

mtc 30114

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

PNC BANK, NATIONAL
ASSOCIATION
PNC Firstside Center
500 First Avenue, 4th Floor
Pittsburgh, PA 15219

Tax ID #13-059-0118
Title Order No. 301114

Assessor's Parcel Numbers: 13-059-0118

ENT 32912:2022 PG 1 of 20
Andrea Allen
Utah County Recorder
2022 Mar 15 02:58 PM FEE 40.00 BY CH
RECORDED FOR Meridian Title Company
ELECTRONICALLY RECORDED

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

This Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (this "**Deed of Trust**") is made as of March 15, 2022, by ELEVATE APARTMENTS AT 620, LLC, a Utah limited liability company, as trustor ("**Trustor**"), to Old Republic National Title Insurance Company, as trustee ("**Trustee**"), for the benefit of PNC Bank, National Association, a national banking association, as Agent, as beneficiary ("**Beneficiary**").

1. GRANT IN TRUST.

1.1 The Property. For the purpose of securing payment and performance of the Secured Obligations defined in Section 2 below, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in the following property (all or any part of such property, or any interest in all or any part of it, together with the Personalty (as hereinafter defined) being hereinafter collectively referred to as the "**Property**");

(a) The real property located in the County of Utah, State of Utah, as described in Exhibit A hereto (the "**Land**");

(b) All buildings, structures, improvements, fixtures and appurtenances now or hereafter placed on the Land, and all apparatus and equipment now or hereafter attached in any manner to the Land or any building on the Land, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment (collectively, the "**Improvements**");

(c) All easements and rights of way appurtenant to the Land; all crops growing or to be grown on the Land (including all such crops following severance from the Land); all standing timber upon the Land (including all such timber following severance from the Land); all development rights or credits and air rights; all water and water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant to the Land) and shares of stock pertaining to such water or water rights, ownership of which affect the

Land; all minerals, oil, gas, and other hydrocarbon substances and rights thereto in, on, under, or upon the Land;

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions relating to the use and enjoyment of all or any part of the Land or the Improvements, and any and all guaranties and other agreements relating to or made in connection with any of the foregoing;

(e) All proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Land, Improvements, or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies, whether or not such policies are required by Beneficiary, and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any breach of warranty, misrepresentation, damage or injury to, or defect in, the Land, Improvements, or the other property described above or any part of them; and

(f) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

1.2 Fixture Filing. This Deed of Trust is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants and conveys to Beneficiary a first and prior security interest in all of the Property that constitutes personal property ("Collateral", for purposes of this Section 1.2), whether now owned or hereafter acquired. Borrower agrees that Beneficiary may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Collateral. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Beneficiary may submit for filing any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Beneficiary may deem appropriate to perfect a security interest with respect to the foregoing items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements Beneficiary may reasonably require.

1.3 Definitions. All capitalized terms not defined herein shall have the meaning ascribed to them in that certain Construction Loan Agreement of even date herewith, between Trustor and Beneficiary (the "**Construction Loan Agreement**").

2. THE SECURED OBLIGATIONS.

2.1 Purpose of Securing. Trustor makes the grant, conveyance, transfer and assignment set forth in Section 1, makes the irrevocable and absolute assignment set forth in Section 3, and grants the security interest set forth in Section 4, all for the purpose of securing the following obligations (the "**Secured Obligations**") in any order of priority that Beneficiary may choose:

(a) Payment of all obligations of Trustor to Beneficiary arising under the following instrument(s) or agreement(s) (collectively, the “**Debt Instrument**”):

(i) That promissory note of even date herewith, payable by Trustor as maker in the stated principal amount of Fifty-One Million Seven Hundred Fifty Thousand and No/100 Dollars (\$51,750,000.00) to the order of Beneficiary.

(ii) The Construction Loan Agreement.

The Debt Instrument, together with any and all other documents, instruments and agreements evidencing, securing or pertaining to the Secured Obligations as will from time to time be executed and delivered to Beneficiary by Trustor or any other party pursuant to the Construction Loan Agreement, and any amendments, modifications, ratification, extensions or supplements thereto shall hereinafter collectively be known as the “**Loan Documents**”. This Deed of Trust also secures payment of all obligations of Trustor under the Debt Instrument which arise after the Debt Instrument is extended, renewed, modified or amended pursuant to any written agreement between Trustor and Beneficiary, and all obligations of Trustor under any successor agreement or instrument which restates and supersedes the Debt Instrument in its entirety;

(b) Payment and performance of all obligations of Trustor under this Deed of Trust; and

(c) Payment and performance of all future advances and other obligations under the Debt Instrument.

This Deed of Trust does not secure any obligation which expressly states that it is unsecured, including, without limitation, any obligations under the Environmental Indemnity and the Guaranty, whether contained in the foregoing Debt Instrument or in any other document, agreement or instrument.

2.2 Terms of Secured Obligations. All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Debt Instrument described in Subsection 2.1(a) and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. These terms include any provisions in the Debt Instrument which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

3. ASSIGNMENT OF RENTS.

3.1 Assignment. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary all rents, royalties, issues, profits, revenue, income and proceeds of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (collectively, the “**Rents**”), and confers upon Beneficiary the right to collect such Rents with or without taking possession of the Property. In the event that anyone establishes and exercises any right to develop, bore for or mine for any water, gas, oil or mineral on or under the surface of the Property, any sums that may become due and payable to Trustor as bonus or royalty

payments, and any damages or other compensation payable to Trustor in connection with the exercise of any such rights, shall also be considered Rents assigned under this Section. THIS IS AN ABSOLUTE ASSIGNMENT, NOT AN ASSIGNMENT FOR SECURITY ONLY.

3.2 Grant of License. Notwithstanding the provisions of Section 3.1, Beneficiary hereby confers upon Trustor a license ("***License***") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.2, shall exist and be continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Trustor, and without regard to the adequacy of the security for the Secured Obligations.

4. SECURITY INTEREST IN RELATED PERSONALTY.

(a) Grant of Security Interest. Trustor grants to Beneficiary a security interest in, and pledges and assigns to Beneficiary, all of Trustor's right, title and interest, whether presently existing or hereafter acquired in and to all of the following property (collectively, the "***Personalty***"):

(i) All materials, supplies, goods, tools, furniture, fixtures, equipment, and machinery which in all cases is affixed or attached, or to be affixed or attached, in any manner on the Land or the Improvements;

(ii) All crops growing or to be grown on the Land (and after severance from the Land); all standing timber upon the Land (and after severance from the Land); all sewer, water and water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant to the Land) and all evidence of ownership rights pertaining to such water or water rights, ownership of which affect the Land; and all architectural and engineering plans, specifications and drawings which arise from or relate to the Land or the Improvements;

(iii) All permits, licenses and claims to or demands for the voluntary or involuntary conversion of any of the Land, Improvements, or other Property into cash or liquidated claims, proceeds of all present and future fire, hazard or casualty insurance policies relating to the Land and the Improvements, whether or not such policies are required by Beneficiary, and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any breach of warranty, misrepresentation, damage or injury to, or defect in, the Land, Improvements, or other Property or any part of them; and

(iv) All substitutions, replacements, additions, and accessions to any of the above property, and all books, records and files relating to any of the above property, including, without limitation, all general intangibles related to any of the above property and all proceeds of the above property.

5. RIGHTS AND DUTIES OF THE PARTIES.

5.1 Representations and Warranties. Trustor represents and warrants that Trustor lawfully possesses and holds fee simple title to all of the Land and the Improvements, unless Trustor's present interest in the Land and the Improvements is described in Exhibit A as a leasehold interest, in which case Trustor lawfully possesses and holds a leasehold interest in the Land and the Improvements as stated in Exhibit A, subject in each case, to Permitted Encumbrances.

5.2 Taxes, Assessments, Liens and Encumbrances. Subject to Trustor's rights to contest the same as set forth in the Construction Loan Agreement, Trustor shall pay prior to delinquency all taxes, levies, charges and assessments, including assessments on appurtenant water stock, imposed by any public or quasi public authority or utility company which are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or which may cause any decrease in the value of the Property or any part of it. Except for Permitted Encumbrances and subject to Section 6.4(f) of the Construction Loan Agreement, Trustor shall discharge any lien on the Property which Beneficiary has not consented to in writing, and shall also pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now or hereafter encumbers or appears to encumber all or part of the Property, whether the lien, charge or encumbrance is or would be senior or subordinate to this Deed of Trust.

5.3 Damages and Insurance and Condemnation Proceeds.

(a) Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, the following claims, causes of action, awards, payments and rights to payment (collectively, the "***Claims***");

(i) all awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it;

(ii) all other awards, claims and causes of action, arising out of any breach of warranty or misrepresentation affecting all or any part of the Property, or for damage or injury to, or defect in, or decrease in value of all or part of the Property or any interest in it;

(iii) all proceeds of any insurance policies payable because of loss sustained to all or part of the Property, whether or not such insurance policies are required by Beneficiary; and

(iv) all interest which may accrue on any of the foregoing.

(b) Trustor shall promptly notify Beneficiary in writing if:

(i) any damage occurs or any injury or loss is sustained to all or part of the Property, or any action or proceeding relating to any such damage, injury or loss is commenced; or

(ii) any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property.

To the extent that Trustor has the right to permit Beneficiary to do so, and if Beneficiary chooses to do so, Beneficiary may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on breach of warranty or misrepresentation, or for damage or injury to, defect in, or decrease in value of all or part of the Property, and it may make any compromise or settlement of the action or proceeding. Beneficiary, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Trustor in adjusting any loss covered by insurance; provided, that, if any casualty loss or condemnation loss with respect to the Property is equal to or less than \$1,000,000.00 (the “**Casualty/Condemnation Threshold**”), and provided no Event of Default exists, Trustor shall have the exclusive right to adjust, compromise, collect, settle and prosecute all such proceeds or awards without the consent of Beneficiary.

(c) All proceeds of the Claims assigned to Beneficiary under this Subsection shall be paid to Beneficiary; provided, that any proceeds which are less than the Casualty/Condemnation Threshold shall be paid directly to Trustor and may be applied by Trustor to restore and repair the Property or used to pay down the Loan, as determined in its discretion. Beneficiary shall apply the proceeds that are in excess of the Casualty/Condemnation Threshold first toward reimbursement of all of Beneficiary’s costs and expenses of recovering the proceeds, including attorneys’ fees. Trustor further authorizes Beneficiary, at Beneficiary’s option and in Beneficiary’s reasonable discretion, and regardless of whether there is any impairment of the Property, (i) to apply the balance of such proceeds, or any portion of them, to pay or prepay some or all of the Secured Obligations in such order or proportion as Beneficiary may determine, or (ii) to hold the balance of such proceeds, or any portion of them, in an interest-bearing account to be used for the cost of reconstruction, repair or alteration of the Property and released to Trustor on terms consistent with the Construction Loan Agreement, or (iii) to release the balance of such proceeds, or any portion of them, to Trustor. If any proceeds are released to Trustor, neither Beneficiary nor Trustee shall be obligated to see to, approve or supervise the proper application of such proceeds. If the proceeds are held by Beneficiary to be used to reimburse Trustor for the costs of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition, or such other condition as Beneficiary may reasonably approve in writing.

5.4 Insurance. Trustor shall provide and maintain in force at all times all risk property damage insurance (including without limitation windstorm coverage, and hurricane coverage as applicable) on the Property and such other type of insurance on the Property as required by the Construction Loan Agreement.

5.5 Maintenance and Preservation of Property.

(a) Trustor shall keep the Property in good condition and repair and shall not commit or allow physical waste of the Property; provided that Trustor may dispose of any worn-out, damaged, or obsolete personal property and, if commercially reasonable, as long as the same is promptly replaced with personal property that is the functional equivalent of the replaced property within such time as could not impair the operation of the Property. Trustor shall not remove or demolish the Property or any part of it, or alter, restore or add

to the Property, other than (i) the construction of the Improvements (as defined in the Construction Loan Agreement) or (ii) alterations with an expense of \$500,000.00 or less, or apply for, initiate, or consent to any additions to or changes in the status of any legal entitlements related to the Project including, without limitation, those evidenced by any comprehensive plan, zoning maps, zoning classification, use permit, variance, planned unit development mechanism, architectural or historical regulation, federal, state or local floodplain regulation or flood map status, or any approval otherwise related to the Plans or other Development Documents, or permit any such entitlements to lapse or become invalid, except with Beneficiary's express prior written consent in each instance.

(b) If all or part of the Property becomes damaged or destroyed, Trustor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices, provided that the insurance proceeds are made available to Trustor (but regardless of whether the insurance proceeds are sufficient, it being acknowledged that Trustor shall be responsible for any deficiency in insurance proceeds necessary for restoration).

(c) Trustor shall not commit or, to the extent in Trustor's legal control, allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, whether now existing or later to be enacted and whether foreseen or unforeseen, or any public or private covenant, condition, restriction or equitable servitude affecting the Property. Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Trustor on the Property or any part of it under this Deed of Trust.

(d) Trustor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

5.6 Releases, Extensions, Modifications and Additional Security. Without affecting the personal liability of any person, including Trustor, for the payment of the Secured Obligations or the lien of this Deed of Trust on the remainder of the Property for the unpaid amount of the Secured Obligations, Beneficiary and Trustee are respectively empowered as follows:

(a) Beneficiary may from time to time and without notice:

(i) release any person liable for payment of any Secured Obligation;

(ii) extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

(iii) accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or

(iv) alter, substitute or release any property securing the Secured Obligations.

(b) Trustee may perform any of the following acts when requested to do so by Beneficiary in writing:

- (i) consent to the making of any plat or map of the Property or any part of it;
- (ii) join in granting any easement or creating any restriction affecting the Property;
- (iii) join in any subordination or other agreement affecting this Deed of Trust or the lien of it; or
- (iv) reconvey the Property or any part of it without any warranty.

5.7 Reconveyance. When all of the Secured Obligations have been paid in full and no further commitment to extend credit continues, Trustee shall reconvey the Property, or so much of it as is then held under this Deed of Trust, without warranty to the person or persons legally entitled to it. In the reconveyance, the grantee may be described as "the person or persons legally entitled thereto," and the recitals of any matters or facts shall be conclusive proof of their truthfulness. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance.

5.8 Compensation and Reimbursement of Costs and Expenses.

(a) Trustor agrees to pay fees in the maximum amounts legally permitted or reasonable fees as may be charged by Beneficiary and Trustee when the law provides no maximum limit, for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including Beneficiary's providing a statement of the Secured Obligations or Trustee's rendering of services in connection with a reconveyance. Trustor shall also, to the extent legally permitted, pay or reimburse all of Beneficiary's and Trustee's actual, reasonable costs and expenses which may be incurred in rendering any such services.

(b) Trustor further agrees to pay or reimburse Beneficiary for all actual, reasonable costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee to protect or preserve the Property or to enforce any terms of this Deed of Trust, including the exercise of any rights or remedies afforded to Beneficiary or Trustee or both of them under Section 6.3, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including actual attorneys' fees and other legal costs, costs of any sale of the Property and any cost of evidence of title.

(c) Trustor shall pay all obligations arising under this Subsection within fifteen (15) days after written demand therefor by Trustee or Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Secured Obligations, and shall bear interest from the date the obligation arises at the rate provided in any instrument or agreement evidencing the Secured Obligations. If more than one rate of

interest is applicable to the Secured Obligations, the highest rate shall be used for purposes hereof.

5.9 Exculpation and Indemnification.

(a) Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following:

(i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to it in this Deed of Trust;

(ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust;

(iii) Beneficiary's failure to produce Rents from the Property or to perform any of the obligations of the lessor under any lease covering the Property;

(iv) any waste committed by lessees of the Property or any other parties, or any dangerous or defective condition of the Property, unless the waste is caused by the gross negligence or willful misconduct of Beneficiary; or

(v) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in operating or managing the Property upon exercise of the rights or remedies afforded Beneficiary under Section 6.3, unless the loss is caused by the gross negligence, willful misconduct or bad faith of Beneficiary.

Trustor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary.

(b) Trustor agrees to indemnify Trustee and Beneficiary against and hold them harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, actual attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which either may suffer or incur in performing any act required or permitted by this Deed of Trust or by law or because of any failure of Trustor to perform any of its obligations, in all events excluding any special, consequential, indirect and punitive damages, unless Beneficiary is required to pay same to any third party. This agreement by Trustor to indemnify Trustee and Beneficiary shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release and/or reconveyance of this Deed of Trust.

5.10 Defense and Notice of Claims and Actions. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing if any claim is asserted which does or could affect any of these matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.11 Substitution of Trustee. From time to time, Beneficiary may substitute a successor to any Trustee named in or acting under this Deed of Trust in any manner now or later to be provided at law, or by a written instrument executed and acknowledged by Beneficiary and recorded in the office of the recorder of the county where the Property is situated. Any such instrument shall be conclusive proof of the proper substitution of the successor Trustee, who shall automatically upon recordation of the instrument succeed to all estate, title, rights, powers and duties of the predecessor Trustee, without conveyance from it.

5.12 Representation and Warranty Regarding Hazardous Substances. Except as disclosed to Beneficiary in writing prior to the date of this Deed of Trust or in that certain Environmental Site Assessment - Phase I dated October 14, 2021, Project No. 219113, Trustor hereby represents and warrants to and covenants and agrees with Beneficiary as follows:

(a) The Property is not in direct or indirect violation of any Environmental Law (as defined in the Environmental Indemnity);

(b) No Hazardous Substances (as defined in the Environmental Indemnity) are located on or have been handled, generated, stored, processed or disposed of on or released or discharged from the Property (including underground contamination) except for those substances used by Trustor or its predecessors in title in the ordinary course of its business and in compliance with all Environmental Laws;

(c) Trustor has received no written notice, nor has any actual knowledge, that the Property is subject to any private or governmental lien or judicial or administrative notice or action relating to Hazardous Substances;

(d) There are no existing or closed underground storage tanks or other underground storage receptacles for Hazardous Substances on the Property;

(e) Trustor has received no written notice of, and to Trustor's knowledge, there exists no investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could reasonably be expected to result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property nor do Indemnitors know of any basis for such a claim; and

(f) Trustor has received no written notice that, and to Trustor's knowledge, there has been no claim by any party that, any use, operation or condition of the Property has caused any nuisance or any other liability or adverse condition on any other property nor does Trustor know of any basis for such a claim.

5.13 Inspections. Upon the request of Beneficiary, at any time and from time to time after the occurrence of an Event of Default under the Loan Documents or at such other time as Beneficiary has reasonable grounds to believe that Hazardous Substances are or have been released, stored or disposed of on or around the Property in violation of Environmental Laws or that the Property may otherwise be in violation of the Environmental Laws, Trustor shall provide, at Trustor's sole expense, an inspection or audit of the Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant reasonably approved by Beneficiary

indicating the presence or absence of Hazardous Substances on the Property or an inspection or audit of the improvements located on the Property prepared by an engineering or consulting firm reasonably approved by Beneficiary indicating the presence or absence of friable asbestos or substances containing asbestos on the Property. If Trustor fails to provide such inspection or audit within thirty (30) days after such request, without waiving any other rights or remedies of Beneficiary by reason of Trustor's failure to do so, Beneficiary may order the same, and Trustor hereby grants to Beneficiary and Beneficiary's agents and employees access to the Property and an irrevocable license to undertake such inspection or audit. The cost of such inspection or audit shall be paid by Trustor within fifteen (15) days after written notice from Beneficiary.

6. ACCELERATING TRANSFERS, DEFAULT AND REMEDIES.

6.1 Accelerating Transfers.

(a) *"Accelerating Transfer"* means any sale, contract to sell, conveyance, encumbrance, or other transfer, whether voluntary, involuntary, by operation of law or otherwise, of all or any material part of the Property or any interest in it, including any transfer or exercise of any right to drill for or to extract any water (other than for Trustor's own use), oil, gas or other hydrocarbon substances or any mineral of any kind on or under the surface of the Property. "Accelerating Transfer" also means withdrawal or removal of any managing member, termination of the limited liability company or any transfer or transfers of the ownership of the economic interest in the Trustor. Notwithstanding the foregoing to the contrary, the following shall not constitute an Accelerating Transfer (i) the lease of the property in the ordinary course of Trustor's business, and (ii) any Permitted Transfer.

(b) Trustor agrees that Trustor shall not make any Accelerating Transfer, other than Permitted Encumbrances and as otherwise permitted under the Construction Loan Agreement, unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and transferee. Beneficiary may withhold such consent in its sole discretion. If any Accelerating Transfer occurs which is not permitted under this Section 6.1, Beneficiary in its sole discretion may declare all of the Secured Obligations to be immediately due and payable, and Beneficiary and Trustee may invoke any rights and remedies provided by Section 6.3 of this Deed of Trust.

6.2 Events of Default. *"Event of Default"* has the meaning set forth in the Construction Loan Agreement.

6.3 Remedies. At any time after the occurrence and during the continuance of an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below, as well as any other rights and remedies authorized by law. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.

(b) Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

(c) Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and in its own name or in the name of Trustor sue for or otherwise collect any and all Rents, including those that are past due, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: entering into, enforcing, modifying, or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; completing any unfinished construction; contracting for and making repairs and alterations; performing such acts of cultivation or irrigation as necessary to conserve the value of the Property; and preparing for harvest, harvesting and selling any crops that may be growing on the property. Trustor hereby irrevocably constitutes and appoints Beneficiary as its attorney in fact, while an Event of Default exists, to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments. Trustor agrees to deliver to Beneficiary all books and records pertaining to the Property, including computer-readable memory and any computer hardware or software necessary to access or process such memory, as may reasonably be requested by Beneficiary in order to enable Beneficiary to exercise its rights under this Section.

(d) Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among the parties to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under this Deed of Trust; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted hereunder either with or without giving notice to any person.

(e) Beneficiary may bring an action in any court of competent jurisdiction to foreclose this instrument or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

(f) Beneficiary may cause the Property which consists solely of real property to be sold by Trustee as permitted by applicable law. Before any such trustee's sale, Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by law. When all time periods then legally mandated have expired, and after such

notice of sale as may then be legally required has been given, Trustee shall sell the Property, either as a whole or in separate parcels, and in such order as Trustee may determine, at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Beneficiary shall have any obligation to make demand on Trustor before any trustee's sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Beneficiary's request shall, postpone any trustee's sale by public announcement at the time and place noticed for that sale. At any trustee's sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States. Any person, including Trustor, Trustee or Beneficiary, may purchase at the trustee's sale. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any trustee's sale, shall be conclusive proof of their truthfulness. Any such deed shall be conclusive against all persons as to the facts recited in it.

(g) Beneficiary may proceed under the Uniform Commercial Code as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. When all time periods then legally mandated have expired, and after such notice of sale as may then be legally required has been given, Trustee may sell the Personalty at a public sale to be held at the time and place specified in the notice of sale. It shall be deemed commercially reasonable for the Trustee to dispose of the Personalty without giving any warranties as to the Personalty and specifically disclaiming all disposition warranties. Alternatively, Beneficiary may choose to dispose of some or all of the Property, in any combination consisting of both personal property and real property, in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by Article 9 of the Uniform Commercial Code. Trustor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property.

6.4 Application of Sale Proceeds and Rents.

(a) Beneficiary and Trustee shall apply the proceeds of any sale of the Property in the following manner: first, to pay, to the extent permitted by applicable law, the portion of the Secured Obligations attributable to the costs, fees and expenses of the sale, including costs of evidence of title in connection with the sale; and, second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose. The remainder, if any, shall be remitted to the person or persons entitled thereto.

(b) Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of any sale of the Property which Beneficiary may receive or collect under Section 6.3, in the following manner: first, to pay, to the extent permitted by applicable law, the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Trustee, Beneficiary or any receiver; and, second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose. The remainder, if any, shall be remitted to

the person or persons entitled thereto. Beneficiary shall have no liability for any funds which it does not actually receive.

7. MISCELLANEOUS PROVISIONS.

7.1 No Waiver or Cure.

(a) Each waiver by Beneficiary or Trustee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not cure or waive any breach, Event of Default or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed); or impair the security of this Deed of Trust; or prejudice Beneficiary, Trustee or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust:

(i) Beneficiary, its agent or a receiver takes possession of all or any part of the Property;

(ii) Beneficiary collects and applies Rents, either with or without taking possession of all or any part of the Property;

(iii) Beneficiary receives and applies to any Secured Obligation proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under this Deed of Trust;

(iv) Beneficiary makes a site visit, observes the Property and/or conducts tests thereon;

(v) Beneficiary receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations;

(vi) Beneficiary, Trustee or any receiver performs any act which it is empowered or authorized to perform under this Deed of Trust or invokes any right or remedy provided under this Deed of Trust.

7.2 Powers of Beneficiary and Trustee.

(a) Trustee shall have no obligation to perform any act which it is empowered to perform under this Deed of Trust unless it is requested to do so in writing and is reasonably indemnified against loss, cost, liability and expense.

(b) Beneficiary may take any of the actions permitted under Subsections 6.3(b) and/or 6.3(c) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

(c) From time to time, Beneficiary or Trustee may apply to any court of competent jurisdiction for aid and direction in executing the trust and enforcing the rights and remedies created under this Deed of Trust. Beneficiary or Trustee may from time to time obtain orders or decrees directing, confirming or approving acts in executing this trust and enforcing these rights and remedies.

7.3 Intentionally Deleted.

7.4 Merger. No merger is intended to occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Property unless Beneficiary consents to a merger in writing.

7.5 Joint and Several Liability. If Trustor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

7.6 Applicable Law. This Security Instrument shall be governed by and in accordance with the internal laws of the State of Utah.

7.7 Successors in Interest. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section does not waive the provisions of Section 6.1.

7.8 Jury Waiver. The terms and provisions of Article 11.20 of the Construction Loan Agreement are hereby incorporated herein by reference.

7.9 Interpretation. Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions. No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Deed of Trust. The Exhibits to this Deed of Trust are hereby incorporated in this Deed of Trust.

7.10 Waiver of Marshaling. Notwithstanding the existence of any other security interests in the Property held by Beneficiary or by any other party, Beneficiary shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Beneficiary shall have the right to determine the order in which any or all portions of the Indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

7.11 Severability. If any provision of this Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

7.12 Notices. Trustor hereby requests that a copy of notice of default and notice of sale be mailed to it at the address set forth below. That address is also the mailing address of Trustor as debtor under the Uniform Commercial Code. Beneficiary's address given below is the address for Beneficiary as secured party under the Uniform Commercial Code. Trustor may, from time to time, change the address to which notice of default and sale hereunder shall be sent by both filing a request therefor and sending a copy of such request to Beneficiary in accordance with the notice provisions of the Construction Loan Agreement.

Addresses for Notices to Trustor:	Elevate Apartments at 620, LLC 11650 South State Street, Suite 300 Draper, Utah 84020 Attn: General Counsel
With a copy to:	Parr Brown Gee & Loveless 101 South 200 East, Suite 700 Salt Lake City, Utah 84111 Attn: Lamont R. Richardson Email: lrichardson@parrbrown.com
Address for Notices to Beneficiary:	PNC Bank, National Association 2801 East Camelback Road Phoenix, AZ 85016 Attn: Chad Mantei, Senior Vice President
With a copy to:	Perkins Coie LLP 2901 N. Central Avenue, Suite 2000 Phoenix, AZ 85012 Attention: Liana W. Spendlove Email: lspendlove@perkinscoie.com

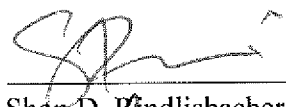
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IN WITNESS WHEREOF, this Deed of Trust has been executed by Trustor and is effective as of the date first above written.

TRUSTOR:

**ELEVATE APARTMENTS AT 620,
LLC,**
a Utah limited liability company

By: OZ AF East, a Utah limited liability
company,
Its Manager

By:  _____

Name: Shon D. Rindlisbacher

Title: Manager

By:  _____

Name: Greg D. Rindlisbacher

Title: Manager

[notary acknowledgement to follow on next page]

ACKNOWLEDGMENT

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.

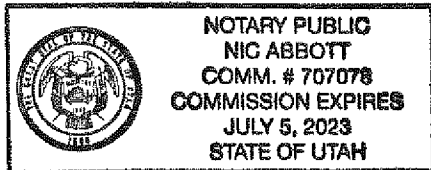
State of Utah)
) ss.
 County of SALT LAKE)

On MARCH 14, 2022, before me, NIC ABBOTT, a Notary Public, personally appeared STON RINDLJBACKER, mgr of OZAR East, LLC, who proved to me 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. mgr of Elevate Apartments at 620, LLC

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

WITNESS my hand and official seal.

[Affix seal here]



Nic Abbott
 Signature of Notary Public

ACKNOWLEDGMENT

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.

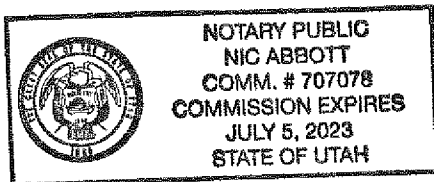
State of Utah)
) ss.
 County of SALT LAKE)

On MARCH 14, 2022, before me, NIC ABBOTT
 Notary Public, personally appeared DREW RINDLISBACHER, mgr of 02 AF LLC, mgr of Elevate Apartments at 620, LLC
 who proved to me 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.

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

WITNESS my hand and official seal.

[Affix seal here]



Nic Abbott
 Signature of Notary Public

EXHIBIT A TO DEED OF TRUSTDescription of Property

The land referred to in this commitment is situated in the County of Utah, State of Utah, and described as follows:

Parcel 1:

Beginning at a point that is located on a boundary and represented by a survey Surveying Associates, on file within Utah County Survey records as File # 91-65, which point is located North 89° 35' 45" West 1326.32 feet along section line and North 60.73 feet from the Southeast corner of Section 24, Township 5 South, Range 1 East, Salt Lake Base and Meridian (Said corner is retraced via Witness monument and county survey records. Basis of bearing is the NAD 83 State Plane Coordinate - System, Central Zone); thence along said survey boundary South 82°14'24" West a distance of 89.20 feet, thence North 89°26'51" West whose course is also is along the Utah Valley Business Park Plat "L" Subdivision a distance of 588.50 feet, thence North 89°47'54" West along said Utah Valley Business Park Plat "F" a distance of 150.04 feet, thence North 00°26'49" East along said Utah Valley Business Park Plat "F" a distance of 44.96 feet, thence to and along the Easterly Bounds of Harrington Hollow Amended Subdivision, the following 2 courses: North 00°47'06" East a distance of 143.49 feet, thence North 00°29'08" East a distance of 343.65 feet to the bounds of a R.O.W. known as 620 South Street of the Vest Road Dedication via Dedication Plat of Utah County Recorder's Office, thence South 88°56'00" East a distance of 604.99 feet to the beginning of a curve, said curve bears to the right through an angle of 08°30'17", having a radius of 1200.00 feet along the arc distance of 178.12, and whose long chord bears South 84°40'52" East a distance of 177.96 feet, thence South 80°25'43" East a distance of 122.13 feet, leaving said R.O.W. thence South 09°35'42" West a distance of 484.96 feet to the point of beginning.

Parcel 2:

A non-exclusive perpetual access easement for Storm Water Facilities as disclosed by that certain Storm Drainage Easement recorded September 29, 2020 as Entry No. 149949:2020 of Official Records.