

AFTER RECORDATION RETURN TO:

James H. Jones, Esq.  
SNELL & WILMER L.L.P.  
Gateway Tower West  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

Loan No. 170636604001

PIN 07-282-0001 through 07-282-0080

114408-ETF

## **FIRST AMENDMENT TO CONSTRUCTION AND TERM LOAN TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING**

This FIRST AMENDMENT TO CONSTRUCTION AND TERM LOAN TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "*Amendment*") is made effective as of July 1, 2019, by **ORCHARD FARMS MULTIFAMILY HOLDINGS, LLC**, a Utah limited liability company, whose mailing address is 978 East Woodoak Lane, Salt Lake City, Utah 84117 ("*Trustor*"), to **ZIONS BANCORPORATION, N.A. dba ZIONS FIRST NATIONAL BANK** (as successor-in-interest by merger to **ZIONS FIRST NATIONAL BANK**, a national banking association), as trustee ("*Trustee*"), for the benefit of **ZIONS BANCORPORATION, N.A. dba ZIONS FIRST NATIONAL BANK** (as successor-in-interest by merger to **ZIONS FIRST NATIONAL BANK**, a national banking association), whose mailing address is One South Main, Suite 400, Salt Lake City, Utah 84133, as beneficiary and secured party ("*Beneficiary*").

### **RECITALS:**

A. Beneficiary and Trustor are parties to that certain Construction and Term Loan Agreement dated as of December 31, 2012 (as amended, modified, extended and renewed from time to time, the "*Loan Agreement*") pursuant to which Beneficiary made a construction and term loan to Trustor in the original maximum principal amount of NINE MILLION EIGHT HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$9,825,000.00) (the "*Loan*"). All capitalized terms used herein and not otherwise defined have the meanings ascribed thereto in the Loan Agreement.

B. The Loan is further evidenced by (i) that certain Promissory Note dated December 31, 2012, made by Trustor for the benefit of Beneficiary in the original principal amount of \$9,825,000.00 (as the same may be amended, modified, extended, renewed, restated or supplemented from time to time, the "*Note*").

C. The obligations of Trustor under the Loan Agreement and Note are secured by, among other documents, instruments and agreements, that certain Construction and Term Loan Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing executed by Trustor to Trustee, and for the benefit of Beneficiary, recorded on January 7, 2013 as Entry No. 2712536, in Book 5681, Pages 2363-2391, in the official records of Davis County, Utah (the "*Trust Deed*"), and covering certain real property located in the County of Davis, State of Utah, and more fully described in **Exhibit A** to the Trust Deed.

D. Pursuant to that certain Loan Modification Agreement of even date herewith (the "*Modification*"), Trustor and Beneficiary have agreed to modify and amend the Loan Agreement and other Loan Documents and to amend and restate the Note.

E. Concurrently with the modification of the Loan and Loan Documents pursuant to the Modification, Trustor and Beneficiary desire to amend the Trust Deed, as more particularly set forth herein.

**AGREEMENT:**

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged, Trustor and Beneficiary agree as follows:

1. Accuracy of Recitals. Trustor acknowledges the accuracy of the Recitals above.

2. Notice of Modification; Modification of Trust Deed.

(a) Notice is hereby given that the Loan Agreement, Note, Trust Deed and other Loan Documents have been amended and modified pursuant to the Modification.

(b) Defined Terms.

(i) All references in the Trust Deed to the "Loan" are hereby amended to refer to the loan from Beneficiary to Trustor in the maximum principal amount of Twelve Million Five Hundred Thousand and 00/100 Dollars (\$12,500,000.00).

(ii) All references in the Trust Deed to the "Note" are hereby amended to refer to that certain Amended and Restated Promissory Note dated effective as of July 1, 2019, from Trustor to Beneficiary in the maximum principal amount of Twelve Million Five Hundred Thousand and 00/100 Dollars (\$12,500,000.00).

(iii) All references in the Trust Deed to the "Loan Agreement" are hereby amended to refer to that certain Construction and Term Loan Agreement dated as of December 31, 2012, between Trustor and Beneficiary, as amended by that certain Loan Modification Agreement dated as of July 1, 2019 (as it may be further amended or modified).

(c) The Trust Deed is hereby modified, to the extent necessary, to be consistent with the Modification.

3. Ratifications and Affirmation. Except as expressly modified by this Amendment, the Trust Deed is hereby ratified and confirmed and shall continue in full force and effect and unchanged, and shall continue to be legal, valid, binding and enforceable in accordance with its terms. Without limiting the generality of the foregoing sentence, Trustor hereby acknowledges and agrees that any and all rights, titles, interests and liens securing the repayment of the Loan, as modified by the Modification, are hereby reaffirmed, renewed and extended.

4. Release of Beneficiary. As a material inducement for Beneficiary to enter into this Amendment, Trustor and its successors and assigns forever waive, release, acquit and discharge Beneficiary and its shareholders, officers, directors, affiliates, attorneys, agents and representatives of and from any and all liabilities, claims, action, demands, defenses and/or causes of action of whatsoever nature, excluding only any causes of action and claims based on Beneficiary's fraud and intentional misconduct (this exclusion shall not apply to matters that Trustor has knowledge of or should have had knowledge of at the time of this Amendment), whether known or unknown, whether asserted or unasserted and whether arising under or pursuant to common or statutory laws, rules or regulation (including state and/or federal law), which Trustor may have against any of the foregoing on account of any matter relating in any way to the Loan, Loan Agreement or other Loan Documents and the transactions contemplated thereby up to the date of this Amendment.

5. Counterparts. This Amendment may be executed in any number of counterparts, each of which is an original, but all of which constitute one and the same instrument. Signature pages may be removed from separate counterparts to form a single document.

6. Choice of Law. THIS AMENDMENT, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH AND PURSUANT TO THE LAWS OF THE STATE OF UTAH (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

7. Binding Effect. The Trust Deed as modified herein is binding upon and inures to the benefit of, Trustor and Beneficiary and their respective successors and assigns.

[REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

The parties have executed this Amendment as of the day and year first above written.

TRUSTOR:

**ORCHARD FARMS MULTIFAMILY HOLDINGS, LLC**  
a Utah limited liability company

By: *James G. Seaberg*  
Name: James G. Seaberg  
Title: Manager

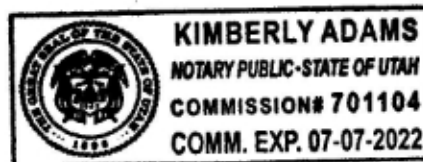
State of Utah

County of *Utah* ss.

On this *9* day of *Aug*, in the year 2019, before me *Kimberly Adams*, a notary public, personally appeared James G. Seaberg, an individual, a manager of ORCHARD FARMS MULTIFAMILY HOLDINGS, LLC, a Utah limited liability company, proved on the basis of satisfactory evidence to be the persons whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)

*Kimberly Adams*  
Notary Signature



BENEFICIARY:

ZIONS BANCORPORATION, N.A., dba ZIONS FIRST NATIONAL  
BANK

By: [Signature]  
Name: Timothy P. Raccuia  
Title: Senior Vice President

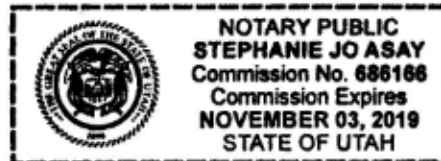
State of Utah

County of Salt Lake ss.

On this 9<sup>th</sup> day of August, in the year 2019, before me Stephanie Jo Asay, a notary public, personally appeared Timothy P. Raccuia an individual, a Senior Vice President of ZIONS BANCORPORATION, N.A., dba ZIONS FIRST NATIONAL BANK, proved on the basis of satisfactory evidence to be the persons whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)

[Signature]  
Notary Signature



**EXHIBIT A**

**PROPERTY DESCRIPTION**

That certain real property situated in the County of Davis, State of Utah and described as follows:

Fee Simple to all Condominium Units, as described in the "Neighborhood Amended and Restated Declaration of Condominium for Orchard Farms Condominium" as recorded as Entry No. 2664102 in the official land records for Davis County Recorder's Office, Davis County, Utah together with all rights, access and easements described or granted therein and as shown or depicted on the Final Plat for Orchard Farms Condominium Neighborhood for the "ORCHARD FARMS CONDOMINIUM" as Entry No. 5153 in the plat records of the Davis County Recorder's Office, Davis County, Utah; ("Final Plat")

TOGETHER WITH an undivided interest in and to the non-exclusive right to use and enjoy the Common Area and Facilities under the Master Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation or Grant of Easements, Orchard Farms Planned Residential Unit Development ("Master Declaration"), the Exclusive Common Areas and each Limited Common Area under the Neighborhood Amended and Restated Declaration of Condominium for Orchard Farms Condominium and as the same are established therefore or depicted or shown on the Final Plat for Orchard Farms Condominium Neighborhood for the "Orchard Farms Condominium" as referenced above.

TOGETHER WITH all rights, access and easements granted in the Master Declaration and the Final Plat as referenced above.

TOGETHER WITH all rights, access and easements granted in and a non-exclusive easement for access over and across Snap Dragon Lane (a private road) pursuant to the Neighborhood Amended and Restated Declaration of Condominium for Orchard Farms Condominium, dated May 29, 2012 recorded as Entry No. 2664102 in the records of the Davis County Recorder's Office, Davis County, Utah.

SUBJECT TO: The Master Declaration and Master Plat as referenced above.