

OFFICIAL RECORD

Requested By:
STEWART TITLE

APN No.
1420-07-117-001, thru 1420-07-117-005;
1420-07-214-008, 1420-07-214-009,
1420-07-214-015 thru 1420-07-214-020
1420-07-201-004

Douglas County - NV
Werner Christen - Recorder
Page: 1 Of 11 Fee: 24.00
BK-0205 PG- 5306 RPTT: 0.00



**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

WELLS FARGO BANK, NATIONAL
ASSOCIATION
Real Estate Group (AU #02961)
100 Wiget Lane, Suite 201
Walnut Creek, CA 94598

Attn: Margaret Diaz
Loan #: 1468OW
Douglas County
99051330ZZ

**MEMORANDUM OF MODIFICATION AGREEMENT
AMENDING DEED OF TRUST**

The undersigned declare that they have entered into a modification agreement dated of even date herewith, wherein provision is made for (a) amendment of that certain deed of trust dated May 15, 1997 and executed by JOHN C. SERPA, an unmarried man, as further grant deeded to SYNCON HOMES, a Nevada corporation, as Trustor, to AMERICAN SECURITIES COMPANY OF NEVADA, a Nevada corporation, as Trustee, in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Beneficiary, which was recorded on June 30, 1997, in the office of the County Recorder of Douglas County, Nevada, as Instrument No. **0416241**, and/or (b) amendment of certain obligations secured by that deed of trust. This instrument is a memorandum of the modification agreement, and the same is incorporated herein by this reference with the same effect and as though set forth herein in its entirety.


Dated as of: February 2, 2005

(SIGNATURES CONTINUED ON THE NEXT PAGE)

Loan 1468OW

"NON-BORROWER TRUSTOR"

SYNCON HOMES,
a Nevada corporation

By: 
Leo A. Hanly, President

"LENDER"

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: 
Ari Bond, Relationship Manager

CONFIDENTIAL



NON-BORROWER TRUSTOR RIDER

This Non-Borrower Trustor Rider is Exhibit A to that certain Memorandum of Modification Agreement Amending Deed of Trust dated October 6, 2004 by and between JOHN C. SERPA, SR., an unmarried man, J.S. DEVCO LIMITED PARTNERSHIP, a Nevada limited partnership and DGD DEVELOPMENT LIMITED PARTNERSHIP, a Nevada limited partnership ("Borrower") and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Beneficiary"). By signing below SYNCON HOMES, a Nevada corporation ("Non-Borrower Trustor") as the present owner of the real property ("Subject Property") which is subject to the lien of that certain Deed of Trust ("Deed of Trust") recorded on January 26, 1999, as Instrument No. 0416241, Official Records in the Office of the County Recorder of Douglas County, Nevada, hereby agrees, for valuable consideration, as follows:

1. **INCORPORATION OF TERMS INTO DEED OF TRUST.** The terms of this Non-Borrower Trustor Rider are hereby incorporated as an Addendum to the Deed of Trust. Capitalized terms used herein which are not otherwise defined herein, are intended to have the definition given to them in the Deed of Trust.
2. **CONDITIONS TO EXERCISE OF RIGHTS.** Non-Borrower Trustor hereby waives any right it may now or hereafter have to require Beneficiary, as a condition to the exercise of any remedy or other right against Non-Borrower Trustor hereunder or under any other document executed by Non-Borrower Trustor in connection with any Secured Obligation: (a) to proceed against any Borrower or other person, or against any other collateral assigned to Beneficiary by Non-Borrower Trustor or any Borrower or other person; (b) to pursue any other right or remedy in Beneficiary's power; (c) to give notice of the time, place or terms of any public or private sale of real or personal property collateral assigned to Beneficiary by any Borrower or other person (other than Non-Borrower Trustor), or otherwise to comply with Section 104.9504 of the Nevada Uniform Commercial Code (as modified or recodified from time to time) with respect to any such personal property collateral; or (d) to make or give (except as otherwise expressly provided in the Loan Documents) any presentment, demand, protest, notice of dishonor, notice of protest or other demand or notice of any kind in connection with any Secured Obligation or any collateral (other than the Subject Property) for any Secured Obligation.
3. **DEFENSES.** Non-Borrower Trustor hereby waives any defense it may now or hereafter have that relates to: (a) any disability or other defense of any Borrower or other person; (b) the cessation, from any cause other than full performance, of the obligations of Borrower or any other person; (c) the application of the proceeds of any Secured Obligation, by any Borrower or other person, for purposes other than the purposes represented to Non-Borrower Trustor by any Borrower or otherwise intended or understood by Non-Borrower Trustor or any Borrower; (d) any act or omission by Beneficiary which directly or indirectly results in or contributes to the release of any Borrower or other person or any collateral for any Secured Obligation; (e) the unenforceability or invalidity of any collateral assignment (other than the Deed of Trust and the amendments thereto) or guaranty with respect to any Secured Obligation, or the lack of perfection or continuing perfection or lack of priority of any lien (other than the lien) which



secures any Secured Obligation; (f) any failure of Beneficiary to marshal assets in favor of Non-Borrower Trustor or any other person; (g) any modification of any Secured Obligation, including any renewal, extension, acceleration or increase in interest rate; (h) any and all rights and defenses arising out of an election of remedies by Beneficiary; (i) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (j) any failure of Beneficiary to file or enforce a claim in any bankruptcy or other proceeding with respect to any person; (k) the election by Beneficiary, in any bankruptcy proceeding of any person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code; (l) any extension of credit or the grant of any lien under Section 364 of the United States Bankruptcy Code; (m) any use of cash collateral under Section 363 of the United States Bankruptcy Code; or (n) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any person. Non-Borrower Trustor further waives any and all rights and defenses that Non-Borrower Trustor may have because Borrower's debt is secured by real property; this means, among other things, that: (1) Beneficiary may foreclose on any real property collateral pledged by Non-Borrower Trustor without first foreclosing on any real or personal property collateral pledged by Borrower; (2) if Beneficiary forecloses on any real property collateral pledged by Borrower or Non-Borrower Trustor, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Beneficiary may foreclose on any real property collateral pledged by Non-Borrower Trustor even if Beneficiary, by foreclosing on such real property collateral, will destroy any right Non-Borrower Trustor may have to collect from Borrower. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Non-Borrower Trustor may have because Borrower's debt is secured by real property. Without limiting the generality of the foregoing or any other provision hereof, Non-Borrower Trustor further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Non-Borrower Trustor under any applicable laws, including, without limitation, those under Nevada Revised Statutes, Sections 40.430 through 40.495.

4. **SUBROGATION.** Non-Borrower Trustor hereby waives, until such time as all Secured Obligations are fully performed: (a) any right of subrogation against any Borrower that relates to any Secured Obligation; (b) any right to enforce any remedy Non-Borrower Trustor may now or hereafter have against any Borrower that relates to any Secured Obligation; and (c) any right to participate in any collateral now or hereafter assigned to Beneficiary with respect to any Secured Obligation.
5. **BORROWER INFORMATION.** Non-Borrower Trustor warrants and agrees: (a) that Non-Borrower Trustor has not relied, and will not rely, on any representations or warranties by Beneficiary to Non-Borrower Trustor with respect to the credit worthiness of any Borrower or the prospects of repayment of any Secured Obligation from sources other than the Subject Property; (b) that Non-Borrower Trustor has established and/or will establish adequate means of obtaining from each Borrower on a continuing basis financial and other information pertaining to the business operations, if any, and financial condition of each Borrower; (c) that Non-Borrower Trustor assumes full responsibility for keeping informed with respect to each Borrower's business operations, if any, and financial condition; (d) that Beneficiary shall have no



duty to disclose or report to Non-Borrower Trustor any information now or hereafter known to Beneficiary with respect to any Borrower, including, without limitation, any information relating to any of Borrower's business operations or financial condition; and (e) that Non-Borrower Trustor is familiar with the terms and conditions of the Loan Documents and consents to all provisions thereof.

6. **REINSTATEMENT OF LIEN.** Beneficiary's rights hereunder shall be reinstated and revived, and the enforceability of the Deed of Trust shall continue, with respect to any amount at any time paid on account of any Secured Obligation which Beneficiary is thereafter required to restore or return in connection with a bankruptcy, insolvency, reorganization or similar proceeding with respect to any Borrower.
7. **SUBORDINATION.** Until all of the Secured Obligations have been fully paid and performed: (a) Non-Borrower Trustor hereby agrees that all existing and future indebtedness and other obligations of each Borrower to Non-Borrower Trustor (collectively, the "Subordinated Debt") shall be and are hereby subordinated to all Secured Obligations which constitute obligations of the applicable Borrower, and the payment thereof is hereby deferred in right of payment to the prior payment and performance of all such Secured Obligations; (b) Non-Borrower Trustor shall not collect or receive any cash or non-cash payments on any Subordinated Debt or transfer all or any portion of the Subordinated Debt; and (c) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, any Borrower with respect to any Subordinated Debt is received by Non-Borrower Trustor, such payment or distribution shall be held in trust and immediately paid over to Beneficiary, is hereby assigned to Beneficiary as security for the Secured Obligations, and shall be held by Beneficiary in an interest bearing account until all Secured Obligations have been fully paid and performed.
8. **HAZARDOUS MATERIALS.**
 - 8.1 **Special Representations and Warranties.** Without in any way limiting the other representations and warranties set forth in the Deed of Trust as heretofore amended, and after reasonable investigation and inquiry, Non-Borrower Trustor hereby specifically represents and warrants to the best of Non-Borrower Trustor's knowledge as of the date hereof as follows:
 - (a) **Hazardous Materials.** The Subject Property is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any oil or other petroleum products, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials," "highly hazardous substances," "extremely hazardous substances," "toxic substances," "wastes," "regulated substances," "industrial solid wastes," or "pollutants" under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "Hazardous Materials").



- (b) Hazardous Materials Laws. The Subject Property is in compliance with all laws, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; Nevada Revised Statutes ("NRS") Sections 41.540 through 41.570, NRS Chapters 445A and 459; and all comparable and applicable federal, state and local laws, statutes, regulations, orders and ordinances; and any guidance documents promulgated thereunder.
- (c) Hazardous Materials Claims. There are no claims or actions ("Hazardous Materials Claims") pending or threatened against Non-Borrower Trustor or the Subject Property by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.

8.2 Hazardous Materials Covenants. Non-Borrower Trustor agrees as follows:

- (a) No Hazardous Activities. Non-Borrower Trustor shall not cause or permit the Subject Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.
- (b) Compliance. Non-Borrower Trustor shall comply and cause the Subject Property and Collateral to comply with all Hazardous Materials Laws.
- (c) Notices. Non-Borrower Trustor shall immediately notify Beneficiary in writing of: (i) the discovery of any Hazardous Materials on, under or about the Subject Property and Collateral; (ii) any knowledge by Non-Borrower Trustor that the Subject Property and Collateral does not comply with any Hazardous Materials Laws; and (iii) any Hazardous Materials Claims.
- (d) Remedial Action. In response to the presence of any Hazardous Materials on, under or about the Subject Property, Non-Borrower Trustor shall immediately take, at Non-Borrower Trustor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.



- 8.3 **Inspection By Beneficiary.** Upon reasonable prior notice to Non-Borrower Trustor, Beneficiary, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding) enter and inspect the Subject Property and Collateral for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Subject Property and Collateral.
- 8.4 **HAZARDOUS MATERIALS INDEMNITY. NON-BORROWER TRUSTOR HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS BENEFICIARY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES) WHICH BENEFICIARY MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF THE USE, GENERATION, MANUFACTURE, STORAGE, DISPOSAL, THREATENED DISPOSAL, TRANSPORTATION OR PRESENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR ABOUT THE SUBJECT PROPERTY AND COLLATERAL. NON-BORROWER TRUSTOR SHALL IMMEDIATELY PAY TO BENEFICIARY UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY, TOGETHER WITH INTEREST FROM THE DATE THE INDEBTEDNESS ARISES UNTIL PAID AT THE RATE OF INTEREST APPLICABLE TO THE PRINCIPAL BALANCE OF THE NOTE. NON-BORROWER TRUSTOR'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS BENEFICIARY SHALL SURVIVE THE CANCELLATION OF THE NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE DEED OF TRUST.**
- 8.5 **Legal Effect of Section.** Non-Borrower Trustor and Beneficiary agree that each representation and warranty and covenant in this Section 8 (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Subject Property is intended by Beneficiary and Non-Borrower Trustor to be an "environmental provision" for purposes of NRS Section 40.502.
9. **LAWFULNESS AND REASONABLENESS.** Non-Borrower Trustor warrants that all of the waivers in the Deed of Trust are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by Non-Borrower Trustor may destroy or impair rights which Non-Borrower Trustor would otherwise have against Beneficiary, Borrower and other persons, or against collateral. Non-Borrower Trustor agrees that all such waivers are reasonable under the circumstances and further agrees that, if any such waiver is determined (by a court of competent jurisdiction) to be contrary to any law or public policy, the other waivers herein shall nonetheless remain in full force and effect.
10. **ENFORCEABILITY.** Non-Borrower Trustor hereby acknowledges that: (a) the obligations undertaken by Non-Borrower Trustor in this Amendment to the Deed of Trust are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Beneficiary's consideration for entering into this transaction, Beneficiary has specifically bargained for the waiver and relinquishment by Non-Borrower Trustor of all such defenses, and (d) Non-Borrower Trustor has



had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Non-Borrower Trustor does hereby represent and confirm to Beneficiary that Non-Borrower Trustor is fully informed regarding, and that Non-Borrower Trustor does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Non-Borrower Trustor, and (iv) the legal consequences to Non-Borrower Trustor of waiving such defenses. Non-Borrower Trustor acknowledges that Non-Borrower Trustor makes this Amendment to the Deed of Trust with the intent that this Amendment to the Deed of Trust and all of the informed waivers herein shall each and all be fully enforceable by Beneficiary, and that Beneficiary is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

11. **DISCLOSURE OF INFORMATION; PARTICIPATIONS.** Non-Borrower Trustor understands and agrees that Beneficiary may elect, at any time, to sell, assign, or participate all or any part of Beneficiary's interest in the Loan, and that any such sale, assignment or participation may be to one or more financial institutions, private investors, and/or other entities, at Beneficiary's sole discretion. Non-Borrower Trustor further agrees that Beneficiary may disseminate to any such potential purchaser(s), assignee(s) or participant(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Beneficiary with respect to: (a) the Subject Property and Collateral and its operation; (b) any party connected with the Loan (including, without limitation, the Non-Borrower Trustor, the Borrower, any partner of Borrower and any guarantor); and/or (c) any lending relationship other than the Loan which Beneficiary may have with any party connected with the Loan.

12. **WAIVER OF RIGHT TO TRIAL BY JURY.** EACH PARTY TO THIS AMENDMENT TO THE DEED OF TRUST, AND BY ITS ACCEPTANCE HEREOF, BENEFICIARY, HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY AND BENEFICIARY HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THE DEED OF TRUST AND BENEFICIARY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO AND BENEFICIARY TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.


13. **INTEGRATION; INTERPRETATION.** The Deed of Trust and the other Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Deed of Trust and the other Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or



Improvements shall include all or any part of the Property or Improvements. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Beneficiary in writing.

"NON-BORROWER TRUSTOR"

SYNCON HOMES,
a Nevada corporation

By: 
Leo A. Hanly, President

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

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JUNIOR INTEREST CONSENT AND SUBORDINATION AGREEMENT

NOTICE: THIS JUNIOR INTEREST CONSENT AND SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY REMAINING SUBJECT TO AND OF A LOWER PRIORITY THAN THE LIEN OF THE DEED OF TRUST AS MODIFIED BY THE FOREGOING MODIFICATION AGREEMENT.

The undersigned ("Junior Interest") further reaffirms the full force and effectiveness of that certain Subordination Agreement between the undersigned and John C. Serpa, an unmarried man, J.S. DEVCO LIMITED PARTNERSHIP, a Nevada limited partnership and DGD DEVELOPMENT LIMITED PARTNERSHIP, a Nevada limited partnership dated May 15, 1997 and recorded June 30, 1997 as Document No. 416243, in Book 697, page 6265, in the Official records of the County of Douglas, State of Nevada, and the undersigned acknowledges that the interest is junior, subordinate and subject to the Deed of Trust, as modified by the foregoing Modification Agreement.

NOTICE: THE LOAN DOCUMENTS MAY CONTAIN A PROVISION WHICH MAY ALLOW THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO EXPEND A PORTION OF THE LOAN FOR OTHER PURPOSES THAN IMPROVEMENT OF THE PROPERTY.

Agreed and Acknowledged:

Dated as of: February 2, 2005

"JUNIOR INTEREST"

SYNCON HOMES,
a Nevada corporation

BY: 
Leo A. Hanley, President

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

STATE OF NEVADA

COUNTY OF Douglas

ss.

This instrument was acknowledged before me on Feb 9, 2005, by Leo A. Hanley
as President of SYNCON HOMES a Nevada
Corporation



Signature Donna Sue Hawkins
Notary Public for Nevada

My commission expires 6/9/05

STATE OF CALIFORNIA

COUNTY OF Contra Costa ss.

On this 10th day of February, 2005, before me, Carolyn D'Andrea a Notary Public in and for the State of California, personally appeared Ari Bond personally known to me (~~or proved on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature Carolyn D'Andrea

My commission expires December 20, 2006

