

**(20-3) RESOLUTION OF THE REPRESENTATIVE TOWN MEETING OF THE TOWN
OF DARIEN TO ACCEPT A TEMPORARY AND PERMANENT EASEMENT OVER
PROPERTY LOCATED AT
179 NOROTON AVENUE, DARIEN, CONNECTICUT**

**Primary – PW
Secondary – PH&S
PZ&H
F&B**

WHEREAS, a state grant has been obtained by the Town for intersection improvements on the Noroton Avenue/West Avenue intersection;

WHEREAS, under the state grant, the Town of Darien pays for the design costs and the grant pays for the right of way acquisition costs and construction costs;

WHEREAS, the purpose of the project is to create additional left turn lanes to reduce queuing and traffic congestion at the Noroton Avenue/West Avenue intersection;

WHEREAS, the intersection of the two Town collector roads has been a longtime congested intersection with long queues;

WHEREAS, the Town recognizes the importance of reducing these problems and make for a safe intersection;

WHEREAS, this project will affect property owners near the intersection as the Town needs easements over certain properties.

WHEREAS, the Town is not acquiring a fee title to the property but necessary easements;

WHEREAS, the property located at 179 Noroton Avenue is owned by Power Test Realty Company Limited Partnership;

WHEREAS, the Town has had discussions and negotiations with the owner of the property in question;

WHEREAS, a settlement has been reached with the owner and said owner will grant temporary and permanent construction and sidewalk easements to the Town;

WHEREAS, these easements are more fully described in the document called Construction and Sidewalk Easement attached hereto and made a part hereof;

WHEREAS, these easements are also shown on the Map prepared by Fuss & O'Neill attached hereto and made a part hereof.

NOW THEREFORE BE IT RESOLVED that the Representative Town Meeting of the Town of Darien authorizes the acceptance and approval of said easements.

AMENDMENT
CONSTRUCTION & SIDEWALK EASEMENT
("EASEMENT")

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, that the undersigned, Power Test Realty Company Limited Partnership, a New York limited partnership duly registered to conduct business in the state of Connecticut (hereinafter referred to as the "Grantor"), as the record owner(s) of a certain parcel of land located at and known as 179 Noroton Avenue, Darien, CT 06820, and more particularly described in a certain Special Warranty Deed from Texaco Refining and Marketing, Inc. to Power Test Realty Company Limited Partnership, which Special Warranty Deed was recorded on the Darien Land Records in Volume 507 at Page 498 (hereinafter the parcel is referred to as the "Subject Property"), for good and valuable consideration received to their full satisfaction of the TOWN OF DARIEN, a municipal corporation organized and existing under the laws of the State of Connecticut (hereinafter referred to as the "Grantee"), does hereby give, grant, bargain, and confirm unto the Grantee, its successors and assigns, these two certain easements over, under, through and upon the portion of said Subject Property depicted and designated on a certain map entitled, "Easements to be Acquired by the Town of Darien from Power Test Realty Limited Partnership", dated September 30, 2019, prepared by Fuss & O'Neill, P.C. (the "Map"), which map is to be filed and recorded in the office of the Town Clerk of the town of Darien as map no. ____ D.L.R., attached hereto as Exhibit A and made a part hereof, and further described as follows:

1. A temporary construction easement over the portion of the Subject Property within the area labelled as "Proposed temporary easement to be acquired from Power Test Realty Company Limited Partnership 965 S.F." on the Map (the "Temporary Easement Area"), together with the privilege and right to enter upon the Temporary Easement Area, subject to the terms herein, at all reasonable times and to bring in and use upon said premises such machinery and equipment, to be operated by the Grantee, its agents, employs or servants, as may be proper and necessary, to lay out, construct, alter, repair, maintain and inspect certain proposed sidewalk extensions, driveways, curbs, signage and fencing, and related installation materials, appurtenances and connections, through and within the Temporary Easement Area. The temporary construction easement described under this paragraph will be extinguished at the earlier to occur of (i) final inspection and approval of the Grantee's construction work by the state Department of Transportation or (ii) August 31, 2021 (collectively, the "Temporary Easement Period"). During the Temporary Easement Period, (i) Grantee shall use commercially reasonable efforts to minimize blocking a driveway or curb-cut, including providing advance notice of any such blocking and blocking only one driveway or curb-cut at a time; (ii) Grantee shall not park or store any equipment on the Subject Property overnight, and (iii) Grantee will not allow any contractors hired by the Grantee to use the Subject Property as a staging or storage area at any time, other than during the time Grantee is conducting any work permitted hereunder. Grantee shall use commercially reasonable efforts to perform the work permitted hereunder

at the Subject Property between the hours of 7 am and 5 pm. Grantee, and its agents, contractors and employees, must perform all activities permitted hereunder in accordance with all applicable laws and governmental regulations.

2. A full and perpetual easement over the portion of the Subject Property as described in Schedule A (the "Permanent Easement Area") attached hereto and made a part hereof, together with the right to the Grantee, its officers, agents, employees, contractors, subcontractors, successors and assigns, to enter upon the Permanent Easement Area, subject to the terms herein, at all reasonable times and to bring in and use upon the Permanent Easement Area such machinery and equipment, to be operated by the agents, employees and servants of the Grantee, its successors and assigns, as may be proper and necessary to effectuate the purposes of the grant of this perpetual easement, and to pass and repass over the Permanent Easement Area as may be reasonably necessary for the purpose of repairing, inspecting, maintaining, altering, removing or replacing the sidewalk extensions, driveways, curbs and signage, and related installation materials, appurtenances and connections, through and within the Permanent Easement Area, in such manner and at such times as the Grantee may determine, provided, however, that the same be reasonable.

Grantee agrees to perform all work contemplated herein in a commercially reasonable manner and to minimize interference with any business operations conducted on the Property. Grantor will notify the Grantee if the Grantee's work is interfering with Grantor's business operations to allow the parties to work together to minimize such interference. The Grantee, its successors and assigns, at its sole cost and expense, further covenants and agrees to repair restore and/or replace any and all damage to the Subject Property attributable to the construction, maintenance or repair permitted hereunder by the Grantee, its duly authorized agents, servants and employees to the substantially same condition existing on the date hereof, and clean and remove all debris from the Subject Property generated by Grantee, or its agents, contractors, consultants, employees, officers, or any other party acting on behalf of Grantee, and to hold harmless the Grantor, their heirs and assigns and Grantor's affiliates and parent company, and their respective agents, tenants, employees, and successors, from any damages or claims, demands, causes of action, suits, actions, liabilities, losses, costs (including attorney's fees and expenses) liens, or encumbrances, for injury or death of any person, or for loss or damage to property resulting, directly or indirectly, from the Grantee's, its officers, agents, employees, contractors, subcontractors, successors and assigns (i) use of, or any activity on or about or within the Subject Property, including, without limitation, the Temporary Easement Area and Permanent Easement Area, and (ii) any breach of any of the Grantee's covenants or obligations hereunder. Grantee shall maintain all responsibility for any personal injury to Grantee's employees, contractors, subcontractors, consultants, personnel or agents, or others, related to the Grantee's project that is not covered by or subject to Grantor's indemnity in the immediately preceding sentence, unless such personal injury is caused by the actions or omissions of the Grantor, or any of its affiliates, or their agents, tenants, representatives, employees or successors. Grantee shall not suffer or permit the filing of any liens, claims or encumbrances of any kind by any of its agents, contractors or consultants in connection with the Grantee's project. In the event any lien, claim

or encumbrance attaches to the Property in connection with the Project, Grantee will cause it to be discharged of record within ninety (90) days of the date notice of such lien, claim or encumbrance is given to Grantee. Grantee shall use qualified and licensed contractors and other professionals in connection with any and all work permitted hereunder, all of whom shall be covered by insurance, at a cost that shall not be borne by the Grantor, at industry standard levels containing customary types and limits of coverage to protect Grantee and Grantor from all claims under any laws and for damages because of bodily injury and damages to the property which may arise out of or in connection with this Easement. Grantee shall, prior to commencement of any and all work permitted hereunder, provide to Grantor Certificates of Insurance issued by reputable and economically sound insurance carriers with a rating of A or greater by Moody's or a similar credit agency evidencing the insurance coverage set forth above naming Grantor, its affiliates, designees and assignees as an additional insured. In no event shall Grantee perform (or cause to be performed) hereunder any sampling or testing of soils, waters or other media or any other subsurface or intrusive testing upon the Subject Property, including, without limitation, the Temporary Easement Area and Permanent Easement Area; provided, however, that Grantee and its contractors may conduct geotechnical test borings for purposes related to the work permitted hereunder.

The Grantor reserves the right to themselves, their heirs, successors and assigns, to use the Subject Property for any purpose and in any manner; provided, however, that no permanent buildings or structures shall be constructed within the Permanent Easement Area, and the Grantor shall convey no interest, right or easement, nor grant any privilege related to the Permanent Easement Area, nor use or enter upon such area in any way that would adversely affect or impair Grantee's full use and enjoyment of the rights and interests in this easement, or that may in any way injure or damage Grantee's materials. It is expressly understood and agreed to by Grantee that the easements granted hereunder are nonexclusive and are granted subject to all currently existing valid easements, agreements, covenants, restrictions and conditions of record affecting the property or any part thereof. The Grantor agrees that any future easements it may convey over the Easement Area will not interfere with the Grantee's easement granted herein.

TO HAVE AND TO HOLD, the above-granted perpetual Easement, privilege and right, with the privileges and appurtenances thereof unto it, which shall run with the land in perpetuity and be binding upon the said Grantor(s) and Grantee, and their respective successors and assigns forever.

These two certain easements have been authorized by the Board of Selectmen of the Town of Darien, pursuant to resolution adopted on _____, 2020.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ day of _____, 2020.

Power Test Realty Company Limited
Partnership

By: Getty Properties Corp.

By: _____
Name:

Title:

Schedule A

(Legal description of permanent easement granted to the Town of Darien over the property known as 179 Noroton Avenue, Darien, Connecticut on _____, 2020)

The Permanent Easement Area shall encompass all that certain lot or parcel of land, with the buildings and improvements thereon, situated in the town of Darien, Connecticut, within the area labelled as "Proposed permanent easement to be acquired from Power Test Realty Company Limited Partnership 887 S.F" on Map_____ of the Darien Land Records, which is bounded and described as follows:

Commencing at a point on the southerly boundary line of West Avenue, so called, at the intersection with the westerly boundary line of Noroton Avenue, and running thence southerly along the westerly boundary of Noroton Avenue for 150 feet, thence westerly for 5.62 feet along the northerly boundary line of land now or formerly owned by Noroton Avenue Incorporated, thence northerly for 138.08 feet along land now or formerly owned by Power Test Realty Company Limited Partnership, thence northerly for 13.80 feet at a radius of 19.00 feet along land now or formally owned by Power Test Realty Company Limited Partnership, thence easterly along southerly boundary line of West Avenue for 12.58 feet to the point or place of beginning.

STATE OF CONNECTICUT)

: ss.: Darien

COUNTY OF FAIRFIELD)

On this the ____ day of _____, 2020, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name he subscribed to the within instrument and acknowledged that he executed the same as his free act and deed for the purposes therein contained.

In witness whereof I hereunto set my hand.

Commissioner of the Superior Court
Notary Public

TOWN OF DARIEN

By

JAYME STEVENSON
Its First Selectman
Duly Authorized

STATE OF CONNECTICUT)
:
COUNTY OF FAIRFIELD)

ss.: Darien

On this the ____ day of _____, 2020, before me, the undersigned officer, personally appeared Jayme Stevenson, the First Selectman of the Town of Darien, a Connecticut municipal corporation, and acknowledged that she, as such First Selectman, being authorized so to do, executed the foregoing instrument as her free act and deed, for the purposes therein contained, by signing the name of the Town of Darien by herself as First Selectman.

In witness whereof I hereunto set my hand.

Commissioner of Superior Court

Notary Public

My Commission expires _____.