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RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
JOHN R BARLOW
MITCHELL BARLOW & MANSFIELD, P
NINE EXCHANGE PLACE STE 600
SALT LAKE CITY UT 84111
BY: EAP, DEPUTY - WI 8 P.

When recorded, return to:

John R. Barlow
Mitchell Barlow & Mansfield
Nine Exchange Place, Suite 600
Salt Lake City, Utah 84111

Affecting Parcel No. 15122760300000

(space above for Recorders use only)

CONSTRUCTION AND MAINTENANCE EASEMENT

THIS CONSTRUCTION AND MAINTENANCE EASEMENT AGREEMENT (this "Agreement") is made and executed this 11 day of ^{March}~~February~~, 2019 (the "Effective Date"), by and between Eden Real Properties, LLC, a Utah Limited Liability Company ("Grantor"), and OZ2 Opportunity Fund, LLC, a Utah Limited Liability Company, ("Grantee"). Grantor and Grantees are sometimes referred to herein individually as "Party" and collectively as "Parties."

RECITALS

- A. Grantor owns certain real property ("Grantor Property") located in Salt Lake County, Utah, as more particularly described on Exhibit A, attached hereto and incorporated herein by this reference.
- B. Grantee desires to obtain an easement on, over, across and through a portion of the Grantor Property for construction and maintenance of buildings on parcels to the south and north of Grantor's property all as more particularly described herein.
- C. Grantor is willing to grant the easement to Grantees for such purposes, subject to the terms and conditions set forth herein.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of Easement. Grantor hereby conveys to Grantee a temporary, non-exclusive easement (the "Easement") on, over, across and through portions of the Grantor Property, as more particularly described on Exhibit B, (the "Easement Area") attached hereto and incorporated herein by this reference, for the purpose of developing and constructing apartment buildings (the "Improvements") on the properties described on Exhibit C (the "Benefitted Properties"), attached hereto and incorporated herein by this reference, and

thereafter for access to and on the Easement Area for the purpose of maintaining, operating, repairing, and replacing the Improvements. The Easement Area includes all of Grantor Property up to existing structures thereon. In the event of any conflict between the preceding sentence and the legal description of the Easement Area in **Exhibit B** hereto, the description in the preceding sentence shall govern.

2. **Access.** Grantee and its agents, servants, employees, consultants, contractors and subcontractors (collectively, "**Grantee's Agents**") shall have the right to enter upon the Easement Area for the purposes permitted by this Agreement. Grantee shall coordinate its activities in the Easement Area with Grantor so as to minimize disruption to Grantor's uses of its property. Unless otherwise coordinated with Grantor, Grantee will limit its loud work within the Easement Area to start no earlier than 8:00 a.m. and end no later than 6:00 p.m., prevailing Mountain Time. This work limitation, however, does not apply to Grantor's work within the Benefitted Properties. Unless otherwise specifically coordinated with Grantor, Grantee and Grantee's Agents will not block or hinder any vehicles on Grantor's property. Further, Grantee covenants that it will provide Grantor a temporary parking space for each current parking space used by Grantor that may be blocked or otherwise rendered nonfunctioning by construction of the Improvements. Any such temporary parking space(s) will be located within no more than 200 feet of the blocked or otherwise rendered nonfunctioning parking space(s).

3. **Payment.** Grantee shall pay Grantor One Thousand and No/100 Dollars (\$1,000.00) per month (the "**Payment**") during any month in which Grantee or Grantee's Agents access the Easement Area for construction of the Improvements. Payment shall be pro-rated for any partial month(s) in which Grantee or Grantee's Agents access the Easement Area for construction of the Improvements. For the avoidance of doubt, Payment shall be made for only those months during (i) initial construction of the Improvements (estimated to be 12 months, beginning in April 2019), and (ii) actual access of the Easement Area by Grantee or Grantee's Agents, and shall not be made for any time (y) during construction of the initial Improvements if Grantee and Grantee's Agents are not accessing the Easement Area, or (z) in the future during which Grantee or Grantee's Agents may maintain, operate, repair, or replace the Improvements following their initial construction.

4. **Restoration.** Grantee will repair any damage to the Grantor Property and Grantor's improvements located thereon caused by such Grantee or Grantee's Agents and will restore the Grantor Property and any improvements thereon to the same or better condition as they existed prior to Grantee, or Grantee's Agent's, entry onto Grantor's Property.

5. **Reservation by Grantor.** Grantor hereby reserves the right to use the Easement Area for any use not inconsistent with Grantee's permitted use of the Easement Area.

6. **Compliance with Laws.** Grantee will comply with all present or future laws, statutes, codes, acts, ordinances, rules, regulations, orders, judgments, decrees, injunctions, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, including, without limitation, any building, zoning and land use laws.

7. Liens. Grantee will keep the Easement Area free from any liens arising out of any use of, or obligations incurred by, through, for or under such Grantee, and Grantee will indemnify, hold harmless and agree to defend Grantor from any liens that may be placed on the Easement Area and/or the property pertaining to any use of, or obligations incurred by, through, for, or under such Grantee or any of Grantee's Agents. Any such liens must be released of record within thirty (30) days.

8. Insurance. Grantee shall obtain and maintain a policy of commercial general liability insurance sufficient to insure its interests against claims for personal injury, bodily injury, death, and property damage occurring on, in or about the Grantor Property. Grantor shall be named as an additional insured on each such policy. Grantee shall provide Grantor with proof of such insurance prior to exercising its rights under this Agreement.

9. Miscellaneous.

9.1. Interpretation. Section titles and captions to this Agreement are for convenience only and shall not be deemed part of this Agreement and in no way define, limit, augment, extend, or describe the scope, content, or intent of any part of this Agreement. This Agreement has been arrived at through negotiation between Grantor and Grantee.

9.2. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah.

9.3. Waiver. No failure by any Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any rights or remedy for a breach of this Agreement will constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement, term, or condition.

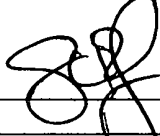
9.4. Rights and Remedies. The rights and remedies of any of the Parties are not intended to be exclusive, and the exercise of one or more of the provisions of this Agreement does not preclude the exercise of any other provisions. Each Party confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder may be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or will limit or affect any rights at law or by statute or otherwise of any Party aggrieved as against the other Party for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the agreement of the Parties that the respective rights and obligations of the Parties hereunder will be enforceable in equity as well as at law or otherwise.

9.5. Enforceability and Litigation Expenses. If any action, suit, or proceeding is brought by a Party hereto with respect to a matter or matters covered by this Agreement or if a Party finds it necessary to retain an attorney to enforce its rights under this Agreement, all costs and expenses of the prevailing Party incident to such proceeding or retention, including reasonable attorneys' fees, will be paid by the non-prevailing Party.

9.6. Authorization. Each individual executing this Agreement represents and warrants that he/she is authorized to do so either as an agent of the governing body of the Party for which he/she signs or in his/her individual capacity, and delivers this Agreement in such

GRANTEE:

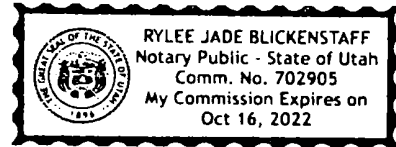
OZ2 OPPORTUNITY FUND, LLC
A Utah Limited Liability Company,

By: 
Name: STEVE RUF
Title: MANAGER

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On this 10 day of March, 2019 personally appeared before me Steven R. Ruf, personally known to me to be authorized of OZ2 OPPORTUNITY FUND, LLC, a Utah Limited Liability Company, who acknowledged before me that he/she signed the foregoing instrument as authorized for the OZ2 OPPORTUNITY FUND, LLC, and stated that he/she was authorized to execute said instrument on behalf of said limited liability company and that the company executed the same.

WITNESS my hand and official seal.





Notary Public for Utah

EXHIBIT A

(Legal Description of Grantor Property)

The following real property located in Salt Lake City, Salt Lake County, Utah:

Parcel municipally described as 852 South West Temple, Salt Lake City, Utah 84108; The north half of Lot 36 and south 32 feet of Lot 35, Block 1, Walkers Sub of Block 6 Plat A Salt Lake City Survey. Parcel no. 15122760300000.

EXHIBIT B

(Legal Description of the Construction and Maintenance Easement Area)

Construction and Maintenance Easement Description

The following real property located in Salt Lake City, Salt Lake County, Utah:

All of the area up to existing structures and improvements on the lot municipally described as 852 South West Temple, Salt Lake City, Utah 84108; more particularly described as the north half of Lot 36 and south 32 feet of Lot 35, Block 1, Walkers Sub of Block 6 Plat A Salt Lake City Survey. Parcel no. 15122760300000.

EXHIBIT C

(Legal Description of the Benefitted Property)

Benefitted Property Description

The following real property located in Salt Lake City, Salt Lake County, Utah:

Parcel municipally described as 856 South West Temple, Salt Lake City, Utah 84108; more particularly described as the south half of Lot 36 and north half of Lot 37, Block 1, Walkers Sub of Block 6 Plat A Salt Lake City Survey. Parcel no. 15122760310000

and

Parcel municipally described as 850 South West Temple, Salt Lake City, Utah 84108; more particularly described as all of Lot 34 and north one foot of Lot 35, Block 1, Walkers Sub of Block 6 Plat A Salt Lake City Survey. Parcel no. 15122760290000