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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
2/3/2022 11:36:00 AM
FEE \$82.00 Pgs: 9
DEP eCASH REC'D FOR FIRST AMERICAN TITLE

Filed for record at request of;
After recording, return to:

BANNER BANK
Construction and Development Lending
6149 N. Meeker Place, Suite 200
Boise, ID 83713
Attn: Melodie James

4189438



Tax Serial Number(s): 11-842-0102, 11-842-0108, 11-842-0110, 11-842-0112, 11-842-0116, 11-842-0120, 11-842-0123, 11-842-0124, 11-842-0111, 11-842-0113, 11-842-0118, 11-862-0202, 11-862-0203, 11-862-0204, 11-862-0207, 11-862-0210, 11-862-0211, 11-862-0217, 11-862-0218, 11-862-0219, 11-862-0220, 11-862-0222, 11-862-0224, 11-862-0225, 11-862-0206, 11-862-0208, 11-862-0209, 11-862-0213, 11-862-0215, 11-862-0216, 11-862-0221

**SHORT FORM DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF CONTRACTS,
SECURITY AGREEMENT, AND FIXTURE FILING
(Utah)**

NOTICE TO RECORDER: THIS DOCUMENT INCLUDES A FIXTURE FILING 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 SHORT FORM DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING (the "**Short Form Deed of Trust**") dated this 20th day of January, 2022, is made 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 19800 North Creek Pkwy, Suite 200, Bothell, Washington 98011, and its successors, participants, and assigns.

Notice to Borrower: This Short Form Deed of Trust incorporates all the terms and provisions of the Master Form Deed of Trust, Security Agreement, Assignment of Leases and Rents, Assignment of Permits, Contracts and Plans

and Fixture Filing dated January 3, 2022, recorded on January 12, 2022, in the county recorder for Davis, County, State of Utah as Entry No. 3449311, under Book 7924, page numbers 1235-1265 (the "**Master Form Deed of Trust**").

Notice to Grantor: The Note (as defined below) secured by this Short Form Deed of Trust 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 this Short Form Deed of Trust (as defined below) will remain in full force notwithstanding such reductions. However, nothing herein shall be construed as obligating Lender to make any future advance to Borrower.

RECITALS

A. Grantor desires to obtain one or more advances from Beneficiary pursuant to the terms of a Revolving Loan Agreement dated January 10, 2022 (the "**Loan Agreement**"), and a related Revolving Promissory Note (Gross Master Revolver) (the "**Note**") of even date therewith made by Borrower and payable from Borrower to Beneficiary in the principal amount of \$15,000,000.00 (the "**Loan**"). The Loan Agreement and Note, as such documents may be amended or restated from time to time, are referred to herein as the "**Primary Obligation Documents**".

B. Grantor desires to convey certain real property that will be developed with proceeds of the Loan in trust to secure certain obligations owing to, or to become owing to, Beneficiary under the Note. Third-Party Grantor is executing the Deed of Trust against the Collateral (as defined below) to facilitate Borrower's ability to receive advances under the Loan that will also directly benefit Third-Party Grantor.

C. Grantor also desires to grant a security interest in certain personal property to further secure the obligations owing to, or to become owing to, Beneficiary under the Primary Obligation Documents.

D. Each Grantor is executing this Short Form Deed of Trust to convey certain real property into trust with power of sale, to grant a security interest in personal property, and to make an assignment of rents and other rights and interests.

E. The Primary Obligation Documents are executed by Borrower and not by Third-Party Grantor, and all references in the Deed of Trust to Borrower and Borrower's obligations to Lender in describing such obligations are intended to reference Borrower only and not include Third-Party Grantor; *provided, however*, that so long as Third-Party Grantor retains fee title to any portion of the Collateral described below, all references to "Borrower" or "Grantor" as owner of the Collateral, and all obligations relating to such ownership, are intended to include Third-Party Grantor.

F. The parties desire that this Short Form Deed of Trust incorporate by reference and by law all of the terms and conditions set forth in the Master Form Deed of Trust identified above that was made in part pursuant to Utah Code Section 57-3-201 through § 57-3-204.

CONVEYANCES, GRANTS, ASSIGNMENTS AND AGREEMENTS

NOW THEREFORE, for good and valuable consideration, the current receipt and reasonable equivalence of which are hereby acknowledged, and for the purpose of securing payment and performance of the Secured Obligations (as defined below), for the benefit of Beneficiary, Grantor hereby irrevocably and unconditionally grants, transfers, bargains, conveys and warrants, 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 Borrower now has or may later acquire in and to the following property:

1. **Grant in Trust.** Grantor irrevocably mortgages, transfers and conveys to the Trustee in trust with power of sale pursuant to Utah Code Section 57-1-1 et seq. all of Grantor's right title and interest and claim in and to the property described in **EXHIBIT A**, which is attached hereto and incorporated herein by reference, and also in and to all of the other real property pertaining thereto as described in the Master Form Deed of Trust, including, without limitation, Section 1 of the Master Form Deed of Trust (collectively, the "**Real Property**").

2. **Security Agreement.** Grantor hereby grants, mortgages, assigns, pledges a security interest to Beneficiary in all of Grantor's present and future right, title, and interest, at law or in equity, in and to all personal property, including fixtures, pertaining or relating to the Real Property and to all of other personal property described in the Master Form Deed of Trust, including, without limitation, Section 1 of the Master Form Deed of Trust, which Master Form Deed of Trust is hereby restated and incorporated herein by reference (collectively, the "**Personal Property**") and, together with the Real Property, the "**Collateral**"). It is intended that the recording of this Short Form Deed of Trust shall be effective as a "fixture filing" under Article 9 of the Utah Uniform Commercial (Utah Code Section 70A-9a-101 et seq.) with respect to any and all fixtures included within the Collateral and all goods or personal property that are now or may hereafter become affixed to the Real Property, and this Short Form Deed of Trust is to be filed and indexed in the real estate records not only as a deed of trust, but also a fixture filing.

3. **Assignment of Leases and Rents.** Grantor hereby assigns and transfers to Beneficiary, pursuant to the Utah Uniform Assignment of Rents Act, (Utah Code Section 57-26-102), all of Grantor's right, title, and interest in and under all leases now or hereafter affecting the Real Property (collectively, the "**Leases**"). This assignment of Leases is made to the fullest extent provided for under the Utah Assignment of Rents Act, including, without limitation, with the right, but not the obligation, to collect all rents and profits of the Real Property under the Leases. The assignment of rents is subject to the further terms, conditions, covenants and restrictions set forth in the Master Form Deed of Trust, including, without limitation, Section 2.1 of the Master Form Deed of Trust.

4. **Assignment of Permits, Contracts and Plans.** Grantor hereby assigns and transfers to Beneficiary all of Grantor's right, title, and interest in and to and under any and all permits, approvals, commitments, designs, plans, specifications, construction, architectural and engineering contracts, subcontracts, surveys, appraisals, and listing agreements together with all amendments, modifications, supplements, revisions, and addenda thereto (collectively, the "**Permits, Contracts and Plans**") subject to the terms, covenants and conditions in the Master Form Deed of Trust, including, without limitation, Section 2.2 of the Master Form Deed of Trust.

5. **Obligations Secured.** Grantor makes the grant, conveyance, transfer and assignment set forth in Section 1.1 of the Master Form Deed of Trust and the grants, conveyances, transfers, and assignments herein, and grants the security interest set forth herein for the purpose of securing the following obligations (the "**Secured Obligations**") in any order of priority that Lender may choose (*specifically excluding, however, for purposes of establishing the Secured Obligations, any obligations of (a) Third-Party Grantor as a guarantor under any guaranty, (b) any other party as a guarantor under any guaranty of the Secured Obligations, or (c) Borrower or any guarantor or other obligor as an indemnitor under any environmental or hazardous substances indemnity agreement related to the Real Property (collectively, the "Unsecured Obligations")*):

5.1. **Promissory Note.** Payment of all obligations at any time owing under that certain Revolving Promissory Note (Gross Master Revolver) payable by Borrower, as maker, to the order of Lender, dated effective January 10, 2022 (the "**Note**"), evidencing a revolving loan from Lender to Borrower in the maximum outstanding principal amount of FIFTEEN MILLION AND 00/100THS U.S. DOLLARS (U.S. \$15,000,000.00) (the

"Loan"), together with interest thereon at a variable rate and any modifications, extensions, renewals, or restatements thereof, whether or not any such modification, extension, renewal or restatement is evidenced by a new, restated, or additional promissory note or notes;

5.2. Loan Documents. Payment and performance of each and every other obligation of Borrower under the Note, the Master Form Deed of Trust incorporated herein, each Short Form Deed of Trust granted by any one or more Affiliates of Borrower, the Loan Agreement executed in conjunction therewith (including the Standard Conditions and Terms incorporated therein, and as such Loan Agreement may subsequently be amended, the "**Loan Agreement**"), all other documents evidencing, securing, or otherwise governing the Loan, and any and all amendments, modifications, and supplements thereto (the "**Loan Documents**"), the provisions of which are incorporated herein by this reference (but specifically excluding the Unsecured Obligations);

5.3. Related Loan Documents. Payment and performance of each covenant and obligation to be performed pursuant to all loan documents (the "**Related Loan Documents**") that evidence, secure, or otherwise govern one or more present or future Related Loans (as defined in the Loan Agreement);

5.4. Future Obligations. Payment to Lender of all future advances, indebtedness and further sums and performance of such further obligations as Borrower or the then record owner of the Real Property or the then owner of the balance of the Collateral may undertake to pay or perform (whether as principal, surety, or guarantor) for the benefit of Lender whether or not such indebtedness or obligations are evidenced by a written instrument reciting that it or they are secured by a Short Form Deed of Trust;

5.5. Other Obligations set forth in Short Form Deeds of Trust. Payment and performance of any other obligations specifically identified in one or more Short Form Deeds of Trust, executed by any one or more entities comprising Borrower; and

5.6. Modifications and Amendments. Payment and performance of all modifications, amendments, extensions, restatements, and renewals, however evidenced, of any of the foregoing Secured Obligations, and including, without limitation, any amendments to the financial covenants or financial reporting requirements applicable to the Loan.

All persons who may have or acquire an interest in all or any part of the Real Property will be considered to have notice of, and will be subject to, the terms of the Secured Obligations and each other agreement or instrument made or entered into relating to each of the Secured Obligations.

6. Provisions Relating to Third-Party Grantor.

6.1. Modification of Loan Documents. At any time and in such manner and on such terms as it considers desirable, and with or without notice to Third-Party Grantor, Lender may amend, modify, compromise, accelerate, extend, change the time or manner for payment, increase or reduce the rate of interest, release or add borrowers, guarantors, or Borrower, accept additional or substituted security, or release or subordinate any security for, the Secured Obligations.

6.2. Waivers. Third-Party Grantor waives any right to require Lender to proceed against Borrower or any other person or entity, or to proceed against or exhaust any other security held by it at any time, or to pursue any other remedy available to it; Third-Party Grantor agrees that Lender shall not be obligated to resort to any other security (including security given by Borrower or any other Affiliates of Borrower) in any particular order, even if such action impairs or destroys any subrogation rights of Third-Party Grantor and/or any right of Third-Party Grantor to proceed against Borrower for reimbursement.

6.3 Provisions re Hazardous Substances and Environmental Laws. All the provisions set forth in Section 7 of the Standard Conditions and Terms that are incorporated by reference in the Loan Agreement shall be binding on the Third-Party Grantor for as long as it retains any interest in the Collateral.

6.4 Representations. Third-Party Grantor represents and warrants to Lender that it will derive material financial benefits from Borrower's current financing arrangements with Lender affecting the Collateral and that the relationship between Third-Party Grantor and Borrower is such that Third-Party Grantor has access to all relevant facts and information concerning the Secured Obligations and agrees that Lender has no duty or obligation to inform Third-Party Grantor in any way about Borrower, the Collateral, or the Secured Obligations. Third-Party Grantor shall be solely and fully responsible for keeping informed of Borrower's financial condition and all circumstances that might affect the Collateral and Third-Party Grantor's obligations hereunder.

7. Incorporation of Other Terms, Conditions, and Covenants in the Master Form Deed of Trust. Borrower hereby agrees to all the additional terms, conditions, covenants, representations and warranties as set forth in the Master Form Deed of Trust, and all the terms, conditions, covenants, representations and warranties set forth in the Master Form Deed of Trust are hereby restated and incorporated herein by reference.

8. Compliance with State Construction Registry Requirements. Grantor shall timely comply with all requirements of Utah Code Sections 38-1a-101 et seq. Grantor shall cause Lender to be named as a person interested in receiving electronic notices of all filings with respect to the construction of the Improvements in the State Construction Registry of the State of Utah (the "**State Construction Registry**") in accordance with Utah Code Section 38-1a-204. Grantor shall also provide to Lender copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the construction of the Improvements. Grantor shall file a notice of intent to obtain final completion in the State Construction Registry when and if required by Utah Code Section 38-1a-506, and upon completion of the Improvements, Borrower shall promptly file a notice of completion in the State Construction Registry as permitted by Utah Code Section 38-1a-507. Grantor agrees that Lender may file a notice of completion in the State Construction Registry as contemplated by Utah Code Section 38-1a-507. In addition, Grantor shall take all other steps necessary under the laws of the state of Utah to prevent or shorten the time for the assertion of claims or liens against the Collateral or any part thereof or right or interest appurtenant thereto, or of claims against Lender or any disbursements made hereunder.

9. Collateral Pool. In no event shall the amounts advanced pursuant to the Note with respect to the Collateral encumbered by this Short Form Deed of Trust exceed \$7,500,000.00, plus any amounts advanced by Lender to protect its security or exercise its rights and remedies with respect to the Loan, Related Loans or the Collateral, plus any other amounts Lender is authorized to advance pursuant to the Loan Documents. The Collateral is part of a collateral pool securing the Loan and the other Loan Documents. Payment and performance of the obligations to Lender with respect to the Loan may be secured by multiple short form deeds of trust (the "**Other Deeds of Trust**") recorded against the Collateral and other properties constituting the collateral pool from time to time. Grantor acknowledges and agrees the partial or full reconveyance of this Deed of Trust shall not in and of itself satisfy or extinguish the obligations secured by this Short Form Deed of Trust or Other Deeds of Trust. The Secured Obligations described in this Short Form Deed of Trust and the obligations secured by the Other Deeds of Trust are intended to be cross-collateralized and cross defaulted.

10. Release Provisions. Lender shall release individual separately conveyable Lots, parcels, or Units from the lien of this Deed of Trust only in accordance with the release provisions set forth in the Loan Documents.

11. **Obligations of Grantor Joint and Several.** If more than one person or entity has executed this Short Form Deed of Trust, the obligations of all such persons shall be joint and several hereunder, except as the obligations of Third-Party Grantor may be limited as set forth above.

12. **Severability.** If any term of this Short Form Deed of Trust, or the application thereof to any person, entity or circumstances, shall, to any extent, be invalid, void or unenforceable, the remainder of this Short Form Deed of Trust, or the application of such term to persons, entities, or circumstances other than those as to which it is invalid, void or unenforceable, shall not be affected thereby, and each term of this Short Form Deed of Trust shall be valid and enforceable to the fullest extent permitted by law.

PURSUANT TO UTAH CODE SECTION §25-5-4, BORROWER AND THIRD-PARTY GRANTOR ARE 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.

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: 

Name: Charles Wheatley
Its: Manager

By: 

Name: Robert C. Miller
Its: Manager

By: 

Name: Bruce G. Robinson
Its: Manager

STATE OF UTAH

COUNTY OF Davis }

ss.

February 2, 2022

The foregoing instrument was acknowledged before me on January 2, 2022, by Robert C. Miller
the Manager of SYMPHONY HOMES LLC, a Utah limited liability company.



Kaye H C
Printed Name Kaye H. Cazier
NOTARY PUBLIC in and for the State of Utah,
residing at Kaysville, UT
My Commission Expires 5-25-23

STATE OF UTAH

COUNTY OF Davis }

ss.

February 2, 2022

The foregoing instrument was acknowledged before me on January 2, 2022, by Charles Wheatley, a
Manager of THE PRESERVE 2018 LLC, a Utah limited liability company.



Kaye H C
Printed Name Kaye H. Cazier
NOTARY PUBLIC in and for the State of Utah,
residing at Kaysville, UT
My Commission Expires 5-25-23

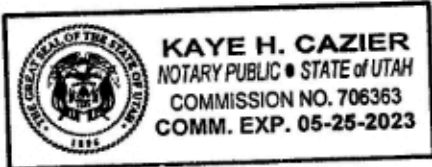
STATE OF UTAH

COUNTY OF Davis }

ss.

February 2, 2022

The foregoing instrument was acknowledged before me on January 2, 2022, by Robert C Miller, a Manager of THE PRESERVE 2018 LLC, a Utah limited liability company.



Kaye H C
Printed Name Kaye H Cazier
NOTARY PUBLIC in and for the State of Utah,
residing at Kaysville, UT
My Commission Expires 5-25-23

STATE OF UTAH

COUNTY OF Davis }

ss.

February 2, 2022

The foregoing instrument was acknowledged before me on January 2, 2022, by Bruce G. Robinson, a Manager of THE PRESERVE 2018 LLC, a Utah limited liability company.



Kaye H C
Printed Name Kaye H. Cazier
NOTARY PUBLIC in and for the State of Utah,
residing at Kaysville, UT
My Commission Expires 5-25-23

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

LOTS 102, 108, 110, 112, 116, 120, 123, 124, 111, 113 AND 118, THE PRESERVE PHASE 1 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE.

PARCEL 2:

LOTS 202, 203, 204, 207, 210, 211, 217, 218, 219, 220, 222, 224, 225, 206, 208, 209, 213, 215, 216 AND 221, THE PRESERVE PHASE 2 PRUD SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE.