

WHEN RECORDED MAIL TO:

SOUTH POINT UTAH DEVELOPMENT, LLC  
PROMONTORY DEVELOPMENT, LLC  
8758 N Promontory Ranch Road  
Park City, UT 84098

177865-CAV

Tax Parcel No.: SS-51-C-4 for 2024 and LRASP-1 for 2025

**AGREEMENT REGARDING CONSTRUCTION OF  
AND RESTRICTIONS ON USE OF UNITS**

THIS AGREEMENT REGARDING CONSTRUCTION OF AND RESTRICTIONS ON USE OF UNITS (this "Agreement") is made and entered into as of the 14 day of December, 2024 (the "Effective Date"), by and between **LIBERTY RANCH AT STAR POINT, LLC**, a Utah limited liability company ("Owner"), and **SOUTH POINT UTAH DEVELOPMENT, LLC**, an Arizona limited liability company ("South Point"), and **PROMONTORY DEVELOPMENT, LLC**, an Arizona limited liability company ("Promontory" and together with South Point, "Developer").

**RECITALS**

A. Capitalized terms used in this Agreement and not defined above, in these Recitals, or elsewhere in this Agreement shall have the meanings set forth in Article 1 below.

B. Owner owns that certain real property located in Summit County, State of Utah, more particularly described on Exhibit "A" attached hereto (the "Real Property"), and subject to the requirements of Summit County, a body politic of the State of Utah ("Summit County"), the rights to develop and construct upon the Real Property one or more buildings comprising a multifamily residential apartment complex and related facilities containing forty (40) residential apartment units (the "Units") (such Real Property, improvements and the Units collectively referred to as the "Project").

C. Owner acquired the Real Property from Developer pursuant to the terms and condition of a Purchase Agreement (defined herein below), subject to certain obligations to develop, construct and operate affordable housing for local employee housing, as imposed by Summit County.

D. As a condition to the sale of the Real Property to Owner by Developer, Owner has agreed to complete development the Project in accordance with the requirements of Summit County imposed upon Developer, and upon completion, operate the Project as a multi-family Residential Apartment Project, renting individual Units to individuals and families for residential occupancy according to deed restrictions imposed by Summit County.

E. The Developer agreed to sell the Real Property to the Owner, but only if Owner covenants and agrees, according to the terms of this Agreement, to construct the Units according

to the requirements of Summit County (hereinafter set forth) prior to a Substantial Completion Date (as defined herein) and thereafter to operate the same as affordable rental housing according to the requirements of a Deed Restriction (as hereinafter defined).

NOW, THEREFORE, in consideration of these Recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Developer agree as set forth below.

#### **Article 1. DEFINITIONS.**

The terms set forth below shall have the indicated meanings.

1.1 “Construction Covenant” means the covenant to construct the Project as specified in Section 2.1.

1.2 “Development Agreement” means that certain Development Agreement for the Promontory Specially Planned Area (“Ordinance No. 406”), as amended, limited to its application to the Project, specifically Section 4.8.4.

1.3 “DIA” means that certain Development Improvements Agreement by and between Summit County and Developer, recorded July 9, 2024, in the official records of the Summit County Recorder, as Entry No. 1222338.

1.4 “Deed Restriction” means a deed restriction applicable to the Units located within the Project as approved by Summit County and Owner, and as specified in the Development Agreement and the EHP.

1.5 “EHP” means that certain Employee Housing Plan, by and between Summit County and Developer, dated April 5, 2019, as subsequently amended and/or recorded in the official records of the Summit County Recorded on October 15, 2024, as Entry No. 1226231.

1.6 “Owner” means the record owner, whether one or more persons or entities of the Project, or if ownership of each Unit is identified by a separate legal description, the Units, and each subsequent Owner of the same. The term Owner shall include a contract purchaser under a recorded installment land sales contract and shall also include the holder of a long-term leasehold interest that provides such holder with operational control over the land and improvements constituting the Units. The term Owner shall not include a residential tenant of a Unit, nor any party holding only a lien or other interest as security for the performance of an obligation.

1.7 “Purchase Agreement” means that certain Purchase and Sale Agreement dated August 9, 2024, by and between Owner and Developer, including the Exhibits attached thereto and any amendments thereto.

1.8 “Real Property” shall have the meaning set forth in Recital B.

1.9 "Residential Apartment Project" means a multi-family residential apartment project located upon the Real Property where individual Units are leased or rented to one or more tenants or occupants pursuant to lease agreements or rental contracts for terms of not more than two (2) years (excluding renewal periods), but no interest in the Units or the right to purchase a Unit is granted or conveyed to the individual tenants or occupants other than a right to occupancy a Unit according to the terms of the respective lease agreement or rental contract.

1.10 "Restrictive Covenant" means the covenants, conditions and restrictions set forth in Article 2.2 of this Agreement.

1.11 "Site Plan" means the site plan for Liberty Ranch at Star Point, approved by Promontory and Summit County, and recorded in the official records of the Summit County Recorder on July 9, 2024, as Entry No. 1222336.

1.12 "Substantial Completion" shall mean the stage in the progress of the construction work when the same sufficiently complete in accordance with the construction plans so that the Owner and its tenants can occupy and utilize Units for their intended use; provided, however, that the issuance of a Certificate of Occupancy, if applicable to the Project or individual building thereof, is a condition precedent to the Substantial Completion of such portion of the Work

1.13 "Substantial Completion Date" means April 6, 2026.

1.14 "Termination Date" means the date when the last of the following events have occurred: (a) the day that a final certificate of occupancy for the last Units constructed as part of the Project have been issued, (b) the date that Developer and its affiliates have been released of any and all obligations under the DIA and surety bonds required thereby; (c) the transfer from Developer to Owner (by a written agreement in accordance with Article 8 of Ordinance 406) of all employee housing duties of the Developer in Ordinance 406 and in the EHP but only as it relates to the forty Units located within the Project; and (d) the date that a document executed by Developer is recorded in the official records of the Summit County Recording, acknowledging the termination of this Agreement, which acknowledgement shall not be unreasonably withheld, conditioned or delayed.

1.14 "Units" means the forty (40) residential housing units to be constructed upon the Real Property

## **Article 2 COVENANTS OF OWNER**

2.1 Owner hereby assumes the obligation of the Developer to develop and construct the Units and related improvements upon the Real Property, at its sole cost and expense, in accordance with the approvals and requirements of Summit County, the Development Agreement, the EHP, and the Site Plan; provided, however, that nothing herein shall preclude non-material deviations from the Development Agreement, the EHP, and/or Site Plan if approved by Summit County. Owner agrees that completion of the Units evidenced by final Certificates of Occupancy issued by Summit County shall occur prior to the Substantial Completion Date. The construction

of the Units and related improvements shall also be made according to the requirements contained in the DIA and all applicable building codes.

2.2 Prior to occupancy of any Units, Owner shall cause to be recorded in the official records of the Summit County Recorder, the Deed Restriction. Once operations of the Project commence, Owner shall comply with all requirements of the Deed Restriction, including but not limited to the qualification of tenants and the creation and preservation of all records with respect to the same.

2.3 Owner warrants, represents and covenants with the Developer that at all times prior to the Termination Date, that Owner shall operate the Project as a multi-family residential rental project materially consistent with and in conformity with the requirements of the Deed Restriction (herein the "Restrictive Covenant"). Owner acknowledges and agrees that the representations, covenants and agreements of Owner to abide by the terms of the Restrictive Covenant set forth in this Section 2.3 were and remain a material inducement to Developer to enter into the Purchase Agreement. Each successor Owner of the Project, including the Units located therein, acknowledges and agrees by their acceptance of a deed to the Project, that each successor Owner is bound by the terms of this Agreement, including the Restrictive Covenant and the obligations arising identified in this Section 2.3 and that each such successor Owner shall own and operate the Project in such a manner that shall not violate the Restrictive Covenant and the obligations arising therefrom. Until the events causing termination have occurred, the covenants, conditions and restrictions contained in this Section 2.3 shall be deemed covenants running with the Real Property, the Project and the Units, binding upon all subsequent owners, lessees or occupants of all or any part of the Project and the Units. For purposes of clarity, the representations, covenants and conditions set forth in this Section 2.3 shall not restrict or prevent any Owner of the Project and Units from operating the same as a Residential Apartment Project and leasing the Units as provided in this Agreement.

### **Article 3 TERM**

This Agreement shall become effective on the Effective Date and shall remain in full force and effect until and through the Termination Date. Subsequent to the Termination Date, this Agreement shall automatically terminate and be of no further force and effect without any further action by the parties. When requested by Owner, and provided that the events resulting in termination have been satisfied, Developer, and if applicable, its successors and assigns, shall execute and delivery in recordable form an acknowledgment of the termination of this Agreement, and such acknowledgment shall be recorded by Owner.

### **Article 4 ENFORCEMENT**

4.1 If Owner, or any successor or assign of Owner, defaults in the performance or observance of any covenant, agreement or obligation of Owner set forth in this Agreement, Developer may declare an "Event of Default" and shall notify Owner of each such alleged Event of Default as provided herein. In the event that Owner fails to cure each such Event of Default within thirty (30) days of receipt of such notice, except for a failure to achieve Substantial

Completion by the Substantial Completion Date, which sole remedy is provided by Section 4.2 below, the Developer, at its option, may take any one or more of the following actions:

- (a) by mandamus or other suit, action or proceeding at law or in equity, require Owner to perform its or their obligations and covenants hereunder, or to enjoin any acts or things which may be unlawful or in violation of the rights of Developer granted herein;
- (b) have access to and the right to inspect, examine and make copies of all of the books and records of Owner relating to the lease and/or sale of Units located within the Project; or
- (c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of Owner contained herein.

4.2 With respect to failure to achieve Substantial Completion of the Project, or portions thereof, by the Substantial Completion Date, Owner acknowledges that Developer may lose significant revenues and incur additional costs and expenses if the Project has not achieved Substantial Completion on or before the Substantial Completion Date, and if as a result of such event and only such event Summit County elects to withhold further development approvals or issue building permits to Developer under the terms of the Development Agreement for other real properties owned by Developer (a "Delay Event"). Therefore, Owner agrees that if a Delay Event occurs because Substantial Completion is not attained by the Substantial Completion Date, Owner shall be liable for and shall pay to the Developer Forty Dollars (\$40.00) per Unit for each calendar day after the Substantial Completion Date that Summit County elects to withhold from Developer further development approvals and the issuance of building permits to Developer's contractors until Substantial Completion is achieved, for the loss of such revenues and increased costs. Liquidated damages shall apply only to the Units that have not achieved Substantial Completion by the Substantial Completion Date and result in a Delay Event. For the purpose of this Agreement, a calendar day includes each day of the week, including weekends and holidays.

4.3 All rights and remedies as set forth in this Agreement shall be cumulative and non-exclusive to the extent permitted by law. Any action taken in violation of this Agreement by Owner or its successor or assigns shall be void.

## **Article 5 GENERAL PROVISIONS**

5.1 In the event that a party to this Agreement brings an action against any other party to this Agreement by reason of the breach of any condition or covenant, representation or warranty in this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to recover from the other reasonable attorneys' fees to be fixed by the court which shall render a judgment, as well as the costs of the suit. The parties waive all right to a jury trial.

5.2 This Agreement shall be governed by the laws of the State of Utah.

5.3 This Agreement shall be amended only with the express written consent of Developer, by a written instrument executed by the Developer and Owner or Owner's successor in

title. The Developer shall have the right to assign its rights under this Agreement upon written notice thereof to Owner in accordance with this Agreement.

5.4 All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be, (i) when delivered by personal delivery, or (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid, or (iii) one (1) business day after having been deposited with an expedited, overnight courier service, or (iv) when delivered by telecopy, facsimile or email, addressed to the party to whom notice is intended to be given at the address set forth below. All notices shall be addressed as follows:

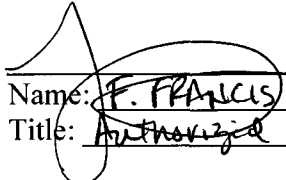

<p>If to Developer: SOUTH POINT UTAH DEVELOPMENT, LLC PROMONTORY DEVELOPMENT, LLC 8758 N Promontory Ranch Road Park City, UT 84098</p> <p>Email: spotter@promontoryclub.com</p>	<p>If to Owner: LIBERTY RANCH AT STAR POINT, LLC c/o Cowboy Partners, L.C. 6440 South Wasatch Blvd, Suite 100 Salt Lake City, Utah 84121</p> <p>Attention: Lee Dial</p>
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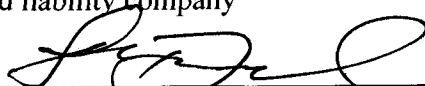
Any party may change the address to which its notices are sent by giving the other party written notice of any such change in the manner provided in this Section, but notice of change of address is effective only upon receipt.

5.5 If any covenant condition, provision, term or agreement of this Agreement is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms and agreements of this Agreement will not be affected by such holding and will remain valid and in force to the fullest extent allowed by law

5.6 The waiver of the breach of this Agreement by a party does not constitute a waiver of the right to enforce this Agreement by such party or a waiver of any subsequent breach. No waiver is effective unless contained in an express written document signed by the party against whom enforcement is sought.

5.7 This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute on and the same instrument, and each of which shall be deemed to be an original.

<p><b>DEVELOPER</b></p> <p><b>SOUTH POINT UTAH DEVELOPMENT, LLC</b>, an Arizona limited liability company</p> <p>By: </p> <p>Name: <u>F. FRANCIS NAJAFI</u></p> <p>Title: <u>Authorized Signer</u></p> <p>Dated this <u>17</u> day of <u>December</u>, 20<u>24</u></p> <p><b>PROMONTORY DEVELOPMENT, LLC</b>, an Arizona limited liability company</p> <p>By: </p> <p>Name: <u>F. FRANCIS NAJAFI</u></p> <p>Title: <u>Authorized Signer</u></p> <p>Dated this <u>17</u> day of <u>December</u>, 20<u>24</u></p>	<p><b>OWNER</b></p> <p><b>LIBERTY RANCH AT STAR POINT, LLC</b>, a Utah limited liability company</p> <p>By its Manager, Liberty Ranch Partners, LLC, a Utah limited liability company</p> <p>By its Manager, Cowboy Partners, L.C., a Utah limited liability company</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Dated this ____ day of _____, 20__</p>
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<p><b>DEVELOPER</b></p> <p><b>SOUTH POINT UTAH DEVELOPMENT, LLC</b>, an Arizona limited liability company</p> <p>By: _____  Name: _____  Title: _____</p> <p>Dated this ____ day of _____, 20__</p> <p><b>PROMONTORY DEVELOPMENT, LLC</b>, an Arizona limited liability company</p> <p>By: _____  Name: _____  Title: _____</p> <p>Dated this ____ day of _____, 20__</p>	<p><b>OWNER</b></p> <p><b>LIBERTY RANCH AT STAR POINT, LLC</b>, a Utah limited liability company</p> <p>By its Manager, Liberty Ranch Partners, LLC, a Utah limited liability company</p> <p>By its Manager, Cowboy Partners, L.C., a Utah limited liability company</p> <p>By:   Name: <u>LEE D. AL</u>  Title: <u>EXECUTIVE VICE PRESIDENT</u></p> <p>Dated this <u>19</u> day of <u>Dec.</u>, 20<u>21</u></p>
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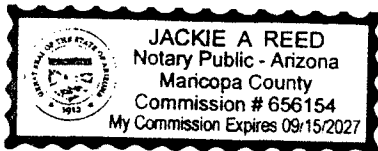
STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, the \_\_\_\_\_ of Cowboy Partners, L.C., a Utah limited liability company, the manager of Liberty Ranch Partners, LLC, a Utah limited liability company, the manager of LIBERTY RANCH AT STAR POINT, LLC, a Utah limited liability company, the signer of the within instrument who duly acknowledged to me that he/she executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

ARIZONA  
STATE OF ~~UTAH~~ )  
 MARICOPA : ss.  
COUNTY OF ~~SUMMIT~~ )

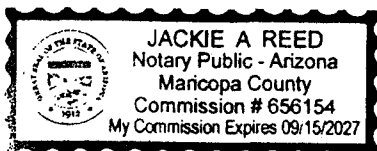
On the 17 day of December, 2024, personally appeared before me F. FRANCIS NAJAF, the Auth. signer of SOUTH POINT UTAH DEVELOPMENT, LLC, an Arizona limited liability company, the signer of the within instrument who duly acknowledged to me that he/she executed the same.



Jackie A Reed  
NOTARY PUBLIC

ARIZONA  
STATE OF ~~UTAH~~ )  
 MARICOPA : ss.  
COUNTY OF ~~SUMMIT~~ )

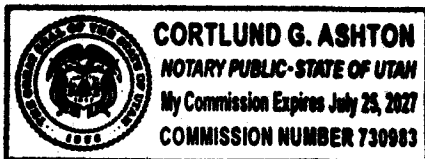
On the 17 day of December, 2024, personally appeared before me F. FRANCIS NAJAF, the Auth signer of PROMONTORY DEVELOPMENT, LLC, an Arizona limited liability company, the signer of the within instrument who duly acknowledged to me that he/she executed the same.



Jackie A. Reed  
NOTARY PUBLIC

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

On the 20 day of December, 2024, personally appeared before me LEE DIAL, the VICE PRESIDENT of Cowboy Partners, L.C., a Utah limited liability company, the manager of Liberty Ranch Partners, LLC, a Utah limited liability company, the manager of LIBERTY RANCH AT STAR POINT, LLC, a Utah limited liability company, the signer of the within instrument who duly acknowledged to me that he/she executed the same.



Cortlund G. Ashton  
NOTARY PUBLIC

STATE OF UTAH )  
 : ss.  
COUNTY OF SUMMIT )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, the \_\_\_\_\_ of SOUTH POINT UTAH DEVELOPMENT, LLC, an Arizona limited liability company, the signer of the within instrument who duly acknowledged to me that he/she executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF UTAH )  
 : ss.  
COUNTY OF SUMMIT )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, the \_\_\_\_\_ of PROMONTORY DEVELOPMENT, LLC, an Arizona limited liability company, the signer of the within instrument who duly acknowledged to me that he/she executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT "A"**

**(LEGAL DESCRIPTION)**

Real Property located in Summit County, State of Utah, more particularly described as follows:

Lot 1, LIBERTY RANCH AT STAR POINT, according to the official plat thereof, as recorded July 9, 2024 as Entry No. 1222337 in Book 2824 at Page 1907 in the office of the Summit County Recorder, State of Utah.

Parcel Number SS-51-C-4 for 2024 and LRASP-1 for 2025