

**CONSTRUCTION CONTRACT**

This AGREEMENT made this 27 day of August 2009 (the "Effective Date") by and between **TANGLEWOOD BUILDERS, LLC** a Connecticut corporation (the "Contractor") and **WESTBURY CONDOMINIUMS ASSOCIATION, INC.**, a Connecticut Non-Stock Corporation (the "Owner").

**WITNESSETH:**

**WHEREAS**, in consideration of the mutual promises contained herein, the parties agree as follows:

1. **Contractor's Work.** The Contractor shall supply all necessary material and equipment and shall perform and furnish all labor, oversight and management necessary for the complete removal and reconstruction / replacement of the of the stairs, walkway, sidewalk and related elements and features in front of the **Building located at 30 Outlook Avenue in West Hartford CT**, in strict accordance with the Plans and Specifications (defined herein) and subject in every manner and detail to the supervision and satisfaction of the Owner or its duly authorized representative. The Contractor's Work will include, but may not be limited to the following.

- A. Deliver all required permits and approvals to the Owner.
- B. Jack hammer and remove the concrete steps and landing at the front door.
- C. Remove the sidewalk located between the two sets of stairs in front of the building.
- D. Excavate and install concrete footing at 42" below grade.
- E. Install 8" wall to form inset for stairs rebar to existing wall using 3,500 lb concrete.
- F. Back fill and compact.
- G. Pour top landing and new steps using 4,000 lb concrete.
- H. Form and pour new sidewalk to match 4,000 lb concrete.
- I. Replace and the lawn's top soil and seed such topsoil (with seed to be specified by owner) in any and all areas affected or impacted by the Contractor's Work.
- J. Deliver all final approvals, drawings and other documents required by all applicable governing bodies.

"Plans and Specifications" is defined as all of the Contractor's Work described within this Section 1 of this Agreement. All Contractor's Work is to be performed in accordance with all applicable laws, the guidelines specified within this Agreement, any and all additional plans and specifications provided to the Contractor by the Owner and all approvals, permits and other guidelines of any sort (all as amended), required by all applicable agencies, groups and governing bodies

2. **Purchase Price.** The Owner shall pay the Contractor the total purchase price of THIRTEEN THOUSAND FIVE HUNDRED AND 00/100 (\$13,500.00) DOLLARS. The total purchase price includes all costs, of each and every kind, associated with completing the Contractor's Work in accordance with the Plans and Specifications, including but not limited to applicable permit fees, Federal, State, county, municipal and other taxes or fees imposed by law. The total purchase price is a Guaranteed Maximum Price and under no circumstance shall be exceeded except in accordance with Section 5 and/or Section 19 of this agreement.

3. **Terms of Payment.** Payments shall be made in the following order and subject to the terms of this Agreement.

**Payment 1:** 10% of the Purchase Price upon completion of Contractor's Work described in Section 1.A of this Agreement.

**Payment 2:** 30% of the Purchase Price upon the Commencement Date ("Commencement Date" is defined as the date on which the Contractor begins the Contractor's Work described in Section 1.B of this Agreement.)

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**Payment 3:** 30% of the Purchase Price upon the completion of the Contractor's Work described in Section 1.H of this Agreement.

**Payment 4:** 20% of the Purchase Price upon Project Completion ("Project Completion" is defined as the full completion, to the Owner's reasonable satisfaction, of the Contractor's Work as defined in Section 1 of this Agreement.)

**Payment 5:** 10% of the Purchase Price 30 days following Project Completion.

Each application for payment shall include evidence satisfactory to the Owner that all obligations resulting from the Contractor's performance to that point have been satisfied. The Contractor warrants that, in order to induce the Owner to release any partial or full payment, it has paid all claims for labor, material, insurance, taxes, equipment, etc., employed in the prosecution of the work above, to the date of requisition.

No payment made hereunder, including the final payment, shall be construed as an acceptance of defective work or improper materials.

The Contractor, upon receipt of each payment, shall release and discharge the Owner of and from any and all liabilities and obligations in any way related to or arising out of this contract. In exchange for each payment, the Contractor shall provide the Owner with the completed waiver and release forms attached hereto as Exhibit B and Exhibit C. The Contractor will provide similar forms from all of the Contractor's suppliers and subcontractors.

4. **Time of the Work.** The Contractor shall begin the Contractor's Work described in Section 1.B of this Agreement by **September 15, 2009** and shall complete (according to the definition of Project Completion contained herein) the Contractor's Work by **October 30, 2009**. The Contractor shall prosecute its work with such diligence and dispatch as not to delay or retard the progress and completion of the project.

Should the Contractor at any time refuse or neglect to supply a sufficient number of properly skilled workmen or materials of the proper quality, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, the Owner shall be at liberty, after three days written notice to the Contractor, to provide any such labor or materials, and to deduct the cost thereof from any money then due or thereafter to become due to the Contractor under this contract; and if such refusal, neglect or failure is sufficient ground for such action, the Owner shall also be at liberty to terminate the employment of the Contractor for the said work, complete the work included under this contract, and to employ any other person or persons to finish the work and to provide the materials therefore. In case of such termination of the employment of the Contractor, it shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expenses incurred by the Owner in finishing the work, such excess shall be paid by the Owner to the Contractor; but if such expense exceed such unpaid balance, the Contractor shall pay the difference to the Owner. All expenses, including legal fees, collection fees, and court fees, incurred by the Owner either for furnishing materials or finishing the work, and/or any damage incurred through such default, shall be chargeable to the Contractor.

5. **Changes and Claims.** No additions or deletions shall be made in the work unless authorized in writing by the Owner. The Owner may, at any time, unilaterally or by agreement with the Contractor, make changes in the work.

The Contractor shall submit all claims, including claims for adjustment in the contract price, in writing to the Owner within five (5) days from the beginning of the event for which the claim is made; otherwise, such claim will be

deemed waived.

6. **Coordination of the Work.** The Contractor shall be responsible for coordinating its work with the Owner. Owner shall be responsible for providing notice of the commencement of the Contractor's Work to the unit owners.

7. **Insurance.** The Contractor, at its own expense, shall obtain and maintain until the work is finally accepted by the Owner, insurance with Owner approved limits: This Agreement is contingent on Owner's approval of Contractor's insurance coverage / policies. Contractor will provide evidence of Contractor's insurance coverage / policies prior to the 9/15/2009. Such coverage / policies are subject to the review of the Owner who may require revisions to Contractor's insurance coverage / policies prior to 9/15/2009. Should Contractor not revise the Contractor's insurance coverage / policies prior to 9/15/2009, the Owner may terminate this Agreement and Owner shall have no liability associated with this Agreement. Should the Owner approve the Contractor's insurance coverage / policies, evidence of the Contractor's insurance coverage / policies will be attached to this Agreement as an exhibit which will be made part of this Agreement.

**Additional Insurance Requirements:**

The Owner shall be listed as an additional insured, the policies shall conform to all requirements of state law, and all subrogation rights against the Owner shall be waived. The Contractor shall furnish the Owner with certificates of insurance before starting work, as evidence that all insurance required herein is in full force and effect.

The Contractor shall include coverage for its subcontractors in its policy or submit similar insurance certification from each of its subcontractors before the work commences. The Contractor shall indemnify the Owner for any loss suffered from the failure of any subcontractors to be so insured.

8. **Removal of Debris and Clean Up.** The Contractor shall keep the project and the property (including the entire grounds of the WESTBURY CONDOMINIUMS ASSOCIATION, INC.) including storage areas used by it, free from the Contractor's rubbish, waste, material, equipment and debris. Upon completion of the work, the Contractor shall clean up and remove from the premises all rubbish, waste, material, equipment and debris due to its work. If the Contractor fails in this regard, the Owner, without notice to the Contractor, shall have the right to remove same and charge the cost thereof to the Contractor.

9. **Liability.** To the fullest extent permitted by law, the Contractor shall be liable for and shall protect, defend, indemnify, and hold harmless the Owner and its officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of, or resulting from the performance of the work, provided that (i) any such claim, cost, loss or damages is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of the Contractor or by anyone directly or indirectly employed by the Contractor to perform or furnish any of the work, or anyone for whose acts any of them may be liable.

In any or all claims against the Owner or its consultants, agents, officers, directors, or employees (or the survivor or personal representative or such employee) of the Contractor, any subcontractor, supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any

way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor, supplier, or other person or organization under workers compensation acts, disability benefit acts, or other employee benefit acts.

10. **Safety.** The Contractor agrees that the prevention of accidents to workers engaged in the work is the responsibility of the Contractor, and the Contractor shall maintain a safe and healthful working environment for the Contractor's employees, subcontractors, and suppliers and shall comply with the requirements of OSHA Safety and Health Standards, and all other applicable laws, regulations, and standards. The Contractor hereby agrees to indemnify and hold the Owner harmless from any claims, losses, damages, expenses (including legal fees), and penalties incurred by the Owner arising as a result of the Contractor's failure to comply with said safety laws, ordinances, rules, or regulations.

11. **Inspections.** The Contractor will permit the inspection of the work by the Owner and its representatives.

12. **Quality of Construction and Warranty.** The work shall be performed in a good and workmanlike manner using new material of a first-rate quality or as otherwise specified in the Plans and Specifications. In the absence of a specific quality described in the specifications, the standard of first-rate quality shall apply. For a period of 1 year, the Contractor shall, at its own cost and expense, promptly remedy any defects resulting from faulty workmanship, equipment, or materials. The provisions of this section apply to work done by subcontractors as well as to work done by direct agents and employees of the Contractor.

13. **Warranties of Manufacturers.** The Contractor hereby agrees to assign to the Owners any and all guaranties or warranties provided by the manufacturer or any other party for materials used in connection with the work.

14. **Guaranty.** The Contractor guarantees completion of the Contractor's Work in accordance with the Plans and Specifications and the terms of this Agreement. The Contractor shall be responsible for any and all costs and liability of any and all kinds related to the failure to complete the project in accordance with the Plans and Specifications and any term of this Agreement.

15. **Termination.** The Owner may terminate this contract if the Contractor fails to meet any of the terms contained within this Agreement.

16. **Cross-Default.** Should the Contractor breach, or fail to meet, any term contained within this Agreement, such breach or failure shall constitute a breach or failure under all other agreements, of any kind, between Owner and Contractor and Owner shall have the right to terminate any and all other agreements between the parties with no liability to Owner.

17. **Representation.** To induce the Owner to enter into this Agreement, the Contractor hereby represents and warrants to the Owner that the Contractor has received no notice of any violation of any state, federal or local law, order, rule, regulation or statute with respect to the conduct of its business, and all of the Contractor's agents and subcontractors shall be properly licensed.

18. **Subcontractors.** The Contractor agrees not to employ any subcontractors without prior written notice to, and approval by, the Owner.

19. **Resolution of Disputes.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by, and in accordance with the construction arbitration rules of, either the American Arbitration Association or the American Dispute Resolution Center, Inc. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration hearings shall be held in Hartford County, Connecticut. The prevailing party shall be entitled to recover its costs and attorney's fees from the non-prevailing party.

20. **Severability and Waiver.** If any portion of this contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited. Any failure by the Owner, at any time, to enforce any of the terms of this contract, or to exercise any right herein, shall not constitute a waiver of such terms, covenants, conditions, or right, or the Owner's enforcement rights herein.

21. **Complete Agreement.** This contract constitutes the entire agreement between the parties. No modification or amendment of this contract shall be effective unless in writing and signed by two duly authorized officers of the Owner and the Contractor. As of the Effective Date, there were no other agreements between the parties.

22. **Survival.** The parties hereby agree that the representations, covenants, terms and conditions of the contract shall survive the completion of the work and payment of the total purchase price.

23. **Applicable Law.** The laws of the State of Connecticut shall govern the rights of the parties hereto and the construction of this contract.

Tanglewood Builders, LLC

By: 

WESTBURY CONDOMINIUMS ASSOCIATION, INC.

By: 

Martin Levitz  
President