

Please record and return to:  
Attorney Douglas E. LoMonte  
Berchem Moses PC  
1221 Post Road East, Suite 301  
Westport, CT 06880

## SIDEWALK MAINTENANCE AND INDEMNIFICATION AGREEMENT

This Sidewalk Maintenance and Indemnification Agreement (the "Agreement") is made this \_\_\_\_ day of April, 2021 by and between **200 DANBURY ROAD, LLC**, a Connecticut limited liability company (the "Developer") and **TOWN OF WILTON**, a Connecticut municipal corporation (the "Town"). The Developer and the Town are each sometimes referred to individually as a "Party" and collectively as the "Parties".

### RECITALS

- A. Developer owns that certain parcel of land at the corner of Danbury Road and Sharp Hill Road, Wilton, Connecticut known as 198 and 200 Danbury Road (the "Developer's Land"). The Developer's Land is more particularly described on Schedule A, attached hereto.
- B. On June 8, 2020, the Town's Planning & Zoning Commission (the "Commission") approved Developer's special permit application to allow the construction of two new mixed use buildings and the retention and relocation of the historic Raymond-Morehouse House on Developer's Land (the "Sharp Hill Square Project").
- C. The Commission's approval of the Sharp Hill Square Project was conditioned upon, among other items, installation of sidewalks from Developer's Land heading south to the Norwalk River Valley Trail trailhead opposite Wolfpit Road (the "Sidewalk Condition").
- D. Fulfillment of the Sidewalk Condition requires construction of a sidewalk on a certain parcel owned by the State of Connecticut (the "State") at 184 Danbury Road (the "State Land").
- E. As a condition of issuing an encroachment permit for the construction of a sidewalk on the State Land, the State required the Town to execute an Encroachment Agreement, a copy of which is recorded on the Wilton Land Records at Volume \_\_\_\_, Page \_\_\_\_ (the "Encroachment Agreement").
- F. As a condition of executing the Encroachment Agreement, the Town requires the Developer to assume the obligations of the Town under the Encroachment Agreement

and to hold harmless and indemnify the Town against certain claims, losses and expenses under the Encroachment Agreement.

NOW, THEREFORE, the Parties hereby agree as follows.

1. **Assumption of Obligations.** Developer hereby assumes all of the construction, testing, maintenance and repair obligations of the Town under the Encroachment Agreement (the "**Construction, Maintenance and Repair Obligations**"), including, without limitation, construction of the sidewalk, maintenance of the sidewalk, repair of the sidewalk and snow and ice removal. Without limiting the generality of the foregoing, Developer shall, at Developer's expense, keep and maintain all sidewalk surfaces in good, safe clean and sightly condition, repair holes and significant surface cracks and remove snow, ice and debris.

2. **Failure to Perform Required Work.** If Developer fails to promptly perform or cause to be performed any of the Construction, Maintenance and Repair Obligations, the Town may provide the Developer with notice detailing the work required to be performed (the "**Required Work**"), and if the Developer does not cause the Required Work to be completed within one (1) month of receipt of the Town's notice, the Town will have the right to perform or cause to be performed the Required Work and charge the costs thereof to the Developer. Developer shall reimburse the Town for the costs incurred by the Town in connection with performing or causing to be performed the Required Work within two (2) weeks of receiving an invoice for the Required Work performed.

3. **Covenant to Indemnify and Hold Harmless.** Developer shall hold harmless and indemnify the Town from all cost and expense associated with any dispute, claim, cause of action or governmental order, judgment or award arising under the Encroachment Agreement except to the extent that the cost and expense was caused by the negligent or willful act or omission of an employee or agent of the Town.

4. **Failure to Perform Obligations.** If a Party fails to perform all of its obligations and covenants under this Agreement, the non-defaulting Party may file a legal action against the defaulting Party seeking legal or equitable remedies, or both. The prevailing Party is entitled to reimbursement from the losing Party for the reasonable costs and expenses incurred, including, but not limited to, court costs and reasonable attorneys' fees.

5. **Covenants Run With the Land.** This Agreement, and all of the provisions contained herein and all of the rights and obligations hereunder, shall be and constitute covenants running with the fee simple estate of the Developer's Land and will bind all present and future owners thereof.

6. **Assignment.** The rights and obligations under this Agreement shall run with the land and may not be assigned except proportionally as part of an assignment or conveyance of an interest in the Developer's Land; but rather such rights and obligations will inure to the burden and benefit of the Parties, and any purported assignment separate and apart from the assignment or conveyance of an interest in Developer's Land in violation of this Agreement shall be void and of no effect. Notwithstanding the foregoing language of this **Section 6**, nothing shall be construed

as limiting the right of the Developer, its successors and/or assigns, to freely pledge, mortgage, transfer, convey, lease and/or assign all or any portion of the Developer's Land in its absolute and sole discretion.

7. **Notices.** For purposes of this Agreement, any notice, demand, consent, report or other communication required or permitted under this Agreement must be in writing and will be effective at the earliest of (a) its actual delivery, (b) the first business day following its deposit with an overnight courier, charges prepaid, or (c) the third business day following its deposit in the United States certified or registered mail, return receipt requested, postage prepaid. Notices to Developer shall be addressed to: 200 Danbury Road, LLC, Attention Patrick Downend, 283 Main Street, Ridgefield, CT 06877. Notices to the Town shall be addressed to: Town of Wilton, Attention First Selectman, 238 Danbury Road, Wilton, CT 06897.

8. **No Waiver.** No consent or waiver, express or implied, by any Party to or of any breach or default by any other Party in the performance by such other Party of the obligations thereof under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party under this Agreement. Failure on the part of any Party to complain of any act or failure to act of any other Party or to declare such other Party in default, irrespective of how long such failure continues, shall not constitute a waiver of such Party of the rights thereof under this Agreement.

9. **Unenforceable Provisions.** If any provision of this Agreement or the application thereof to any entity or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to any other entity or circumstance will not be affected thereby and must be enforced to the greatest extent permitted by law.

10. **Amendments In Writing.** Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge or termination is sought.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force or effect.

12. **Binding Agreement.** The provisions of this Agreement apply to, inure to the benefit of and bind the Parties and the respective successors and representatives thereof, including, without limitation, any mortgagee acquiring an interest in any portion of Developer's Land, or any improvements thereon, by reason of foreclosure, deed or assignment in lieu of foreclosure or purchase at foreclosure sale; but any such mortgagee may not incur or be required to assume any obligation under this Agreement unless and until such mortgagee has so acquired an interest in any portion of Developer's Land, or any improvements thereon by reason of foreclosure, deed or assignment in lieu of foreclosure or purchase at foreclosure sale.

13. **Interpretation.** No provision of this Agreement may be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial

authority by reason of such Party having or being deemed to have structured or dictated such provision.

**14. Governing Law, Jurisdiction and Venue.** The Parties agree that this Agreement shall be construed in accordance with and governed by Connecticut law without reference to the conflicts or choice of law principles thereof. Any litigation arising out of or relating to this Agreement shall be filed and pursued exclusively in the State or Federal courts located in the State of Connecticut, and the parties hereto consent to the jurisdiction of and venue in such courts.

*{This space intentionally left blank. The next page is the signature page.}*

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this 15<sup>th</sup> day of ~~April~~ June, 2021.

Witnesses: [Signature]  
Signature: J. Somner  
Print Name:

200 DANBURY ROAD, LLC  
By [Signature]  
Patrick Downend, Its Managing Member

Signature: [Signature]  
Print Name: JAMES O. WHITMORE

STATE OF CONNECTICUT      )  
  )  
COUNTY OF FAIRFIELD     )      TOWN OF Fairfield June APRIL, 2021

Personally appeared, PATRICK DOWNEND, MANAGING MEMBER of 200 DANBURY ROAD, LLC, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed and the free act and deed of said limited liability company before me.

[Signature]  
Notary Public

**JAMES O. WHITMORE**  
**NOTARY PUBLIC - CONNECTICUT**  
**MY COMM. EXPIRES 05/31/2025**  
**169212**

TOWN OF WILTON

Signature \_\_\_\_\_  
Print Name:

By \_\_\_\_\_  
Lynne Vanderslice, Its First  
Selectwoman

Signature \_\_\_\_\_  
Print Name:

STATE OF CONNECTICUT     )  
  )  
COUNTY OF FAIRFIELD     )     TOWN OF WILTON     APRIL \_\_\_\_, 2021

Personally appeared, LYNNE VANDERSLICE, FIRST SELECTWOMAN of the TOWN OF WILTON, signer and sealer of the foregoing instrument, and acknowledged the same to be her free act and deed and the free act and deed of said Town before me.

\_\_\_\_\_  
Notary Public