
Return Document to:

Stratford Apartments 169, LLLP
440 South 500 East
Salt Lake City, Utah 84102
Attn: Shawn McMillen
Parcel No. 16-06-110-001 & 16-06-107-038
CT-158150-MCM

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

This Temporary Construction Easement Agreement (the "Agreement") is made as of [March 26], 2024 (the "Effective Date"), by and between Liberty Crest Associates, LLC, a Utah limited liability company (the "Landowner"), and Stratford Apartments 169, LLLP, a Utah limited liability limited partnership, and its successors and assigns (such entity and its successors and assigns are collectively referred to as the "Partnership") (the Landowner and the Partnership are each an "Owner" and together, the "Owners").

RECITALS

WHEREAS, the Landowner is the fee owner of that certain real property located in the City of Salt Lake, Utah, legally described on Exhibit A attached hereto (the "Landowner's Property"), and the Partnership is the fee owner of that certain real property located in the City of Salt Lake, Utah, legally described on Exhibit B attached hereto (the "Partnership's Property");

WHEREAS, the Partnership intends to develop certain improvements on the Partnership's Property, including the development of a 46-unit permanent supportive housing development (the "Project");

WHEREAS, in connection with the construction and development of the Project, such construction and development thereof will require the use of scaffolding and stairs as a construction access point on and above the Landowner's Property (the "Construction Improvements"); and

WHEREAS, the parties desire to enter into this Agreement for the purposes of granting to the Partnership a temporary, non-exclusive easement for the Construction Improvements.

NOW, THEREFORE, for the consideration of the Recitals, which are hereby made a part hereof, and of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Grant.** For the period beginning on the Effective Date and terminating upon the earlier to occur of (i) the receipt of a Certificate of Occupancy for the Project, or (ii) 24 months from the Effective Date, the Landowner hereby grants, sells and conveys unto the Partnership, for use by the Partnership and its agents, employees, tenants, designees, contractors, guests, invitees, successors and assigns, and all those acting by or on behalf of it (collectively, the "Permitted Users"), a temporary and non-exclusive easement (the "Easement") for the purpose of accessing, surveying, establishing, laying, constructing, reconstructing, installing, realigning, modifying, replacing, improving, substituting, inspecting, maintaining, and repairing the Construction Improvements in, over, across, and along the Landowner's Property in the locations shown on **Exhibit C** attached hereto and incorporated by reference herein. The Partnership acknowledges that in no event shall the Partnership access or enter the Landowner's Property prior to the Effective Date.
2. **Location.** **Exhibit C** shows the location of the Easement (the "Easement Area"). The Partnership shall have the right to select the exact location of the Easement and the Construction Improvements within the Easement Area, provided that such selection shall be subject to the prior written approval of the Landowner, which shall not be unreasonably withheld, conditioned, or delayed. The parties acknowledge that **Exhibit C** may be in preliminary form, whether as sketches or surveys or otherwise. Upon the request of the Partnership, the Landowner agrees to cooperate with the Partnership and to execute and deliver to the Partnership any additional documents, including an amendment to this Agreement, for the purpose of correcting the legal description or location of the Easement or making such other modifications requested by the Partnership to accomplish the purposes of this Agreement, provided, all such amendments and modification have been previously approved in writing by the Landowner. The Partnership shall provide the Landowner with a copy of the recorded affidavit, amendment or re-recorded Agreement.
3. **Restoration.** After it has exercised its rights to use the Easement in any manner that disturbs the surface of the Easement, the Partnership will, in accordance with the rights granted under this Agreement, restore the ground disturbed by the Partnership's use of the Easement to the condition in which it existed immediately prior to Partnership's exercise of its rights within the Landowner's Property.
4. **Obstructions.** Except as allowed in the Easement granted herein, neither the Landowner nor the Partnership or their respective successors or assigns, shall construct, install, or place any barrier, curbing, fence or obstruction, including landscaping, on any portion of the Easement Area so as to obstruct the use and enjoyment of the Easement and the Easement Area, including, but not limited to, access to the transformers and electrical equipment located in the Easement Area, by either party as contemplated by this Agreement.
5. **Default; Remedies.** The Parties agree that the provisions of this Agreement shall be enforced as follows or under any remedies available at law and in equity:

- a. Failure to perform any obligations under this Agreement, which default is not cured within thirty (30) days after the giving of written notice from the other Party to the defaulting Party, then the other Party shall have the right, exercisable by delivering written notice to the defaulting Party to cure such default, and the right to be promptly reimbursed for any costs incurred to cure such default. If any reimbursement due hereunder is not made within thirty (30) days of demand therefore, interest shall accrue on all sums due at the highest lawful rate until paid. In the event any Party must engage the services of an attorney or other professional in order to collect any sums due, the defaulting Party shall be liable for reimbursement of all attorneys' fees, court costs and other professional fees incurred, whether or not legal proceedings are commenced.
 - b. In the event of any violation or threatened violation by any Party of any of the provisions of this Agreement, in addition to the right to collect damages and exercise the right to self-help, each Party shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, five (5) business days advance written notice of the violation shall be given to the Party claimed to have committed such violation, provided that no such advance notice shall be necessary in the case of emergency.
6. **Compliance with Laws.** With respect to the Partnership's respective use, enjoyment and exercise of any rights or obligations hereunder, the Partnership will comply with all Governmental Requirements of all Governmental Authorities. For purposes of this Section, the term (i) "Governmental Requirements" shall mean: all applicable laws, statutes, ordinances, codes, rules, regulations, orders, resolutions and applicable judicial decisions or decrees, as presently existing and hereafter amended, of any Governmental Authorities, and (ii) "Governmental Authorities" shall mean any federal, state, county, city or local governmental or quasi-governmental authority, entity or body (or any departmental agency thereof) exercising jurisdiction over a particular subject matter.
7. **Indemnification.**
- a. **Indemnification by Partnership.** The Partnership, for itself and for and on behalf of its successors, assigns and permittees, covenants and agrees, at its sole cost and expense, to indemnify, protect, and hold harmless the Landowner, and its successors, assigns and permittees (each a "Landowner Indemnified Person") from and against any and all claims, liens, damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys' and experts' fees and disbursements actually incurred) which may at any time be imposed upon, incurred by, or asserted or awarded against the Landowner Indemnified Person and arising directly from or out of or in connection with the Partnership's or its Permitted Users' use of the Easement, the Easement Area and other rights granted or assigned to the Partnership herein, including but not limited to: (a) any mechanic's or materialman's lien or other lien against the Landowner's Property as a result of the

Partnership's or permittees use, (b) accidents, injuries, loss or damage of or to any person or property, whether arising from the negligent, intentional or willful acts or omissions of the Partnership or its permittees or otherwise, (c) the performance of any construction, maintenance, replacement, repair, restoration or other work on the Easement Area or the Landowner's Property; and (d) the failure of the Partnership to comply fully with the terms and conditions of this Agreement. Notwithstanding the foregoing, the Landowner is not indemnified or held harmless from matter arising as the result of the Landowner's gross negligence or willful misconduct. This Section shall survive termination of this Agreement.

- b. Indemnification by Landowner. The Landowner, for itself and for and on behalf of its successors, assigns and permittees, covenants and agrees, at its sole cost and expense, to indemnify, protect, and hold harmless the Partnership, and its successors, assigns and permittees (each a "Partnership Indemnified Person") from and against any and all claims, liens, damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements, or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys' and experts' fees and disbursements actually incurred) which may at any time be imposed upon, incurred by, or asserted or awarded against the Partnership Indemnified Person and arising directly from or out of or in connection with the Landowner's or its permittees' use of the Easement, the Easement Area and other rights granted or assigned to the Landowner herein, including but not limited to: (a) any mechanic's or materialman's lien or other lien against the Partnership's Property as a result of the Landowner's or permittees use, (b) accidents, injuries, loss or damage of or to any person or property, whether arising from the negligent, intentional or willful acts or omissions of the Landowner or its permittees or otherwise, (c) the performance of any construction, maintenance, replacement, repair, restoration or other work on the Easement Area or the Partnership's Property; and (d) the failure of the Landowner to comply fully with the terms and conditions of this Agreement. Notwithstanding the foregoing, the Partnership is not indemnified or held harmless from matter arising as the result of the Partnership's gross negligence or willful misconduct. This Section shall survive termination of this Agreement.

8. Insurance. Each Owner shall, during the entire term this Agreement is in effect, procure, maintain and keep in full force and effect commercial general liability insurance with a combined single limit for bodily injury (including death), personal injury, and property damage of at least One Million Dollars and NO/100 (\$1,000,000.00) per occurrence with an aggregate limit of not less than Two Million Dollars and NO/100 (\$2,000,000.00) insuring against all liability that arises out of any of the matters covered by this Agreement, including, but not limited to: the use of the Easement Area, Easement, and the installation, construction, maintenance, repair, modification, replacement, operation, and use of the Construction Improvements. Such insurance policy shall name the other Owner as an additional insured. Upon request, each Owner shall provide the other Owner with certificates evidencing such insurance coverage upon execution of this Agreement. Further, no Owner shall assign or delegate any of its rights hereunder or permit any contractor, subcontractor or materialman to enter upon the Easement Area for any purpose

unless such person or entity is duly licensed, bonded and insured to the extent set forth herein. Each Owner shall maintain evidence of its compliance with this provision and shall provide such evidence to the other Owner upon written request.

9. **Covenants to Run with Land.** The Partnership shall have the right to sell, assign, apportion, or lease this Agreement, as amended from time to time, and the Easement granted under it, in whole or in part, to one or more parties, with prior written consent of the Landowner, and the Partnership shall be released from its obligations under this Agreement to the extent of such sale, assignment, apportionment, or lease, provided that any such purchaser, assignee, apportionee, or lessee assumes the Partnership's obligations pursuant to an assumption agreement approved by the Landowner prior to such purchase, assignment, apportion, or lease. The Landowner and the Partnership hereby agree that the Easement set forth herein shall run with the land and be binding on all parties having any right, title or interest to the Landowner's Property and the Partnership's Property, their heirs, successors, and assigns.
10. **Landowner's Interest.** The Landowner, for itself, its heirs, successors, and assigns, represents, warrants, and covenants that it is the sole true and lawful owner(s) of the Landowner's Property and has full right and power to grant and convey the Easement. The Landowner relinquishes, releases and waives all rights of dower, homestead and distributive shares in and to the Easement.
11. **Reserved.**
12. **Company Liens.** If a mechanics lien is filed against Landowner's Property as a result of the action or inaction of the Partnership, the Partnership shall remove the lien of record by the payment or by bonding with a surety company authorized to do business in the State of Utah, within ten (10) days from the date of the filing of said mechanic's or other lien. Should the Partnership fail to take the foregoing steps within said ten (10) day period, then Landowner shall have the right, among other things, to pay said lien without inquiring into the validity thereof, and the Partnership shall immediately reimburse Landowner for the total expense incurred by it in discharging said lien. Landowner shall have the right to post and maintain on Landowner's Property, notices of non-responsibility under the laws of the State of Utah.
13. **Property of Partnership.** Notwithstanding any rule of law or equity, unless otherwise sold, bartered or conveyed to another party, the Construction Improvements and System Improvements shall at all times remain the property of the Partnership.
14. **Estoppel Certificates.** Each party shall, from time to time, within twenty (20) days after a written request from the other party, execute, acknowledge and deliver to the requesting party, a certificate stating (i) that this Agreement is unmodified and in full force and effect, or, if modified, identifying the modification agreement(s); (ii) whether there is any existing default hereunder by any other party and, if so, specifying the nature and extent thereof; (iii) the nature and extent of any claims or defenses then being asserted or otherwise known by the party executing the certificate; (iv) whether the party executing the certificate has given or received any notice making a demand or claim hereunder which has not been

resolved; and (v) such other matters as may be reasonably requested with respect to the rights and obligations of the party under this Agreement.

15. **Miscellaneous.**

- a. In the event of litigation between the parties in connection with this Agreement, the prevailing party (i.e., the party whose position is substantially upheld) shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. The obligation in the immediately preceding sentence shall survive any termination of this Agreement.
- b. All notices given or permitted to be given under this Agreement shall be in writing. Notice is considered given either (i) when delivered in person to the recipient named above, (ii) two (2) business days after deposit in the United States mail in a sealed envelope or container, postal charges prepaid, return receipt requested or certified mail at the following respective addresses, or (iii) one (1) business day after deposit with an overnight courier service addressed to the parties at the following respective addresses:

If to the Landowner: Liberty Crest Associates, LLC
6440 Wasatch Boulevard East
Holladay, Utah 84121
Attn: [LYNN DIAL]

With a copy to: []
[]
[]
Attn: []

If to the Partnership: Stratford Apartments 169, LLLP
440 South 500 East
Salt Lake City, Utah 84102
Attn: Shawn McMillen

With a copy to: Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402
Attn: Robert P. Singleton

Either party may, by notice given at any time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both.

- c. This Agreement and the Easement granted under it shall be interpreted in accordance with the laws of the State of Utah and all applicable federal laws. All actions or proceedings with respect to this Agreement shall be instituted only in state or federal court of the state Utah, and the Landowner consents to the jurisdiction of or venue in such courts.

- d. The Partnership and the Landowner may exercise all or any of its rights in this Agreement at any time, and the Partnership's or the Landowner's non-use or limited use of any such rights shall not constitute forfeiture of or otherwise limit any such rights.
- e. The waiver or failure to enforce any provision of this Agreement by either the Landowner or the Partnership or the waiver of a breach or violation of any provision of this Agreement by either party shall not operate as or be construed as a waiver of any subsequent breach, or waiver or failure to enforce, of any provision of this Agreement.
- f. This Agreement may be signed in counterparts and all such counterparts shall be deemed as originals and binding upon each party executing any counterpart and upon its respective heirs, devisees, representatives, successors and assigns. The Partnership's payment of consideration for this Agreement is evidence of the Partnership's acceptance of the Agreement. This Agreement, or a memorandum giving notice of this Agreement, and exhibits, shall be recorded in the real estate records of the county or counties where the Landowner's Property lies by the Partnership immediately upon execution.
- g. This Agreement, including all exhibits, addendums and amendments to the Agreement, and any payment or damage calculation sheets provided to Landowner and any other documents signed contemporaneously with this Agreement, contain the entire agreement between the parties and there are not any other representations or statements, verbal or written that have been made modifying, adding to, or changing the terms of this Agreement. This Agreement, shall not be abrogated, modified, rescinded, or amended in whole or in part without the written consent of the Landowner and the Partnership, in writing and executed by each of them.
- h. If any provision of this Agreement is invalid under any applicable statute or is declared invalid by a court of competent jurisdiction, then that provision shall be deemed to be severed from this Agreement and the remainder of this Agreement shall continue in full force and effect and shall be construed to the furthest extent legally possible so as to accomplish the purposes set forth in this Agreement.

Signature page(s) follows

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

LANDOWNER:

LIBERTY CREST ASSOCIATES, LLC,
a Utah limited liability company

By its Manager: Cowboy PARTNERS, LC

By: [Signature]

Name: LEE DIAL

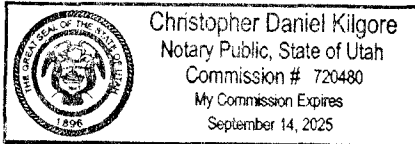
Title: EXECUTIVE VICE PRESIDENT

ACKNOWLEDGMENT

STATE OF UTAH)
)ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 22 day of March, 2024, by Cowboy Partners, the Manager of Liberty Crest Associates, LLC, a Utah limited liability company, for and on behalf of said limited liability company.

*Lee Dial



Christopher Daniel Kilgore
Notary Public

My Commission Expires: 9/14/2025

[Signature page to Easement Agreement]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

PARTNERSHIP:

STRATFORD APARTMENTS 169, LLLP,
a Utah limited liability limited partnership

By: Stratford Apartments GP, LLC,
a Utah limited liability company

Its: General Partner

By: First Step House,
a Utah nonprofit corporation

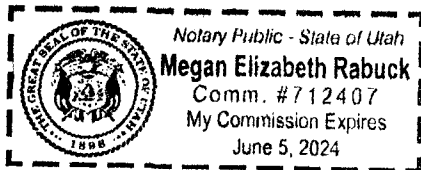
Its: Sole Member and Manager

By: 
Name: Shawn McMillen
Title: Executive Director

ACKNOWLEDGMENT

STATE OF UTAH)
)ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 18 day of March, 2024, by Shawn McMillen, the Executive Director of First Step House, a Utah nonprofit corporation, the sole member and manager of Stratford Apartments GP, LLC, a Utah limited liability company, the general partner of Stratford Apartments 169, LLLP, a Utah limited liability limited partnership, for and on behalf of said limited liability limited partnership.




Notary Public

My Commission Expires: June 5, 2024

[Signature page to Easement Agreement]

EXHIBIT A
LEGAL DESCRIPTION OF LANDOWNER'S PROPERTY

BEGINNING AT THE NORTHEAST CORNER OF LOT 1, BLOCK 71, PLT A, SLC SUR;
S0°01'43"E 74 FEET; S89°58'22"W 88 FEET; N0°01'43"W 8 FEET; S89°58'22"W 85.5 FEET;
N0°01'43"W 66 FEET; S89°58'22"W 21.3 FEET; N0°01'43"W 216.01 FEET; N89°58'22"E 194.8
FEET; S0°01'43"E 216.01 FEET TO THE POINT OF BEGINNING; 1.24 ACRES MORE OR
LESS.

EXHIBIT B
LEGAL DESCRIPTION OF PARTNERSHIP'S PROPERTY

Residential Unit 1, contained within STRATFORD CONDOMINIUM, as the same is identified in the Plat filed in the office of the Salt Lake County Recorder, Utah, on December 20, 2006 as Entry No. 9946062 in Book 2006P of Plats at Page 384 and in the declaration recorded December 20, 2006 as Entry No. 9946063 in Book 9397 at Page 3579 and the First Amendment to Declaration for Stratford Condominiums recorded 9.27.24 as Entry No. 4821056 in Book 11480 at Page 6587 (as said declaration may have been subsequently restated, amended and/or supplemented).

TOGETHER WITH the undivided ownership interest in and to the Common Areas and Facilities defined under said declaration.

**EXHIBIT C
EASEMENT LOCATION**

(Attached)

27674814v9

Temporary Scaffolding Encroachment Area

Beginning at a point being North $0^{\circ}01'45''$ West 90.00 feet and South $89^{\circ}58'22''$ West 66.50 feet from the Southeast Corner of Lot 1, Block 71, Plat "A", Salt Lake City Survey, and running;

Thence South $89^{\circ}58'22''$ West 21.50 feet

Thence North $0^{\circ}01'38''$ West 9.67 feet;

Thence North $89^{\circ}58'22''$ East 21.50 feet;

Thence South $0^{\circ}01'38''$ East 9.67 feet to the point of beginning.

Contains 207.91 square feet.

