

Return:

Dana Eric Friedman, Esq.
Harlow, Adams & Friedman, P.C.
One New Haven Avenue, Suite 100
Milford, CT 06460

EMERGENCY ACCESS EASEMENT AGREEMENT

THIS EMERGENCY ACCESS EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of _____, 2023 (the “**Effective Date**”), by and between **THE CITY OF MILFORD**, a municipal corporation and existing under the laws of the State of Connecticut with offices at 70 West River Street, Milford, CT 06460 (“**Grantor**” or the “**City**”), and **METRO TOD, LLC**, a Connecticut limited liability company with offices at 41 Cherry Street, Milford, CT 06460 (together with its successors and assigns, “**Grantee**”). Grantor and Grantee are referred to herein as a “**Party**,” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Grantor is the owner of certain pieces or parcels of land known and designated as “Map 54 Block 322 Parcel 1 145 High Street 15,472 Sq. Ft. ± 0.36 Ac. ±”, “Map 54 Block 322 Parcel 2B 0 Railroad Avenue 12,033 Sq. Ft. ± 0.28 Ac. ±” and “Map 54 Block 322 Parcel 4A 0 River Street 16,867 Sq. Ft. ± 0.39 Ac. ±” (“**Grantor’s Parcels**”) on a certain map entitled “ALTA/ACSM Land Title Survey Tax Map 54 Block 322 Parcels 1, 2B, 4, 4A High Street, River Street and Railroad Avenue Milford, Connecticut” prepared by City of Milford Engineering Bureau Milford, Connecticut dated July 8, 2015 revised to 08/26/2015 and recorded as Map AB 3605 on the Milford Land Records (the “**Land Title Survey Map**”); and

WHEREAS, Grantee is the owner of a certain piece or parcel of land known and designated as Map 54 Block 322 Parcel 4 44-64 River Street 55,627 Sq. Ft. ± 1.28 Ac. ±” (“**Grantee’s Parcel**”) on the Land Title Survey Map; and

WHEREAS, Grantor and Grantee desire to enter into a mutually beneficial agreement regarding the non-exclusive use of certain areas of Grantor’s Parcels as shown on the Land Title Survey Map for access by emergency vehicles through and across Grantor’s Parcels;

NOW, THEREFORE, for mutual consideration, the receipt and sufficiency of which is hereby acknowledged by both Grantor and Grantee, the Parties agree as follows:

1. **Recitals.** The recitals of fact as set forth above are hereby incorporated into the body of this Agreement by reference.

2. **Grant of Easement.** Subject to the terms of this Agreement, Grantor hereby grants to Grantee, its heirs, executors, administrators, successors and assigns the non-exclusive right for emergency vehicles to pass and repass over and across an area shown as “Emergency Access Easement” on a certain map entitled “Emergency Access Easement From High Street Over Lands Of The City Of Milford To Metro TOD, LLC 44-64 River Street, Milford, Connecticut” prepared by CT Civil Group and dated May

5, 2023 (the “**Easement Map**”) to be recorded simultaneously herewith. The legal description of the boundary of the “**Easement Area**” is as follows:

Commencing at a point on the easterly street line of High Street and the southwest corner of lands now or formerly of the City of Milford known as 145 High Street;

thence running along the easterly street line of High Street N 34° 38' 42" W a distance of 32.41 feet to the easement point of beginning;

thence continuing along the easterly street line of High Street N 34° 38' 42" W a distance of 24.03 feet to a point;

thence running through lands now or formerly of the City of Milford known as 145 High Street, 0 Railroad Ave, and 0 River Street, each in part the following courses:

- N 52° 28' 57" E a distance of 36.90 feet to a point;
- S 87° 56' 55" E a distance of 34.41 feet to a point;
- N 69° 22' 53" E a distance of 149.58 feet to a point;
- N 69° 22' 53" E a distance of 170.11 feet to a point;
- N 70° 12' 11" E a distance of 233.62 feet to a point;

thence running along the westerly line of other lands now or formerly of the City of Milford known as 44-64 River Street S 19° 46' 59" E a distance of 24.00 feet to a point;

thence running through lands now or formerly of the City of Milford known as 145 High Street, 0 Railroad Ave, and 0 River Street, each in part the following courses:

- S 70° 12' 11" W a distance of 233.24 feet to a point;
- S 69° 22' 53" W a distance of 167.68 feet to a point;
- S 69° 22' 53" W a distance of 156.86 feet to a point;
- N 87° 56' 55" W a distance of 30.58 feet to a point;
- S 52° 28' 57" W a distance of 29.47 feet to the point of beginning;

Containing in all 14,909 square feet or 0.34 Acres more or less and as depicted on the Easement Map.

3. **Good Condition and Repair; Relocation; Obstructions.** Grantee shall have the right to maintain the Easement Area in good condition and repair, at Grantee’s sole cost and expense, to assure safe and unobstructed access for said emergency vehicles. In the event that Grantee reasonably determines that the Easement Area is no longer in good condition and repair to assure safe and unobstructed access for emergency vehicles, it will provide thirty (30) days prior written notice to Grantor of Grantee’s intent to repair the Easement Area, in which event, Grantor shall have fifteen (15) days to notify Grantee in writing of its election to either (a) make the repairs or (b) allow Grantee to make the repairs. If Grantee is allowed to make such repairs, it will provide Grantor with a certificate of insurance evidencing insurance coverage of Grantor as may reasonably be required by Grantor, and Grantor and Grantee will agree upon a work plan regarding the scope and timing of the repairs. All repairs will be done in a first class and good and workmanlike manner free from any liens or encumbrances and in full compliance with applicable laws, rules and regulations affecting the Easement

Area. Grantor shall have the right to relocate said Easement Area so long as it remains a minimum of Twenty Four (24') feet wide and is aligned in a linear manner across all of Grantor's Parcels substantially similar to the Easement Area as shown on the Easement Map. Grantor will maintain the Easement Area free from any obstructions that would prevent access by emergency vehicles.

4. **Grantor's Use.** Grantor shall retain the right and privilege to use the Easement Area for all other purposes, except as herein granted or as would interfere with the use or enjoyment of the easement established herein; no building, structure or obstruction shall be located or constructed on said Easement Area by Grantee.

5. **Successors.** The grant of this easement shall be perpetual and shall run with the land and shall be binding upon both the Grantor and Grantee owners, as the owners may, from time to time change, and upon their respective heirs, executors, administrators, successors and assigns.

6. **Private Ownership of Grantor's Parcels.** The grant of the Easement shall not change the private ownership of Grantor's Parcels, and no one shall have any right to use Grantor's Parcels, except as specifically specified herein. Except as expressly limited herein, Grantor reserves for itself and its successors and assigns, all rights as owner of Grantor's Parcels.

7. **Indemnification.** Grantee agrees to indemnify, defend, and hold Grantor harmless from and against any and all claims, causes of action, costs, expenses, losses, liabilities, and damages (collectively, "Claims") arising from or incurred in connection with (a) Grantee's breach of this Agreement; or (b) the performance of any of Grantee's rights or obligations set forth in this Agreement. The foregoing indemnification will not cover any Claims to the extent the same were caused by the gross negligence or willful misconduct of Grantor. Without limiting the foregoing, Grantee agrees to indemnify, defend, and hold Grantor harmless from and against any Claims arising from or incurred in connection with the release or discharge by Grantee of any hazardous materials into or upon the Grantor's Parcels.

8. **Liens.** No liens or encumbrances of any kind or type shall be imposed on the Easement Area or any other part of Grantor's Parcels due to Grantee's acts or omissions. If any mechanic's or other lien, charge or order for the payment of money or other encumbrance shall be filed against Grantor and/or any portion of Grantor's Parcels, then Grantee shall, at Grantee's expense, cause same to be discharged of record or bonded within thirty (30) days after written notice to Grantee of the filing thereof, and Grantee shall indemnify and save harmless Grantor against and from all costs and liabilities, suits, penalties, claims and demands, including, without limitation, reasonable attorneys' fees resulting therefrom. If Grantee fails to comply with the foregoing provisions, Grantor shall have the option of discharging or bonding any such lien, charge, order or encumbrance, and Grantee agrees to reimburse Grantor for all costs, expenses and other sums of money, including reasonable attorneys' fees, in connection therewith upon demand.

9. **No Waiver.** No waiver of any right under this Agreement shall be effective for any purpose unless it is in writing and is signed by the Party hereto possessing the right, nor shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this Agreement.

10. **Attorney's Fees.** The substantially prevailing Party in any action or proceeding for the enforcement, protection, or establishment of any right or remedy under this Agreement or for the

interpretation of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing Party.

11. **Governing Law.** This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of Connecticut as the same may from time to time exist without regard to conflicts of laws provisions.

12. **Counterparts; Section Headings.** This Agreement may be executed in any number of counterparts, and each when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument. The section headings are inserted for convenience only and are not to be construed as part of this Agreement.

13. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Grantor, Grantee, the Grantee Parties, and their respective successors and assigns.

14. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and may not be modified or amended except in writing signed by the Parties hereto or their successors, permitted assigns, or subsequent holders of fee title to Grantor's Parcel's.

15. **Severability.** In the event that any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to applicable laws by an authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of provisions of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

[No further text on this page – signature and acknowledgment pages follow]

WHEREFORE the City of Milford has set its hand and seal this ____ day of _____, 2023.

GRANTOR:

CITY OF MILFORD

Name:

Name:

By: _____
Name:
Its

STATE OF CONNECTICUT

} ss.

COUNTY OF NEW HAVEN

On _____, 2023 personally appeared _____,
_____ of the **City of Milford**, Connecticut, duly authorized signer and sealer of the
foregoing instrument and acknowledged the same to be _____ free act and deed and the free act and deed
of said municipality, before me.

Name:
Commissioner of the Superior Court
Notary Public
My Commission expires: _____

WHEREFORE Metro Tod LLC has set its hand and seal this ____ day of _____, 2023.

GRANTEE:

METRO TOD, LLC

Name:

By: _____

Name:

Name:
Its

STATE OF CONNECTICUT

} ss.

COUNTY OF NEW HAVEN

On _____, 2023 personally appeared _____,
_____ of **Metro Tod, LLC** duly authorized signer and sealer of the foregoing
instrument and acknowledged the same to be _____ free act and deed and the free act and deed of said
limited liability company, before me.

Name:

Commissioner of the Superior Court
Notary Public

My Commission expires: _____

Record and Return to:

Harlow, Adams & Friedman, P.C.
One New Haven Avenue, Suite 100
Milford, CT 06460
Attention: Dana E. Friedman, Esq.

SPACE ABOVE FOR RECORDER'S USE

CONSTRUCTION, MAINTENANCE, ACCESS AND USE EASEMENT AGREEMENT

THIS CONSTRUCTION, MAINTENANCE, ACCESS AND USE EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of _____, 2023 (the “**Effective Date**”), by and between **THE CITY OF MILFORD**, a municipal corporation existing under the laws of the State of Connecticut (“**Grantor**” or the “**City**”), and **METRO TOD, LLC**, a Connecticut limited liability company (together with its successors and assigns, “**Grantee**”). Grantor and Grantee are referred to herein as a “**Party**,” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Grantor is the owner of certain rights of way for the municipal streets commonly known as “River Street” and “Darina Place” as they abut the real property known as 44-64 River Street (together, the “**Grantor’s ROW**”) as shown on a map entitled “Easement Plan Prepared for 44-64 River St Milford, Connecticut” dated July 21, 2020, revised to April 12, 2023, prepared by CT Civil Group, LLC to be filed simultaneously herewith and attached hereto as **Exhibit A** (the “**Easement Map**”);

WHEREAS, Grantee is the owner of a certain piece or parcel of land known and designated as 44-64 River Street, Milford, Connecticut (“**44-64 River Street**”) as shown on the Easement Map; and

WHEREAS, Grantor and Grantee desire to enter into a mutually beneficial agreement regarding the use of portions of Grantor’s Right of Way as shown on the Easement Map and more particularly described in **Exhibit B** attached hereto (the “**Easement Area**”) for access, construction, use and maintenance of multiple structures and facilities by Grantee through and across Grantor’s ROW.

NOW, THEREFORE, for Ten and 00/100 (\$10.00) Dollars and in consideration of the mutual promises of the Parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals**. The recitals of fact as set forth above are hereby incorporated into the body of this Agreement by reference.
2. **Grant of Easements**. Subject to the terms of this Agreement, Grantor hereby grants to Grantee, its heir, successors and assigns, during the Term (as hereinafter defined), the following

exclusive and non-exclusive easements in favor of 44-46 River Street to be used in connection with Grantee's development and operation of 44-46 River Street:

(a) An exclusive easement for the construction, maintenance, repair, replacement and use of: (i) an exterior terrace; (ii) handicap ramp; (iii) retaining/landscape wall; and (iv) subsurface grease trap (collectively, the "**Easement Improvements**") over and across certain portions of Grantor's ROW in the areas identified as: (w) "TERRACE EASEMENT"; (x) "HANDICAP RAMP EASEMENT"; (y) "LANDSCAPE WALL EASEMENT"; and (z) "GREASE TRAP EASEMENT" (collectively, the "**Exclusive Easement Area**") on the Easement Map, with all of the foregoing being referred to as the "**Exclusive Easements**".

(b) A non-exclusive easement on and over the portions of the Easement Area on which the Easement Improvements are not located (the "**Non-Excusive Easement Area**"), including that certain portion of the Easement Area covering part of the proposed municipal sidewalk shown as "PROPOSED SIDEWALK" on the Easement Map, for the following purposes: (i) to access Grantee's building located on 44-64 River Street and the Easement Improvements; (ii) to maintain, repair, upgrade and replace the Easement Improvements in such manner as Grantee reasonably deems necessary and appropriate, but in all respects subject to the terms of this Agreement; and (iii) the planting and maintenance of landscaping features, being reasonably acceptable to the Grantor, in the parts of the Easement Area identified as "LANDSCAPED AREAS" on the Easement Map, at its sole cost and expense (the "**Landscaped Areas**"), with all of the foregoing being referred to as the "**Non-Exclusive Easements**", and being together with the Exclusive Easements, the "**Easements**".

3. **Private Ownership of Grantor's ROW.** The grant of the Easements shall not change the ownership of Grantor's ROW, and no one shall have any right to use Grantor's ROW, except as specifically specified herein. Except as expressly limited herein, Grantor reserves for itself and its successors and assigns, all rights as owner of Grantor's ROW.

4. **Prior Notice to Grantor.** Grantee shall provide Grantor with at least ten (10) business days prior written notice before conducting any activities that involve the construction, maintenance, repair, upgrade and/or replacement of the Easement Improvements (except in the case of emergency, Grantee shall provide as much written notice as is reasonably possible) and Landscaped Areas, which written notice shall include a description of the work intended to be undertaken by Grantee and the time anticipated to complete such work. Grantee agrees it shall provide Grantor with reasonable updates relating to the foregoing work until completion. Grantor shall be entitled, but not required, to have a representative present during the completion of the work intended to be undertaken by Grantee. Grantee shall pay for the cost of any police officers and other personnel reasonably required by the City to protect the City's property and ensure the safety of the general public.

5. **Standard of Work.** Grantee covenants and agrees to construct or cause to be constructed all of the Easement Improvements and Landscaped Areas in a first class and good and workmanlike manner, free from any liens or encumbrances and in full compliance with applicable laws, rules and regulations affecting the Easement Area and Landscaped Areas. Following completion thereof, Grantee shall keep, maintain and repair the Easement Improvements and

Landscaped Areas so as to comply with all applicable rules, regulations and orders of all governmental authorities or agencies having jurisdiction, at the Grantee's sole cost and expense. Grantee hereby agrees that it shall use commercially reasonable efforts to limit any disturbance to Grantor's or the general public's use of the Non-Exclusive Easement Area, and other adjacent real property owned by Grantor, during any construction, maintenance or repair of the Exclusive Easement Area or Landscaped Areas.

6. **Insurance.** At all times during the Term, Grantee shall maintain, at Grantee's sole cost and expense, (a) commercial general liability insurance including property damage, bodily injury, and contractual liability insurance, in the minimum amount of \$3,000,000.00 per each occurrence (the calculation as to whether such limit is met will include any umbrella coverage of Grantee), (b) auto liability, including bodily injury and property damage, in the minimum amount of \$1,000,000.00 per each accident, and (c) worker's compensation insurance to comply with the applicable laws of Connecticut. Grantee shall name Grantor as an additional insured for the insurance coverages as required by subsections (a) and (b) above and provide Grantor with certificates of insurance within fifteen (15) days of the Effective Date. The foregoing requirements are minimum insurance requirements only. During the Term, Grantor may require Grantee to carry additional types and amounts of insurance coverage, including modifications to any existing insurance coverages required under this Section 6. If Grantor so requires, Grantee shall furnish Grantor with certificates of insurance within fifteen (15) days of Grantor's request therefor.

7. **Indemnification.** Grantee agrees to indemnify, defend, and hold Grantor harmless from and against any and all claims, causes of action, costs, expenses, losses, liabilities, and damages (collectively, "**Claims**") arising from or incurred in connection with (a) Grantee's breach of this Agreement; or (b) the performance of any of Grantee's rights or obligations set forth in this Agreement. The foregoing indemnification will not cover any Claims to the extent the same were caused by the gross negligence or willful misconduct of Grantor. Without limiting the foregoing, Grantee agrees to indemnify, defend, and hold Grantor harmless from and against any Claims arising from or incurred in connection with the release or discharge by Grantee of any hazardous materials into or upon the Grantor's ROW.

8. **Liens.** No liens or encumbrances of any kind or type shall be imposed on the Easement Area or any other part of Grantor's ROW due to Grantee's acts or omissions. If any mechanic's or other lien, charge or order for the payment of money or other encumbrance shall be filed against Grantor and/or any portion of Grantor's ROW, then Grantee shall, at Grantee's expense, cause same to be discharged of record or bonded within thirty (30) days after written notice to Grantee of the filing thereof, and Grantee shall indemnify and save harmless Grantor against and from all costs and liabilities, suits, penalties, claims and demands, including, without limitation, reasonable attorneys' fees resulting therefrom. If Grantee fails to comply with the foregoing provisions, Grantor shall have the option of discharging or bonding any such lien, charge, order or encumbrance, and Grantee agrees to reimburse Grantor for all costs, expenses and other sums of money, including reasonable attorneys' fees, in connection therewith upon demand.

9. **Notices.** All notices herein provided for shall be given by registered mail or certified mail, postage prepaid, return receipt requested, or sent by overnight express carrier (e.g., Federal Express or UPS) for guaranteed next business day delivery. Notice shall be deemed given when

so mailed and addressed. Either Party may change such address by written notice to the other Party as provided for herein. Notice shall be delivered as follows:

To Grantor: Mayor's Office
City of Milford
110 River Street
Milford, CT 06460
Attn: Mayor

With a copy to: Office of the City Attorney
City of Milford
110 River Street
Milford, CT 06460
Attn: City Attorney

With a copy to: Pullman & Comley, LLC
90 State House Square
Hartford, CT 06103
Attn: Gary B. O'Connor, Esq.

To Grantee: Metro TOD, LLC
41 Cherry Street
P.O. Box 3530
Milford, CT 06460
Attn.: Robert H. Smith, Jr.

With a copy to: Harlow, Adams & Friedman, P.C.
One New Haven Ave., Suite 100
Milford CT 06460
Attn: Dana Eric Friedman, Esq.

10. **Term/Termination**. The “**Term**” of this Agreement shall begin on the Effective Date and shall automatically terminate on that day that 44-46 River Street is no longer operating as a mixed-use commercial and residential property for a consecutive period of twelve (12) months. Upon the expiration of the Term, this Agreement shall be of no further force or effect and the easements granted herein shall terminate without the need for recording any further instrument or agreement by the Parties upon the land records. Notwithstanding the foregoing, Grantee agrees to promptly execute an instrument in recordable form acknowledging such termination at the request of Grantor for recording on the City of Milford Land Records.

11. **Run with the Land**. This Agreement is intended to run with the land.

12. **No Waiver**. No waiver of any right under this Agreement shall be effective for any purpose unless it is in writing and is signed by the Party hereto possessing the right, nor shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this Agreement.

13. **Attorney's Fees.** The substantially prevailing Party in any action or proceeding for the enforcement, protection, or establishment of any right or remedy under this Agreement or for the interpretation of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing Party.

14. **Governing Law.** This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of Connecticut as the same may from time to time exist without regard to conflicts of laws provisions.

15. **Counterparts; Section Headings.** This Agreement may be executed in any number of counterparts, and each when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument. The section headings are inserted for convenience only and are not to be construed as part of this Agreement.

16. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Grantor, Grantee, and their respective successors and assigns.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and may not be modified or amended except in writing signed by the Parties hereto or their successors, permitted assigns, or subsequent holders of fee title to Grantor's ROW or 44-64 River Street.

18. **Severability.** In the event that any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to applicable laws by an authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of provisions of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

[No further text on this page – signature and acknowledgment pages follow]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement intending thereby to be legally bound.

GRANTOR:

CITY OF MILFORD

Name:

Name:

By: _____

Name:

Its:

STATE OF CONNECTICUT

} ss.

COUNTY OF NEW HAVEN

On _____, 2023, before me, the undersigned officer, personally appeared _____, who acknowledged herself/himself to be the _____ of the **City of Milford**, a Connecticut municipal corporation, and that she/he as such official, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the **City of Milford** by herself/himself as such official.

Name:

Commissioner of the Superior Court

Notary Public

My Commission expires: _____

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement intending thereby to be legally bound.

GRANTEE:

METRO TOD, LLC

Name:

Name:

By: _____

Name:

Its:

STATE OF CONNECTICUT

} ss.

COUNTY OF NEW HAVEN

On _____, 2023, before me, the undersigned officer, personally appeared _____, who acknowledged herself/himself to be the _____ of **Metro TOD, LLC**, a Connecticut limited liability company, and that she/he as such _____, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the **Metro TOD, LLC** by herself/himself as such _____.

Name:

Commissioner of the Superior Court

Notary Public

My Commission expires: _____

EXHIBIT A

EASEMENT MAP

(attached)

EXHIBIT B

EASEMENT AREA LEGAL DESCRIPTION