

## SETTLEMENT AGREEMENT

This Settlement Agreement dated June 20, 2024 (the “**Effective Date**”), is entered between RS21 Liberty Wells Apartments, LLC (“**Liberty**”) on the one hand and Red Brick Wells, Inc. (“**Red Brick**”) on the other hand. Liberty and Red Brick are sometimes collectively referred to herein as “**Parties**” and each as a “**Party**.”

### RECITALS

WHEREAS, Liberty is an owner of a property described in Exhibit 1 (the “**Liberty Property**”).

WHEREAS, Liberty developed the Liberty Property with a mixed-use building that is occupied by residential and commercial tenants.

WHEREAS, the building on the Liberty Property has footings beneath the foundation.

WHEREAS, Red Brick is the owner of a property described in Exhibit 2, and is directly adjacent to and south of the Liberty Property (the “**Red Brick Property**”).

WHEREAS, during the development of the Red Brick Property, Liberty alleges that Red Brick and its contractors, subcontractors, or other agents constructed a footing for Red Brick’s building that crossed the property line and entered the Liberty Property (the “**Footing**”).

WHEREAS, Liberty alleges that the Footing was located below and touched the bottom side of the footing for the building on the Liberty Property.

WHEREAS, Liberty alleges that the construction of the Footing also disturbed underground utilities that service the Liberty Property and its tenants, including a Google fiber connection.

WHEREAS, Liberty alleges that Red Brick also constructed a utility conduit on the Liberty Property.

WHEREAS, Liberty alleges that the location of the building being constructed on the Red Brick Property may make access to the gas meter on the Liberty Property difficult or impossible.

WHEREAS, disputes have arisen related to the Footing, the utility conduit, and the impact to the utilities that service the Liberty Property (the “**Disputes**”).

WHEREAS, Liberty filed a lawsuit against Red Brick and others regarding the Footing and the other Disputes. The lawsuit is styled as *RS21 Liberty Wells Apartments, LLC v. Red Brick Wells, Inc. et al.*, Case No. 230903051, and it is pending in the Third Judicial District Court of Salt Lake County, State of Utah (the “**Lawsuit**”).

WHEREAS, after the Disputes arose and Liberty filed the Lawsuit, Liberty assigned a portion of its interest in the Liberty Property to Turtle Bay Villa, LLC.

WHEREAS, the Parties desire to resolve the Lawsuit by executing and delivering this Settlement Agreement, all on the terms and conditions hereof.

NOW THEREFORE, in consideration of the mutual covenants, representations, warranties, agreements, and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### **AGREEMENT**

1. Footing. Red Brick represents and warrants that it has completely cut and severed the Footing at the property line between the Red Brick Property and the Liberty Property. The Parties further agree that Liberty may choose to remove any portion of the Footing that is located on the Liberty Property at any time. Red Brick also represents and warrants that the building and all other improvements constructed or to be constructed on the Red Brick Property do not and will not rely on the portion of the Footing that is located on the Liberty Property.

2. Red Brick North Wall. The Parties agree that the northern wall of its building as currently under construction is not within one foot of the south property line between the Red Brick Property and the Liberty Property.

3. Utility Conduit. Red Brick represents and warrants that it has moved its utility conduit off the Liberty Property.

4. Gas Meters. If the gas company requires the gas meters between the buildings to be relocated, then Red Brick shall pay all costs of the relocation.

5. Easement. Within 30 days of the Effective Date, as defined above, Red Brick shall convey to Liberty and Turtle Bay Villa, LLC as owners of the Liberty Property an express easement for the area between the buildings on the Liberty Property and the Red Brick Property by executing and recording the Easement Agreement attached as Exhibit 3 to this Settlement Agreement. The Easement Agreement will provide Liberty, Turtle Bay Villa, LLC, and their successors and assigns a perpetual, nonexclusive easement across the surface of the land between the buildings to construct a fence, to landscape, and to maintain the area and the fence. The Parties agree to work together and to perform any and all acts necessary to execute the Easement Agreement, and Red Brick agrees to record the Easement Agreement with the Salt Lake County Recorder.

6. Dismissal Without Prejudice. The parties shall dismiss all claims in the Lawsuit without prejudice within 30 days of the Effective Date, as defined above. Each Party will bear its own attorneys' fees and costs. The Parties agree to work together and to perform all acts necessary to ensure the dismissal of all claims asserted between them in the Lawsuit without prejudice.

7. Discovery, Tolling, and Limitations. The Parties agree that if Liberty discovers, within four (4) years of the Effective Date of this Settlement Agreement, the buildings on the Liberty Property suffer adverse effects from the placement of the Footing and associated excavating, then Liberty may assert claims for damages against Red Brick or any other party, including another party to this litigation insofar as Liberty has not already received compensation for those damages from any other party.

8. Recording. Liberty may immediately record this Settlement Agreement with the Salt Lake County Recorder against the Red Brick Property and the Liberty Property.

9. Entire Agreement; Amendment and Modification. This Settlement Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all other agreements or understandings, written or oral, between the Parties with respect to the subject matter hereof. This Settlement Agreement cannot be amended, supplemented or changed, nor can any provision hereof be waived, except by a written instrument signed by the Party against whom enforcement of any such amendment, supplement, modification, or waiver is sought.

10. Assignment. This Settlement Agreement and all of the provisions and covenants hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Liberty assigns a portion of its interest in the Settlement Agreement to Turtle Bay Villa, LLC in proportion to the ownership interest in the Liberty Property that Liberty transferred to Turtle Bay Villa, LLC. This provision will also apply to any other assignment in connection with any sale or transfer of any interest in the Liberty Property and/or the Red Brick Property. The rights, covenants, and obligations of the Parties provided for herein shall run with the land as a benefit to and burden upon the Liberty Property and the Red Brick Property.

11. Severability. If any provision of this Settlement Agreement shall be determined to be contrary to law and unenforceable by any court of law, the remaining provisions shall be severable and enforceable in accordance with their terms.

12. No Admission of Liability. The Parties expressly understand, acknowledge, agree, and stipulate that nothing contained in this Settlement Agreement is to be considered or construed as an admission of liability, fault, or wrongdoing by any Party. Each Party expressly denies any and all liability on account of any of the claims, allegations, defenses, or causes of action of any Party hereto against the other.

13. Interpretation and Drafting Presumptions. Unless the context requires otherwise, all words used in this Settlement Agreement in the singular number shall extend to and include the plural, all words in the plural number shall extend to and include the singular, and all words in any gender shall extend to and include all genders. Each of the Parties understands, acknowledges, and agrees that each of the Parties hereto has contributed to the drafting of this Settlement Agreement, and no provision hereof shall be construed against any Party hereto as being the draftsman thereof. This Settlement Agreement shall therefore be construed without

regard to any presumption or other rule requiring construction against the Party causing the Settlement Agreement to be drafted.

14. Governing Law and Venue. This Settlement Agreement and all rights and remedies of the Parties shall be governed by and construed in accordance with the laws of the State of Utah. Each of the Parties hereby expressly consents to the personal jurisdiction of the state and federal courts located in Salt Lake County, Utah, for any action or proceeding arising from or relating to this Settlement Agreement, waives any argument that venue in any such forum is not convenient, and agrees that any such action or proceeding shall only be venued in such courts.

15. Attorneys' Fees. In any action or proceeding to enforce this Settlement Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and related costs, including fees and costs incurred prior to formal initiation of an action or proceeding, and including fees and costs incurred for collecting or attempting to collect any judgment or award.

16. Further Assurances. Each Party shall take any and all actions that are reasonably requested by another Party and are necessary to carry out the purposes, provisions, and intent of this Settlement Agreement.

17. Authorization to Settle. Each Party represents and warrants that it is authorized and has the right to surrender, compromise, settle, and cancel the claims, demands, choses in action, and causes of action covered by the term of this Settlement Agreement and all parts thereof.

18. Voluntary Agreement. Each Party represents and warrants that it enters into this Settlement Agreement voluntarily and after full consideration of all material facts. The Parties further represent and warrant that they have consulted counsel or had an opportunity to consult with counsel with respect to this Settlement Agreement.

19. Counterparts. This Settlement Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute one and the same Settlement Agreement. Facsimile signatures in one or more counterparts of this Settlement Agreement shall be binding. All signatures shall be deemed effective as of the Effective Date first written above.

*[Remainder of the page left blank]*

IN WITNESS WHEREOF, each Party hereto has caused this Settlement Agreement to be executed in its name by a duly authorized officer or representative as of the Effective Date.

RS21 LIBERTY WELLS APARTMENTS, LLC:

Name:

Justin Belliveau

Title:

Manager

STATE OF Utah

COUNTY OF Salt Lake

I certify that I know or have satisfactory evidence that Justin Belliveau is the person who appeared before me, and said person acknowledged that she/he signed this instrument, on oath stated that she/he was authorized to execute the instrument and acknowledged it as Manager of Liberty Wells, a Settlement Agreement, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Witness my hand and seal this 21<sup>st</sup> day of June, 2024.

Melody Hernandez

Notary Public (SEAL)



My appointment expires: 04/05/2025

RED BRICK WELLS, INC.:

Name:

Alexey Kotov

Title:

CEO / President

STATE OF

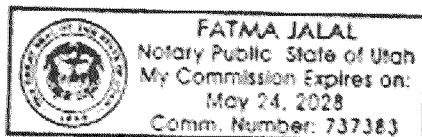
UTAH

COUNTY OF

Salt Lake

I certify that I know or have satisfactory evidence that Alexey Kotov is the person who appeared before me, and said person acknowledged that she/he signed this instrument, on oath stated that she/he was authorized to execute the instrument and acknowledged it as CEO / President of Red Brick Wells, a settlement agreement, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Witness my hand and seal this 28 day of June, 2024.



Fatma Jalal  
Notary Public (SEAL)

My appointment expires: May 24, 2028

EXHIBIT 1  
(Liberty Property)

Parcel No. 1

PARCEL 1A, TIFFANY'S ADDITION AMENDED SUBDIVISION (AMENDMENT TO LOTS 1, 2, 3, 4 & 5, BLOCK 1, WASHINGTON PLACE SUBDIVISION), ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER

PARCEL 1A:

EASEMENTS AS CONTAINED IN THAT CERTAIN CROSS ACCESS EASEMENT FOR VEHICULAR CIRCULATION, SURFACE DRAINAGE AND MAINTENANCE AGREEMENTS AS RECORDED NOVEMBER 30, 2011 AS ENTRY NO. 11288218 IN BOOK 9970 AT PAGE 5798 OF OFFICIAL RECORDS.

PARCEL 1B:

RECIPROCAL EASEMENTS CONTAINED IN THAT CERTAIN AGREEMENT RECORDED FEBRUARY 15, 2019 AS ENTRY NO. 12935237 IN BOOK 10753 AT PAGE 3603 OF OFFICIAL RECORDS.

PARCEL 2:

PARCEL 2A, TIFFANY'S ADDITION AMENDED SUBDIVISION (AMENDMENT TO LOTS 1, 2, 3, 4 & 5, BLOCK 1, WASHINGTON PLACE SUBDIVISION), ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE.

PARCEL 2A:

EASEMENTS AS CONTAINED IN THAT CERTAIN CROSS ACCESS EASEMENT AGREEMENT RECORDED IN THE SALT LAKE COUNTY RECORDER'S OFFICE ON NOVEMBER 30, 2011 AS ENTRY NO. 11288218 IN BOOK 9970 AT PAGE 5798 OF OFFICIAL RECORDS.

PARCEL 2B:

RECIPROCAL EASEMENTS CONTAINED IN THAT CERTAIN AGREEMENT RECORDED FEBRUARY 15, 2019 AS ENTRY NO. 12935237 IN BOOK 10753 AT PAGE 3603 OF OFFICIAL RECORDS.

APN(S): 16-07-459-035, 16-07-459-036

EXHIBIT 2

(Red Brick Property)

PARCEL 1:

Beginning at the Northeast corner of Lot 6, Block 1, WASHINGTON PLACE, and running thence South 00°02'32" East 115.55 feet to the Southeast corner of Lot 9 of said Block 1, Washington Place; thence South 89°56'37" West 141.23 feet to the centerline of a vacated alley; thence North 00°02'41" West 40.52 feet along said centerline of vacated alley; thence North 89°56'37" East 5.19 feet to the Northwest corner of said Lot 9; thence North 00°02'41" West 75.03 feet to the Northwest corner of said Lot 6; thence North 89°56'37" East 136.04 feet to the point of beginning. (Being Lots 6 through 9, Block 1, Washington Place)

TOGETHER WITH 1/2 the vacated alley abutting on the West of Lot 9, Block 1, Washington Place.

APN(S): 16-07-459-034



EXHIBIT 3  
(Easement Agreement)

## EASEMENT AGREEMENT

This Easement Agreement dated June 20, 2024 (the “*Effective Date*”), is entered between RS21 Liberty Wells Apartments, LLC (“*Liberty*”) and Turtle Bay Villa, LLC (“*Turtle Bay*”) on the one hand and Red Brick Wells, Inc. (“*Red Brick*”) on the other hand. Liberty, Turtle Bay, and Red Brick are sometimes collectively referred to herein as “*Parties*” and each as a “*Party*.”

WHEREAS, Liberty and Turtle Bay are owners of a property described as

Parcel No. 1

PARCEL 1A, TIFFANY’S ADDITION AMENDED SUBDIVISION (AMENDMENT TO LOTS 1, 2, 3, 4 & 5, BLOCK 1, WASHINGTON PLACE SUBDIVISION), ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER

PARCEL 1A:

EASEMENTS AS CONTAINED IN THAT CERTAIN CROSS ACCESS EASEMENT FOR VEHICULAR CIRCULATION, SURFACE DRAINAGE AND MAINTENANCE AGREEMENTS AS RECORDED NOVEMBER 30, 2011 AS ENTRY NO. 11288218 IN BOOK 9970 AT PAGE 5798 OF OFFICIAL RECORDS.

PARCEL 1B:

RECIPROCAL EASEMENTS CONTAINED IN THAT CERTAIN AGREEMENT RECORDED FEBRUARY 15, 2019 AS ENTRY NO. 12935237 IN BOOK 10753 AT PAGE 3603 OF OFFICIAL RECORDS.

PARCEL 2:

PARCEL 2A, TIFFANY’S ADDITION AMENDED SUBDIVISION (AMENDMENT TO LOTS 1, 2, 3, 4 & 5, BLOCK 1, WASHINGTON PLACE SUBDIVISION), ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER’S OFFICE.

PARCEL 2A:

EASEMENTS AS CONTAINED IN THAT CERTAIN CROSS ACCESS EASEMENT AGREEMENT RECORDED IN THE SALT LAKE COUNTY RECORDER’S OFFICE ON NOVEMBER 30, 2011 AS ENTRY NO. 11288218 IN BOOK 9970 AT PAGE 5798 OF OFFICIAL RECORDS.

PARCEL 2B:

RECIPROCAL EASEMENTS CONTAINED IN THAT CERTAIN AGREEMENT RECORDED FEBRUARY 15, 2019 AS ENTRY NO. 12935237 IN BOOK 10753 AT PAGE 3603 OF OFFICIAL RECORDS.

APN(S): 16-07-459-035, 16-07-459-036

WHEREAS, Liberty developed the Liberty Property with a mixed-use building that is occupied by residential and commercial tenants.

WHEREAS, Red Brick is the owner of a property described as

PARCEL 1:

Beginning at the Northeast corner of Lot 6, Block 1, WASHINGTON PLACE, and running thence South 00°02'32" East 115.55 feet to the Southeast corner of Lot 9 of said Block 1, Washington Place; thence South 89°56'37" West 141.23 feet to the centerline of a vacated alley; thence North 00°02'41" West 40.52 feet along said centerline of vacated alley; thence North 89°56'37" East 5.19 feet to the Northwest corner of said Lot 9; thence North 00°02'41" West 75.03 feet to the Northwest corner of said Lot 6; thence North 89°56'37" East 136.04 feet to the point of beginning. (Being Lots 6 through 9, Block 1, Washington Place)

TOGETHER WITH 1/2 the vacated alley abutting on the West of Lot 9, Block 1, Washington Place.

APN(S): 16-07-459-034

WHEREAS, disputes arose between the Liberty and Red Brick during Red Brick's development of its property.

WHEREAS, to resolve their disputes, Red Brick, in part, agreed to convey to Liberty and Turtle Bay an express easement on a portion of its property that is located between the buildings on the Parties' properties, as set forth below.

NOW THEREFORE, the Parties agree as follows:

1. Easement. Red Brick hereby grants and conveys to Liberty, Turtle Bay, and their successors and assigns a perpetual, nonexclusive easement across the surface of the property described in Exhibit A to this Easement Agreement for the purpose of accessing and maintaining the Liberty Property, to build and maintain a fence, and to landscape. The parties understand and intend that the property described in Exhibit A includes the property between the northern property line of the Red Brick Property and one foot south of that property line.

2. Maintenance. Liberty and Turtle Bay may, but have no duty to, maintain the Easement.

3. Termination and Amendment. This Easement shall be terminated or amended only by a written and recorded instrument signed by the parties or then current owner of the Property and the Easement.

4. Easement Appurtenant. This Easement shall run with the land and shall be binding upon and inure to the benefit of the Parties' successors and assigns, heirs, beneficiaries and personal representatives.

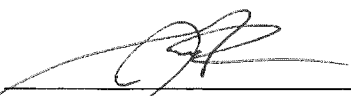
5. Governing Law. This Easement shall be governed by and construed and enforced in accordance with the laws of the State of Utah.

SIGNED on this the 20th day of June 2024.

*[Remainder of the page left blank]*

IN WITNESS WHEREOF, each Party hereto has caused this Easement Agreement to be executed in its name by a duly authorized officer or representative as of the Effective Date.

RS21 LIBERTY WELLS APARTMENTS, LLC:

  
Name: Justin Belliveau

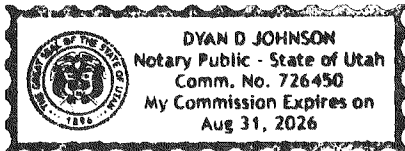
Title: Manager

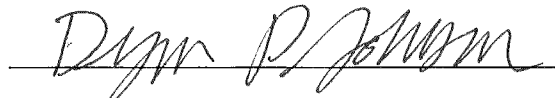
STATE OF Utah

COUNTY OF Utah

I certify that I know or have satisfactory evidence that Justin Belliveau is the person who appeared before me, and said person acknowledged that she/he signed this instrument, on oath stated that she/he was authorized to execute the instrument and acknowledged it as Manager of RS21 Liberty Wells Apartments, a limited liability corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Witness my hand and seal this 18th day of July, 2024.



  
Notary Public (SEAL)

My appointment expires: Aug. 31 2026

~~TURTLE BAY VILLA, LLC:~~

Name: Logan Woolley

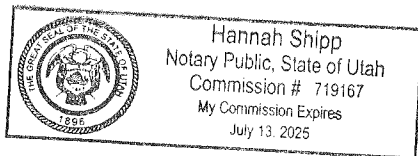
Title: Manager

STATE OF Utah

COUNTY OF Wasatch

I certify that I know or have satisfactory evidence that Logan Woolley is the person who appeared before me, and said person acknowledged that she/he signed this instrument, on oath stated that she/he was authorized to execute the instrument and acknowledged it as Manager of Turtle Bay Villa, LLC, a limited liability corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Witness my hand and seal this 26<sup>th</sup> day of July, 2024.



H Shipp

Notary Public (SEAL)

My appointment expires: July 13, 2025

RED BRICK WELLS, INC.:

[Signature]  
Name: Alexey Kotov  
Title: CEO, President  
STATE OF Utah

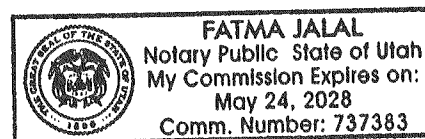
COUNTY OF Salt Lake

I certify that I know or have satisfactory evidence that Alexey Kotov is the person who appeared before me, and said person acknowledged that she/he signed this instrument, on oath stated that she/he was authorized to execute the instrument and acknowledged it as CEO/President of Red Brick Wells, a Corporation UTAH, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Witness my hand and seal this 3<sup>th</sup> day of July, 2024.

Fatma Jalal  
Notary Public (SEAL)

My appointment expires: May 24, 2028



## EXHIBIT A

### Description of the Easement Property

Beginning at the Northeast corner of Lot 6, Block 1, WASHINGTON PLACE, and running thence

1. South 00°02'32" East, along the east line of parcel number 16-07-459-034, a distance of 1.00 Foot;
2. South 89°56'37" West 136.04 Foot to the west line of parcel number 16-07-459-034;
3. North 00°02'41" West, along the west line of parcel number 16-07-459-034, a distance of 1.00 Foot to the north-west corner of said parcel number 16-07-459-034;
4. North 89°56'37" East, along the North line of parcel number 16-07-459-034, a distance of 136.04 feet, more or less, to the point of beginning.

The total area of the land surface easement across the Parcel Number 16-07-459-034 as described above is 136 SQ. FT. or 0.003 ACRES MORE or LESS.