

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

APN(s):
51-543-0001

CTIA 74119-TF

**FIRST MODIFICATION TO AMENDED AND RESTATED DEED OF TRUST,
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING**

This FIRST MODIFICATION TO AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "*Amendment*") dated as of June 1, 2020, by and between **RESIDENCES AT MONTE VISTA, LLC**, a Utah limited liability company, whose mailing address is 3401 North Center Street, Suite 300 Lehi, UT 84043 ("*Trustor*"), **ZIONS BANCORPORATION, N.A. dba ZIONS FIRST NATIONAL BANK**, as the original beneficiary under the Deed of Trust (as defined below) ("*Original Beneficiary*"), whose mailing address is One South Main, Suite 400, Salt Lake City, Utah 84133, and **ZIONS BANCORPORATION, N.A. dba ZIONS FIRST NATIONAL BANK**, as Agent, as the successor beneficiary to Original Beneficiary, whose mailing address is One South Main, Suite 400, Salt Lake City, Utah 84133.

RECITALS:

A. Original Beneficiary and Trustor are parties to that certain Second Amended and Restated Loan Agreement dated as of June 1, 2020 (as the same may have been or may be amended, modified, or supplemented from time to time, including but not limited to as amended pursuant to that certain First Loan Modification Agreement of even date herewith, the "*Loan Agreement*") pursuant to which Original Beneficiary made a term loan to Trustor in the original maximum principal amount of **SIXTEEN MILLION THREE HUNDRED EIGHTY-TWO THOUSAND AND NO/100 DOLLARS (\$16,382,000.00)** (the "*Loan*"). All capitalized terms used herein and not otherwise defined have the meanings ascribed thereto in the Syndication Agreement (as defined below).

B. The Loan is further evidenced by that certain Amended and Restated Promissory Note dated June 1, 2020, made by Trustor for the benefit of Original Beneficiary in the principal amount of \$16,382,000.00 (as the same may be amended, modified, extended, renewed, restated or supplemented from time to time, the "*Existing Note*").

C. The obligations of Trustor under the Loan Agreement and Existing Note are secured by, among other documents, instruments and agreements, that certain Amended and Restated Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by Trustor to the trustee named therein for the benefit of Original Beneficiary, as beneficiary, dated June 1, 2020 (as the same may have been or may be amended, modified, or supplemented from time to time, the "*Deed of Trust*"), and covering certain real property located in the County of Utah, State of Utah, and more fully described in **Exhibit A** attached hereto.

D. Concurrently herewith, Original Beneficiary, Agent, and **TRANSPORTATION ALLIANCE BANK INC. d/b/a TAB BANK**, a Utah state chartered bank ("*TAB*") have entered into that certain Assignment

and Assumption Agreement dated as of approximately even date herewith, pursuant to which Original Beneficiary assigns all of its rights, title and interest in and to a portion of the Loan to TAB, and TAB accepts such assignment and assumes Original Beneficiary's obligations arising under the Loan Documents with respect to such assigned portion of the Loan.

E. Concurrently herewith, Original Beneficiary, as a Bank and as Agent for the Banks, and TAB have entered into that certain Syndication and Agency Agreement dated approximately even date herewith (as the same may be amended, modified, or supplemented from time to time, the "*Syndication Agreement*"). The Syndication Agreement provides, *inter alia*, that the Loan may be funded by a syndicate of lenders rather than Original Beneficiary alone.

F. Also concurrently herewith, and in connection with the Syndication Agreement, the Existing Note has been amended and restated pursuant to (i) that certain Second Amended and Restated Secured Promissory Note as of even date herewith, made by Trustor for the benefit of **ZIONS BANCORPORATION, N.A. dba ZIONS FIRST NATIONAL BANK** in the maximum principal amount of \$8,191,000.00 (as the same may be amended, modified, or supplemented from time to time, the "*Zions Note*"), and (ii) that certain Second Amended and Restated Secured Promissory Note as of even date herewith, made by Trustor for the benefit of TAB in the maximum principal amount of \$8,191,000.00 (as the same may be amended, modified, or supplemented from time to time, the "*Tab Note*"), and together with the Zions Note, individually and collectively, the "*Note*"). The Zions Note and Tab Note collectively amend, restate, and replace the Existing Note. From and after the execution and delivery of the Zions Note and the Tab Note, all references in the Deed of Trust to the Existing Note will refer to the Note.

G. Pursuant to that certain First Loan Modification Agreement of even date herewith (as the same may be amended, modified, or supplemented from time to time, the "*Modification*"), Trustor, Agent, and Original Beneficiary have agreed to modify and amend the Loan Agreement and other Loan Documents to, *inter alia*, address the syndicated nature of the Loan.

H. Concurrently with (i) the modification of the Loan and Loan Documents pursuant to the Modification, and (ii) the effectiveness of the Assignment and Assumption and Syndication Agreement, Trustor and Original Beneficiary desire to amend the Deed of Trust, as more particularly set forth herein.

AGREEMENT:

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

1. Accuracy of Recitals. Trustor acknowledges the accuracy of the Recitals above.
2. Notice of Modification; Modification of Deed of Trust.

(a) Notice is hereby given that the Loan Agreement, Existing Note, Deed of Trust and other Loan Documents have been amended and modified pursuant to the Modification and the Syndication Agreement. Among other things, the Syndication Agreement provides that the Loan may now be funded by a syndicate of lenders. The Deed of Trust is hereby modified, to the extent necessary, to be consistent with the Modification and the Syndication Agreement.

(b) All references in the Deed of Trust to the "Loan" are hereby amended to refer to the loan from Banks to Trustor in the maximum principal amount of **SIXTEEN MILLION THREE HUNDRED EIGHTY-TWO THOUSAND AND NO/100 DOLLARS (\$16,382,000.00)** pursuant to the Loan Agreement and Note.

(c) The definition of "Beneficiary" set forth in the Deed of Trust is hereby amended and restated in its entirety to mean Agent. Accordingly, all references to Original Beneficiary in the Deed of Trust are hereby amended to mean the Agent. For the avoidance of doubt, all grants or assignments of liens or security interests in the Deed of Trust made by Trustor in favor of Original Beneficiary are hereby deemed to be made in favor of the Agent for the benefit of the Banks.

(d) All references in the Deed of Trust to the Existing Note (which is referred to in the Deed of Trust as the "Note") are hereby amended to refer to the Note (as defined herein) as the same may be amended, modified, extended, and renewed from time to time. Accordingly, all of Trustor's obligations arising under the Note shall be included in the term "Obligations" as defined in the Deed of Trust.

(e) All references in the Deed of Trust to the "Loan Agreement" are hereby amended to refer to the Loan Agreement.

(f) The Deed of Trust is further modified as follows:

(i) All representations and warranties made by Trustor in the Deed of Trust to Original Beneficiary are hereby deemed to be made to Agent and Banks and their successors and assigns.

(ii) All indemnities in favor of Original Beneficiary in the Deed of Trust are hereby deemed to also be made in favor of Agent and Banks and their respective successors and assigns and Related Parties.

3. Ratifications and Affirmation. Except as expressly modified by this Amendment, the Deed of Trust 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 Original Beneficiary. As a material inducement for Original Beneficiary to enter into this Amendment, Trustor and its successors and assigns forever waive, release, acquit and discharge Original 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 Original 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 Deed of Trust as modified herein is binding upon and inures to the benefit of, Trustor and Original 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:

RESIDENCES AT MONTE VISTA, LLC

a Utah limited liability company

By: ICO Multifamily Holdings Operations, LLC
a Utah limited liability company
its Manager

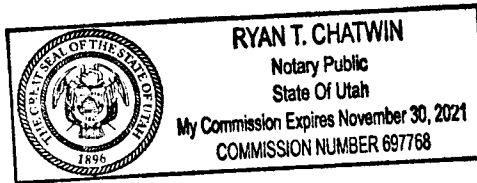
By: [Signature]
Name: James G. Seaberg
Title: Manager

State of Utah
County of Utah ss.

On this 22 day of July, in the year 2020, before me Ryan Chatwin, a notary public, personally appeared James G. Seaberg, an individual, a Manager of ICO Multifamily Holdings Operations, LLC, a Utah limited liability company, the Manager of **RESIDENCES AT MONTE VISTA, LLC**, a Utah limited liability company, on behalf of said limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

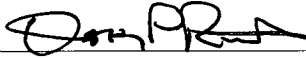
(Notary Seal)

Notary Signature



ORIGINAL BENEFICIARY:

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


By: 
Name: Timothy P. Raccuia
Title: Senior Vice President

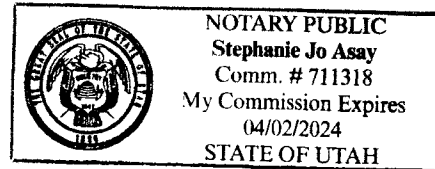
State of Utah

County of Salt Lake ss.

On this 21st day of July, in the year 2020, 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 person whose name is subscribed to in this document, and acknowledged he executed the same.


(Notary Seal)


Notary Signature



AGENT:

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

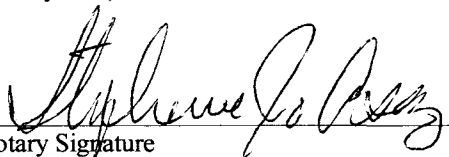
By: 
Name: Timothy P. Raccuia
Title: Senior Vice President

State of Utah

County of Salt Lake ss.

On this 21st day of July, in the year 2020, 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 person whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)


Notary Signature

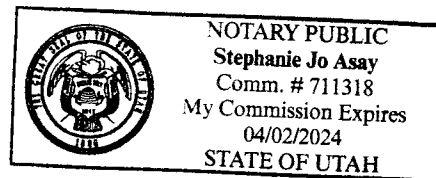


EXHIBIT A

PROPERTY DESCRIPTION

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

Lot 1, RESIDENCES AT MONTE VISTA SUBDIVISION, according to the official plat thereof as recorded in the office of the Utah County Recorder.