2015 in the stated principal amount of ONE HUNDRED TWENTY-FIVE MILLION AND NO/100 DOLLARS (\$125,000,000.00), executed by Trustor, OAKWOOD HOMES LLC, a Colorado limited liability company, and OAKWOOD HOMES OF NEBRASKA LLC, a Delaware limited liability company (individually and collectively the "Borrower"), payable to the order of Beneficiary, and bearing interest and being payable as set forth therein, and being fully due and payable on August 12, 2016, and all modifications, increases, refinancings, renewals and extensions thereof.

3. Trustor and Lender acknowledge and agree that ARTICLE XI of the Deeds of Trust shall be deleted and replaced with the following:

ARTICLE XI

CO-BORROWER PROVISIONS

Section 11.1 Joint and Several Obligations. Notwithstanding anything to the contrary contained in this Agreement, Trustor, OAKWOOD HOMES LLC, a Colorado limited liability company, and OAKWOOD HOMES OF NEBRASKA LLC, a Delaware limited liability company (individually and collectively, "Borrower"), each hereby agrees as follows:

(a) Each and every representation, warranty, covenant or agreement of Borrowers contained in the Loan Documents shall be, and shall be deemed to be, the joint and several representation, warranty, covenant and agreement of each of the Borrowers. In addition, the Indebtedness and liabilities of the Borrowers shall be, and shall be deemed to be, the joint and several Indebtedness and liabilities of each of the Borrowers and all of such Borrowers. The value of the consideration received and to be received by each Borrower is reasonably worth at least as much as the liability and Indebtedness of each Borrower hereunder.

(b) The provisions of this Deed of Trust are severable, and in any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the Indebtedness of any Borrower under this Deed of Trust would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Borrower's liability under this Deed of Trust, then notwithstanding any other provision of this Deed of Trust to the contrary, the amount of such liability shall, without any further action by the Borrower or Beneficiary, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Borrowers' "Maximum Liability"). This Section with respect to the Maximum Liability of the Borrower is intended solely to preserve the rights of Beneficiary hereunder to the maximum extent not subject to avoidance under applicable law, and neither the Borrower nor any other person or entity shall have any right or claim under this Section with respect to the Maximum Liability, except to the extent necessary so that the Indebtedness of the Borrower hereunder shall not be rendered voidable under applicable law.

(c) Each of the Borrowers agrees that the Indebtedness may at any time and from time to time exceed the Maximum Liability of each Borrower, and may exceed the aggregate Maximum Liability of all other Borrowers, without impairing this Borrower or affecting the rights and remedies of Beneficiary hereunder. Nothing in this Section shall be construed to increase any Borrower's obligations hereunder beyond its Maximum Liability.

(d) In the event any Borrower (a "Paying Borrower") shall make any payment or payments under this Deed of Trust or shall suffer any loss as a result of any realization upon any collateral granted by it to secure its Indebtedness under this Deed of Trust, each other Borrower (each a "Non Paying Borrower") shall contribute to such Paying Borrower an amount equal to such Non Paying Borrower's "Pro Rata Share" of such Payment or payments made, or losses suffered, by such Paying Borrower. For the purposes hereof, each Non Paying Borrower's "Pro Rata Share" with respect to any such payment or loss by a Paying Borrower shall be determined as of the date on which such payment or loss was made by reference to the ratio of (i) such Non Paying Borrower's Maximum Liability as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder) or, if such Non Paying Borrower's Maximum Liability has not been determined, the aggregate amount of all monies received by such Non Paying Borrower from the

other Borrower after the date hereof (whether by loan, capital infusion or by other means) to (ii) the aggregate Maximum Liability of all Borrowers hereunder (including such Paying Borrower) as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder), or to the extent that a Maximum Liability has not been determined for any Borrowers, the aggregate amount of all monies received by such Borrowers from the other Borrowers after the date hereof (whether by loan, capital infusion or by other means). Nothing in this Section shall affect any Borrower's several liability for the entire amount of the Indebtedness (up to such Borrower's Maximum Liability). Each of the Borrowers covenants and agrees that its right to receive any contribution under this Deed of Trust from a Non Paying Borrower shall be subordinate and junior in right of payment to all the Indebtedness. The provisions of this Section are for the benefit of both Beneficiary and the Borrowers and may be enforced by any one, or more, or all of them in accordance with the terms hereof.

(e) Each Borrower acknowledges that it will enjoy significant benefits from the business conducted by the other Borrowers because of, *inter alia*, their combined ability to bargain with other persons including without limitation their ability to receive the credit extensions under this Deed of Trust and the other Loan Documents, which would not have been available to an individual Borrower acting alone. Each Borrower has determined that it is in its best interest to procure the credit facilities contemplated hereunder, with the credit support of the other Borrowers as contemplated by this Deed of Trust and the other Loan Documents.

(f) Beneficiary is hereby authorized, without notice or demand and without affecting the liability of any Borrower hereunder, to, at any time and from time to time, (i) renew, extend or otherwise increase the time for payment of the Indebtedness; (ii) with the written agreement of any Borrower accelerate or otherwise change the terms relating to the Indebtedness or otherwise modify, amend or change the terms of any promissory note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to Beneficiary; (iii) accept partial payments of the Indebtedness; (iv) take and hold security or collateral for the payment of the Indebtedness or for the payment of any guaranties of the Indebtedness and exchange, enforce, waive and release any such security or collateral; and (v) settle, release, compromise, collect or otherwise liquidate the Indebtedness and any security or collateral therefor in any manner, without affecting or impairing the Indebtedness of any Borrower.

(g) Each Borrower hereby agrees that, except as hereinafter provided, its Indebtedness hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect such obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by the Beneficiary with respect to any provision of any instrument evidencing such obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to the Beneficiary; (iii) failure by the Beneficiary to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Indebtedness; (iv) the institution of any proceeding under the United States

Bankruptcy Code, or any similar proceeding, by or against a Borrower or the Beneficiary's election in any such proceeding of the application of Section 1111(b)(2) of the United States Bankruptcy Code; (v) any borrowing or grant of a security interest by a Borrower as debtor-in-possession, under Section 364 of the United States Bankruptcy Code; (vi) the disallowance, under Section 502 of the United States Bankruptcy Code, of all or any portion of the Beneficiary's claim(s) for repayment of any of the Indebtedness; or (vii) any other circumstance other than payment in full of the Indebtedness which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(h) Until all Indebtedness have been paid and satisfied in full and all commitments under the Loan Documents are terminated, no payment (with respect to the Indebtedness) made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower or (ii) a payment made by any other person under any guaranty, shall entitle such Borrower, by subrogation or otherwise, to any payment from any other Borrower or from or out of any other Borrower's property and such Borrower shall not exercise any right or remedy against any other Borrower or any property of any other Borrower by reason of any performance of such Borrower of its joint and several Indebtedness hereunder.

(i) Any notice given by one Borrower hereunder shall constitute and be deemed to be notice given by all Borrowers, jointly and severally. Notice given by the Beneficiary to any one Borrower hereunder or pursuant to any other Loan Documents in accordance with the terms hereof shall constitute notice to each and every Borrower. The knowledge of one Borrower shall be imputed to all Borrowers and any consent by one Borrower shall constitute the consent of and shall bind all Borrowers.

(j) This Section is intended only to define the relative rights of Borrowers and nothing set forth in this Section is intended to or shall impair the Indebtedness of Borrowers, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Deed of Trust or any other Loan Document. Nothing contained in this Section shall limit the liability of any Borrower to pay the credit facilities made directly or indirectly to that Borrower and accrued interest, Fees and expenses with respect thereto for which such Borrower shall be primarily liable.

(k) This Deed of Trust is a primary and original obligation of each of the Borrowers and each of the Borrowers shall be liable for all existing and future obligations (constituting a portion of the Indebtedness) of any other Borrower as fully as if such obligations were directly incurred by such Borrower.

(l) Each Borrower further agrees that its obligations hereunder shall not be impaired in any manner whatsoever by any bankruptcy, extensions, moratoria or other relief granted to any other Borrower pursuant to any statute presently in force or hereafter enacted.

4. Trustor acknowledges and agrees, that as an accommodation to Trustor, Exhibit A hereto (which exhibit describes the recording information of the Master Deeds of Trust) shall be attached to this Agreement (and to any and all other documents which may require the attachment of a description of the recording information of the Master Deeds of Trust) after Trustor's execution of same. Accordingly, Trustor hereby authorizes and directs Lender to attach such Exhibit A to this Agreement.

5. Notwithstanding anything to the contrary in the Loan Documents, Trustor shall not change (a) the location of its place of business or its chief executive office if it has more than one place of business, (b) the location of any of the Property, (c) Trustor's name or business structure, including Trustor's state of organization or registration, without in each instance the prior written consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned. Lender's consent will, however, be conditioned upon, among other things, the execution and delivery of additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such changes. Trustor's principal place of business and its chief executive office as of the date hereof are located at the address set forth in the initial paragraph of the Deeds of Trust.

6. Trustor hereby expressly promises to pay to the order of Lender, the principal amount of the Note (as modified and increased) and all accrued and unpaid interest now or hereafter to become due and payable under the Note, and Trustor hereby expressly promises to perform all of the obligations of Trustor under the Loan Documents (as modified and increased).

7. The liens of the Deeds of Trust are hereby acknowledged by Trustor to be good, valid and subsisting liens, and such liens are hereby renewed and extended so as to secure the payment of the Note and Loan (as modified and increased).

8. Trustor hereby represents and warrants to Lender that (a) Trustor is the sole legal and beneficial owner of the Property; (b) Trustor has the full power and authority to make the agreements contained in this Agreement without joinder or consent of any other party; (c) the execution, delivery and performance of this Agreement will not contravene or constitute an event which itself or which with the passing of time or giving of notice or both would constitute a default under any deed of trust, loan agreement, indenture or other agreement to which Trustor or Guarantor is a party or by which Trustor or any of its property is bound; and (d) there exists no default under the Loan Documents (as modified and increased). **TRUSTOR HEREBY AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST ANY LOSS, CLAIM, DAMAGE, LIABILITY OR EXPENSE (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES) INCURRED AS A RESULT OF ANY REPRESENTATION OR WARRANTY MADE BY TRUSTOR HEREIN PROVING TO BE UNTRUE IN ANY MATERIAL RESPECT.**

9. The terms and conditions hereof may not be modified, amended, altered or otherwise affected except by instrument in writing executed by Lender and Trustor.

10. All Loan Documents are hereby amended and modified in a manner consistent with the modifications, terms and/or provisions contained herein. Except as expressly modified

hereby, the terms and conditions of the Loan Documents are and shall remain in full force and effect.

11. Trustor agrees to pay to Lender, contemporaneously with the execution and delivery hereof, all costs and expenses incurred in connection with this transaction, title insurance endorsement premiums, reasonable fees of Lender's counsel and recording fees.
12. Trustor hereby agrees to execute and deliver to Lender such further documents and instruments evidencing or pertaining to the Loan, as modified and increased hereby, as may be reasonably requested by Lender from time to time so as to evidence the terms and conditions hereof.
13. Trustor hereby represents and warrants to Lender that Trustor does not have any currently existing claims, causes of action, or offsets against, or defenses or counterclaims to, the terms and provisions of the Loan Instruments or the obligations created thereby. Nevertheless, to the extent any such claims, causes of action, offsets, defenses or counterclaims of any nature whatsoever, whether known or unknown, at law or in equity, should exist, Trustor hereby waives same and hereby release Lender, together with Lender's predecessors, successors and assigns, its parent, subsidiaries and affiliates, agents, counsel, trustees, servicers, beneficiaries, certificate holders of Lender, and its officers, directors, shareholders, partners, employees, attorneys and agents, from any and all liability in connection therewith, such waiver and release being with full knowledge and understanding of the circumstances and effects of such waiver and release and after having consulted legal counsel with respect thereto.
14. This Agreement may be executed in any number of counterparts and different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

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EFFECTIVE as of the date set forth above.

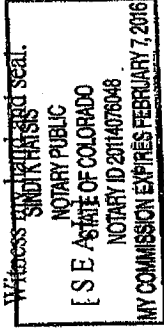
TRUSTOR:

OAKWOOD HOMES OF UTAH LLC,
a Delaware limited liability company

By: *Robert J. Sanderman*
Name: Robert J. Sanderman
Title: Executive Vice President

STATE OF Colorado §
§
COUNTY OF Denver §

The foregoing instrument was acknowledged before me on April 6, 2015, by Robert J. Sanderman, the Executive Vice President of **OAKWOOD HOMES OF UTAH LLC**, a Delaware limited liability company, on behalf of said company.




Girdi K. Hatsis
Notary Public, State of Colorado

My Commission Expires:
February 7, 2016

Girdi K Hatsis
(Printed Name of Notary Public)

LENDER:

**U.S. BANK NATIONAL ASSOCIATION
d/b/a HOUSING CAPITAL COMPANY**

By: 
Name: Lori Nicole Beckman
Title: Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

STATE OF CALIFORNIA §
 § ss.
COUNTY OF Fresno §

On April 9 2015, before me, Lori Nicole Beckman, Notary Public, personally appeared SSON Subs, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Lori Nicole Beckman
NOTARY PUBLIC
State of California
My commission expires: Mar 15, 2017

(SEAL)


JOINDER AND CONSENT

The undersigned, **OAKWOOD HOMES LLC**, a Colorado limited liability company and **OAKWOOD HOMES OF NEBRASKA LLC**, a Delaware limited liability company, hereby join in that certain Modification Agreement to which this Joinder and Consent is attached, for the purposes of consenting to, and agreeing to, the terms and provisions of Section 5 thereof.


OAKWOOD HOMES LLC,
a Colorado limited liability company

By: **MREC OAKWOOD LLC**,
a Delaware limited liability company,
as Manager

By: **PHH 2013, Inc.**,
a Colorado corporation,
as Manager

By: 
Name: Robert J. Sandgeman
Title: Executive Vice President

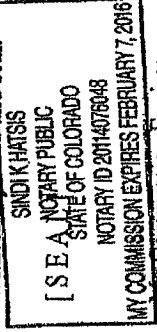
OAKWOOD HOMES OF NEBRASKA LLC,
a Delaware limited liability company

By: 
Name: Robert J. Sandgeman
Title: Executive Vice President

STATE OF Colorado
COUNTY OF Denver

The foregoing instrument was acknowledged before me on April 6, 2015, by Robert J. Sanderman, the Executive Vice President of PHH 2013, INC., a Colorado corporation, as Manager of MREC OAKWOOD LLC, a Delaware limited liability company, as Manager of OAKWOOD HOMES LLC, a Colorado limited liability company, on behalf of said corporation and companies.

Witness my hand and seal:



Sindi Khatzis
Notary Public, State of Colorado

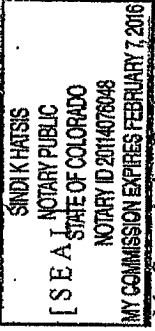
Sindi K. Hatzis
(Printed Name of Notary Public)

February 7, 2016
My Commission Expires:

STATE OF Colorado
COUNTY OF Denver

The foregoing instrument was acknowledged before me on April 6, 2015, by Robert J. Sanderman, the Executive Vice President of OAKWOOD HOMES OF NEBRASKA LLC, a Delaware limited liability company, on behalf of said company.

Witness my hand and seal:



Sindi Khatzis
Notary Public, State of Colorado

Sindi K Hatzis
(Printed Name of Notary Public)

February 7, 2016
My Commission Expires:

EXHIBIT A

Description of the Deed(s) of Trust

1. Master Form of Deed of Trust (With Security Assignment and Assignment of Rents and Leases) Doc No. 2814917 dated July 25, 2014 in Davis County, Utah by Oakwood Homes of Utah LLC, a Delaware limited liability company, in favor of U.S. Bank National Association, d/b/a Housing Capital Company.
2. Master Form of Deed of Trust (With Security Assignment and Assignment of Rents and Leases) Doc No. 11887004 dated July 25, 2014 in Salt Lake County, Utah by Oakwood Homes of Utah LLC, a Delaware limited liability company, in favor of U.S. Bank National Association, d/b/a Housing Capital Company.
3. Master Form of Deed of Trust (With Security Assignment and Assignment of Rents and Leases) Doc No. 51344:2014 dated July 25, 2014 in Utah County, Utah by Oakwood Homes of Utah LLC, a Delaware limited liability company, in favor of U.S. Bank National Association, d/b/a Housing Capital Company.
4. Master Form of Deed of Trust (With Security Assignment and Assignment of Rents and Leases) Doc No. 132909 dated September 15, 2014 in Morgan County, Utah by Oakwood Homes of Utah LLC, a Delaware limited liability company, in favor of U.S. Bank National Association, d/b/a Housing Capital Company.
5. Master Form of Deed of Trust (With Security Assignment and Assignment of Rents and Leases) Doc No. 404470 dated September 15, 2014 in Wasatch, Utah by Oakwood Homes of Utah LLC, a Delaware limited liability company, in favor of U.S. Bank National Association, d/b/a Housing Capital Company.
6. Master Form of Deed of Trust (With Security Assignment and Assignment of Rents and Leases) Doc No. 408089 dated January 15, 2015 in Tooele County, Utah by Oakwood Homes of Utah LLC, a Delaware limited liability company, in favor of U.S. Bank National Association, d/b/a Housing Capital Company.