

**DECLARATION  
OF  
DRIVEWAY AND UTILITY EASEMENTS AND MAINTENANCE AGREEMENT**

**DECLARATION** dated this \_\_\_\_ day of \_\_\_\_\_, 2021 by 183 Westport, LLC ("Declarant") with an address at 105 Seeley Road, Wilton CT 06897.

***Recitals:***

**WHEREAS**, Declarant owns those certain pieces, parcels and tracts of land located in the Town of Wilton, County of Fairfield and State of Connecticut shown and designated as "1 1.3473 Acres" ("Lot 1"); "2 1.4170 Acres" ("Lot 2"); "3 1.4110 Acres" ("Lot 3") and "4 1.6878 Acres" ("Lot 4") on that certain map entitled "Subdivision Map 183 Westport Road 5.863 Acres Zone: R-2A Wilton, Connecticut Prepared For 183 Westport LLC" prepared by Stalker Land Surveying dated November 11, 2020, which map is on file in the office of the Clerk of the Town of Wilton as map numbered \_\_\_\_\_ (the "Survey"); and

**WHEREAS**, Declarant intends that Lot 1, Lot 2, Lot 3 and Lot 4 (each such lot being referred to hereinafter as a "Lot" or such lots together as the "Lots") and the current and any subsequent owners (each such owner being referred to hereinafter as an "Owner" or such owners together as "Owners") thereof shall have the benefits and burdens of certain easements, covenants, conditions and restrictions imposed on the Lots by this Declaration;

**NOW, THEREFORE**, Declarant hereby declares that the Lots shall be held, transferred, sold, conveyed, encumbered, and occupied only subject to the easements, covenants, conditions and restrictions hereinafter set forth, which easements, covenants, conditions and restrictions shall constitute equitable servitudes and shall run with the land.

**1. PARTIES TO THIS DECLARATION**

1.1 Any Owner of a Lot or of any portion of, or of any interest in, a Lot is deemed to be a party to this Declaration.

**2. BENEFITS AND BURDENS OF OWNERS**

2.1 An Owner is presumed to be entitled to the benefits, and to have assumed the burdens, created by this Declaration. This presumption is as conclusive as if the Owner had executed this Declaration and any amendments thereto immediately upon the Owner accepting delivery of the deed that conveyed to the Owner title to the Lot or any portion thereof or interest therein.

2.2 Each Owner of all or any part of a Lot or an interest therein shall be liable (but only during the period of such ownership) for the performance of all covenants, obligations, duties or undertakings herein set forth with respect to such Lot.

### **3. RECIPROCAL EASEMENT**

3.1 It hereby is declared that Lots 2 and 3 shall be subject to a non-exclusive easement for the benefit of the Owners of Lot 1, and Lot 4 and the tenants, guests, and invitees of such Lot Owners, for all lawful purposes including public utilities in, over, under and upon that portion of said Lots 2 and 3 shown as "paved driveway" on the Survey for the purpose of providing access and public utilities from Westport Road to Lot 1, and Lot 4.

3.2 It is hereby is declared that Lot 2 shall be subject to a non-exclusive easement for the benefit of the Owners of Lot 3 and the tenants, guests, and invitees of such Lot Owner, for all lawful purposes including public utilities in, over, under and upon that portion of said Lot 2 shown as "paved driveway" for the purpose of providing access and public utilities from Westport Road to Lot 3.

3.3 It is hereby is declared that Lot 3 shall be subject to a non-exclusive easement for the benefit of the Owners of Lot 2 and the tenants, guests, and invitees of such Lot Owner, for all lawful purposes including public utilities in, over, under and upon that portion of said Lot 3 shown as "paved driveway" for the purpose of providing access and public utilities from Westport Road to Lot 2.

3.4 The Lot 2 Easement Area and the Lot 3 Easement Area hereinafter are referred to individually as an "Easement Area" and collectively as the "Easement Areas".

### **4. CONSTRUCTION AND REPAIR WORK**

4.1 All development, construction, alteration, repair, operation and maintenance work ("Work") undertaken by or on behalf of a Lot Owner on or within an Easement Area, including general clean-up and surface restoration, shall not be commenced without first furnishing to the Owner of the Lot on which work shall take place evidence of adequate insurance coverage, shall be accomplished in a workmanlike manner and shall be completed expeditiously to avoid interference with the use and enjoyment of the Lots.

4.2 The Lot Owner undertaking Work, or in whose behalf Work is undertaken, shall:

4.2.1 Pay all costs and expenses incurred in connection with such Work unless otherwise expressly provided herein.

4.2.2 Repair any and all damage caused by or in performing the Work.

4.2.3 Restore the area of the Work to substantially the same condition existing immediately prior to the commencement

of the Work including, without limitation, replacement of any pavement, lawn, trees, shrubbery, walls or other improvements damaged or removed in connection with the Work.

- 4.2.4 Indemnify the other Lot Owner against, and hold such Lot Owner harmless from, any and all liability and damage arising from such Work.

4.3 Anything set forth in paragraph 4.1 or under paragraph 4.2 of this Declaration to the contrary notwithstanding; an Owner shall be solely responsible for any damage to an Easement Area resulting from:

- 4.3.1 the abuse or misuse thereof by such Owner or tenant of such Owner, or guest or invitee of such Owner or tenant; or
- 4.3.2 machinery or equipment operating in an Easement Area, including the mere passage of such machinery or equipment through an Easement Area.

4.4 Except to the extent specifically permitted hereunder, no structures, barriers or other material impediments (other than paving or landscaping over the Easement Areas) shall be permanently or temporarily placed, constructed or maintained on or in the Easement Areas in such a manner that it prevents or impedes the use of any easement herein granted to a Lot Owner or the tenant of such Lot Owner or the guest or invitee of such Lot Owner or tenant.

## **5. RECIPROCAL TEMPORARY EASEMENTS**

5.1 The Owners of Lot 1, Lot 3 and Lot 4 are hereby granted a temporary easement to enter upon Lot 2 to the extent reasonably required to perform Work described in paragraph 4.1 of this Declaration or work required to enjoy the benefit of any of the easements herein declared.

5.2 The Owners of Lot 1 and Lot 4 are hereby granted a temporary easement to enter upon Lot 2 to the extent reasonably required to perform Work described in paragraph 4.1 of this Declaration or work required to enjoy the benefit of any of the easements herein declared.

5.3 The Owner Lot 1 is hereby granted a temporary easement to enter upon Lot 2 to the extent reasonably required to perform Work described in paragraph 4.1 of this Declaration or work required to enjoy the benefit of any of the easements herein declared.

## **6. EASEMENT AREA OPERATION AND MAINTENANCE**

6.1 Access to the Lots shall be provided by a common driveway (the "Common Driveway") to be constructed within the Easement Areas.

The expense of maintaining and repairing the Common Driveway, including the removal of snow therefrom, and the maintenance and keeping free from vegetation and other obstructions any and all detention basins, culverts or drainage structures associated with said Common Driveway shall be allocated between the Owners in accordance with the terms of Section 7 of this Declaration.

## **7. ALLOCATION OF CERTAIN EXPENSES BETWEEN OWNERS**

7.1 All of the cost and expense of operating, maintaining and repairing the Common Driveway shall be allocated to the Owners of the Lots as follows: Lot 1 twenty-five (25%) percent; Lot 2 twenty-five (25%) percent; Lot 3 twenty-five (25%) percent and Lot 4 twenty-five (25%) percent.

## **8. THIS DECLARATION NOT A DEDICATION TO PUBLIC**

8.1 Nothing herein contained shall be construed to constitute a gift or dedication of the Lots or any part thereof to the general public or for use by the general public or for any public purpose. The general public may use or traverse any part of a Lot (other than pursuant to express right or dedication evidenced by recorded map or deed or written agreement) only by permission of the Owner of the Lot and subject to the control of such Owner.

8.2 The Owners of the Lots shall restrict temporarily ingress and egress to and from the Lots when necessary to prevent a prescriptive easement from arising by reason of continued public use of part of a Lot.

## **9. NEGATION OF PARTNERSHIP**

9.1 None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Declaration is not intended nor shall it be construed to create any third-party beneficiary rights as to any person who is not Declarant or an Owner unless herein so provided.

## **10. NON-MERGER**

10.1 The covenants, conditions, restrictions, easements and reciprocal easements established by this Declaration and the terms and provisions contained in this Declaration shall not be deemed or construed to merge in Declarant fee simple title to the Lots. This Declaration grants mutual and reciprocal rights to, between and among the Lots and the Owners of the Lots to the same extent as if this Declaration had been executed by all subsequent Owners of the Lots in order to more appropriately and conveniently impose the general plan and scheme of development for access and utilities to the Lots upon each of the respective Lots and their Owners and all future parties to this Declaration.

## **11. BREACH SHALL NOT PERMIT TERMINATION**

11.1 No breach of this Declaration shall entitle any current or future Owner of any Lot to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner or any tenant may have hereunder by reason of any breach of this Declaration.

## **12. MORTGAGES**

12.1 No breach of any of the covenants, conditions, restrictions or easements, nor enforcement of any lien provisions, herein set forth shall defeat or render invalid any mortgage of any Lot made in good faith and for value, and such mortgage shall survive foreclosure of any lien created by this Declaration. Notwithstanding the foregoing, this Declaration shall be senior to the lien of any mortgage or deed of trust recorded on or after the date this Declaration is recorded, and all of the covenants, conditions, restrictions and easements contained herein shall survive and be binding upon and effective against any Owner whose interest in any Lot is derived through foreclosure or trustee's sale, or otherwise.

## **13. SEVERABILITY**

13.1 If any part of this Declaration shall be determined by a court of competent jurisdiction to be illegal or void for any reason, the remaining parts thereof shall remain in full force and effect.

## **14. ENFORCEMENT AND REMEDIES**

14.1 If any Owner of a Lot or any portion of, or of any interest in, a Lot shall, during the term of this Declaration, default in the full and faithful performance of any obligation on such Owner's part to be performed, then the Owner of the other Lot or any portion of, or of any interest in, the other Lot, in addition to all remedies such Owner may have at law or in equity, shall have the right to perform such obligation on behalf of such defaulting Owner and to be reimbursed by such defaulting Owner for the cost thereof, together with interest at the maximum rate allowed by law. Any such claim for reimbursement, together with all such interest accrued, shall be a secured right, and a lien therefor shall attach to all such Lots and improvements thereon owned by the defaulting party.

## **15. APPROVALS**

15.1 Whenever the consent or approval of any Owner is required for the performance of obligations set forth herein, such consent or approval shall not be unreasonably withheld and notice of such consent or approval, or a statement of specific grounds for disapproval, shall be delivered promptly to the party requesting such consent or approval. Unless provision is made for a specific time period, consent or

approval shall be given or denied within thirty (30) days of the receipt of the request therefor, and if not given or denied within said thirty (30) day period, such consent or approval will be deemed to have been given. Each of the Lots shall have one vote, notwithstanding the fact that one Lot may be owned by more than one individual or entity. All votes shall be determined by a majority of the number of Lots for which votes are cast. If the Owners of a Lot fail to agree on any matter for which a vote is required, the Lot shall have no vote on the matter in question.

15.2 Every authorization, consent, approval, waiver, statement or other communication upon which a party hereto desires to rely concerning the subject matter of this Declaration shall be in writing and shall be sent either (a) by hand; (b) by registered or certified mail, postage prepaid, return receipt requested or (c) by express mail or reputable overnight courier service, and shall be deemed delivered on the date of delivery in the case of subparagraph (a) above, three (3) business days after the date postmarked in the case of subparagraph (b) above or on the business day following delivery in the case of subparagraph (c) above, and shall be addressed as follows:

15.2.1 If to Declarant: 183 Westport LLC  
105 Seeley Road  
Wilton, CT 06897

15.2.2 If to any future Owner: To the address of such Owner delivered and maintained hereunder.

## **16. MISCELLANEOUS**

16.1 The captions at the beginning of each paragraph of this Declaration are not part of and do not define, limit, amplify, change, or alter any term, covenant, or condition of this Declaration.

16.2 For the purposes of this Declaration, the neuter gender includes a feminine or masculine, and the singular number includes the plural, and the word person includes corporation, partnership, firm, or association whenever the context so requires.

16.3 The terms, covenants, provisions and conditions of this Declaration shall be effective as of the date hereof and shall continue in full force and effect until a date agreed upon by all of the Owners of the Lots. Unless such an agreement is reached, the terms, covenants, provisions and conditions of this Declaration shall continue in perpetuity.

16.4 All of the Owners of the Lots shall, and shall cause each tenant of any Lot in which such Owners own an interest, to conduct their use and occupancy of the Lots in compliance with the terms of this Declaration.

16.5 This Declaration shall not be amended after its recordation without the written approval of a majority of the Owners of the Lots, which amendment shall be recorded in the Wilton Land Records.

16.6 This Agreement shall be construed and governed by the laws of the State of Connecticut.

16.7 This Declaration is and shall be binding upon and shall inure to the benefit of Declarant and his successors and assigns, and shall run with the land.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of this \_\_\_\_ day of \_\_\_\_\_, 2021.

Signed, Sealed and Delivered in the  
Presence of:

183 Westport LLC

\_\_\_\_\_

By: \_\_\_\_\_

Managing Member

\_\_\_\_\_

STATE OF CONNECTICUT       )  
  )  
COUNTY OF FAIRFIELD       )       ss.: Town of Wilton

On this the \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned officer, personally appeared \_\_\_\_\_ who acknowledged himself to be the Managing Member of 183 Westport LLC and that he as such Managing Member being duly authorized to do so executed the foregoing instrument for the purposes contained therein, by signing the name of \_\_\_\_\_ by himself as the Managing Member of the limited liability company.

\_\_\_\_\_  
Commissioner of the Superior Court