

## **AGREEMENT REGARDING CONDITIONS OF APPROVAL**

**THIS AGREEMENT REGARDING CONDITIONS OF APPROVAL** (this "Agreement") is entered into as of this 29th day of November, 2016, by and among the **DARIEN BOARD OF EDUCATION**, a public agency having a business address of 35 Leroy Avenue, Darien, Connecticut 06820 ("Board"), **LENNIS KOONTZ**, having a residence address of 373 Middlesex Road, Darien, Connecticut 06820, **PAUL MICHALSKI**, having a residence address of 371 Middlesex Road, Darien, Connecticut, **WALTER RALEIGH**, having a residence address of 369 Middlesex Road, Darien, Connecticut 06820 and **A. W. VANDENBROEK**, having a residence address of 15 Linda Lane, Darien, Connecticut 06820, (collectively, "Neighbors").

**WHEREAS**, the Board, acting under authority of the Town of Darien as owner of the Property (as defined below), has made certain applications to the Darien Planning and Zoning Commission ("Commission") for: (1) a zone text amendment regarding the height of permanent lighting facilities that accommodate town or school athletics, or town non-profit organization athletic activities ("Text Amendment Application"); and (2) a site plan/special permit approval to permit the installation of permanent lighting facilities and an upgraded PA system associated with the football stadium at the Darien High School Campus ("Site Plan/Special Permit Plan Application"), (collectively, "P&Z Applications"), located on real property known as 2 and 80 High School Lane, Darien, Connecticut, and designated Assessor's Map 9/Lots 80 and 81 ("Property"); and

**WHEREAS**, the Board, acting under authority of the Town of Darien as owner of the Property, has made a certain application to the Darien Environmental Protection Commission ("EPC") seeking approval of regulated activities associated with the proposed work provided by the P&Z Applications ("Wetlands Application"), (the Wetlands Application and P&Z Applications are collectively referred to as "Applications"); and

**WHEREAS**, in furtherance of the Site Plan/Special Permit Application, the Board and the Neighbors have reached certain understandings regarding the proposed conditions, limitations and restrictions set forth in Sections I-V on Exhibit A (collectively, "Filed Conditions"), attached hereto and made a part hereof, as well as the following amended and restated version of Filed Condition III(A)(ii) (the Filed Conditions, as so amended for purposes of this Agreement, are referred to as "Proposed Conditions"): "The sound or noise emanating directly from the PA system, exclusive of any other noise including but not limited to noise attributed to crowd cheering or band playing, must comply at all times with the State of Connecticut Regulations for the Control of Noise (for the limited purpose of this measurement, the sound or noise emanating from the PA system is not exempt by any applicable State of Connecticut Regulations for the Control of Noise)."

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, the Board and the Neighbors hereby agree as follows:

1. Covenant to Abide By Conditions. Whether or not approvals of the Applications ("Approvals") include the Proposed Conditions as conditions of approval, the

Board agrees and accepts the Proposed Conditions as private conditions of the approval of the Site Plan/Special Permit Application ("Site Plan/Special Permit Approval") subject to the terms and conditions of this Agreement. In furtherance thereof, the Board agrees that it will abide by the Proposed Conditions and not permit nor consent to any activity inconsistent with the Proposed Conditions. In the event of any conflict or inconsistency between the Proposed Conditions and the specific conditions of the Approvals, the most restrictive or least permissive conditions shall prevail for purpose of this Agreement.

2. Covenant Not to Appeal. So long as the conditions of the Approvals are no less restrictive and no more permissive in any respect than the Proposed Conditions as provided herein, then each Neighbor, for himself or herself and for any person or entity under the control of such Neighbor, hereby agrees: (a) not to appeal any of the Approvals; and (b) not to in any way challenge the validity of any of the Approvals.

3. Term.

(A) So long as the Approvals are not appealed by a Neighbor in violation of Paragraph 2, above, the terms and conditions of this Agreement shall remain in effect for a period of five (5) years from the effective date of the approval of the Site Plan/Special Permit Plan Application. During this five (5) year time period, the Board agrees not to: (i) submit, nor consent to the submission of, any application to the Planning and Zoning Commission seeking to modify any condition contained in the Planning and Zoning Application Approval, that would be less or more restrictive, unless such modification is required to comply with any law; nor (ii) seek approval to install, construct or use permanent lighting facilities, or an upgraded PA system, at any other field, including a track, located on the Property, or any other property over which the Board has authority.

(B) After the five (5) year time period referenced in Paragraph 3(A), herein, expires, the conditions contained herein shall remain in effect, unless the Board files an application with the Planning and Zoning Commission or Environmental Protection Board seeking: (i) approval to modify, change or eliminate any condition contained in the Planning and Zoning Application Approval or Wetlands Application Approval; or (ii) approval for any new or upgraded permanent or temporary lighting facilities, or PA systems, on the Property or any other property over which the Board has authority.

4. Modifications; Binding Effect. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements and understandings with respect to the subject matter contemplated herein, and may not be altered, amended, modified, or otherwise changed in any respect whatsoever, except by a writing duly executed by an authorized representative of each of the parties hereto. This Agreement, and the covenants and agreements contained herein, shall be binding upon, and shall inure to the benefit of, the parties hereto and limited to the term of this Agreement as referenced in Paragraphs 3(A) and 3(B), hereinabove. As to the Neighbors, the covenants and agreements of the Board contained herein shall inure to the benefit of the Neighbors, their heirs, successors and assigns, so long as the Neighbors own their respective properties referenced above; however, such benefits shall inure to the benefit of any successors in interest to the Neighbors' respective properties for as long as any successor owns the

subject respective property, subject to term of this Agreement as referenced in Paragraph 3(A) and 3(B) hereunder.

5. Severability. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. Should a court determine any part, term, or provision of this Agreement to be illegal or invalid, said illegal or invalid part, term, or provision shall be deemed not to be part of this Agreement. The validity of the remaining parts, terms, or provisions shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent permitted by law or equity.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut in all respects, including all matters of construction, validity and performance.

7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute one and the same instrument. The parties shall execute multiple counterparts of this Agreement. A facsimile or .pdf signature shall constitute an original signature and an Agreement containing the signatures (original or facsimile or .pdf) of all of the parties hereto is binding on such parties once all such signatures are transmitted via confirmed facsimile or via electronic mail. This Agreement shall not become effective until all parties designated herein have executed this Agreement.

8. No Recording. This Agreement shall not be recorded on any land records. If the Neighbors or any of them should cause this Agreement to be recorded on any land records, this Agreement shall automatically and immediately terminate and be of no further force or effect.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Board and the Neighbors have executed this Agreement as of the date first written above.

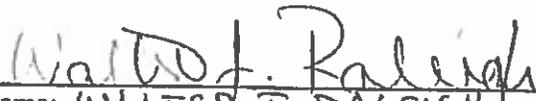
**BOARD:**

**DARIEN BOARD OF EDUCATION**

By:

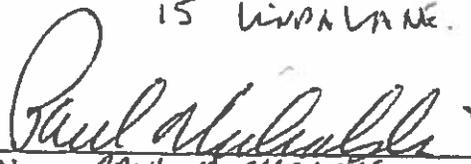
  
Name: Daniel Brenner 12/15/16  
Its: Superintendent of Schools

**NEIGHBORS:**

  
Name: WALTER J. RALEIGH  
Address: 369 MIDDLESEX, DARIEN.

  
Name: C. LEONIS KOBETZ, II  
Address: 377 MIDDLESEX RD,

  
Name: A VAN DEN BROEK  
Address: 15 WINDLANE, DARIEN

  
Name: PAUL MICHALSKI  
Address: 371 MIDDLESEX RD.

## 4.5 Appendix: Proposed Conditions

- I. Overall Project:
  - A. Limited to Four (4) 80 foot poles to be installed on either side of the DHS Stadium Field, as depicted on the approved plans.
  - B. Limited to the new balanced audio or sound system, as proposed.
  - C. Provide for an Evergreen tree barrier to be planted and maintained between the property line beginning in the left field of the JV baseball field and extending to the foul pole in right field of the varsity baseball field, as depicted on the approved plans.
  
- II. Proposed Conditions of Approval for Lighting Facilities Plan:
  - A. Field Use When Lighting Facilities in Use:
    - i. Only DHS sports and Darien non-profit youth sports organizations will be permitted.
    - ii. Youth practices will be allowed under the lights in the fall. No youth practices will be permitted in the spring under the lights.
    - iii. No youth games will be allowed.
    - iv. No adult league play.
    - v. DHS athletic teams must be participating in all contests played under the lights.
    - vi. Only DHS Varsity games will be played under the lights.
  
  - B. Time Limitations for Lighting Facilities:
    - i. Lights will remain off on Saturdays and Sundays with the exception of FCIAC playoff or championship games.
    - ii. Practices and other activities will be on Monday through Friday with lights off by 7:30 pm.
    - iii. In the event DHS games that were appropriately scheduled to start by 4:00 p.m. (game one) and 5:30 (game two) and end by 7:30 p.m., but could not finish within the prescribed 7:30 pm time period, allowances will be made for the completion of the game regardless of the hour of completion.

- iv. Lights will remain off: (a) from the end of the CIAC fall season until the beginning of the CIAC spring season; and (b) from the end of the CIAC spring season to the beginning of the CIAC fall season.
- v. Friday night games can extend until 10 pm. Each Varsity team will have the opportunity to play no more than two games per season on a Friday night exclusive of mandated playoff games.

C. Evening Games:

- i. Each Varsity team will be assigned 2 regular game dates. In the fall that includes boys' and girls' soccer, field hockey and football. In the spring it includes boys' and girls' lacrosse. With each team receiving two games this totals 12 "night games."
- ii. In addition to the 12 regular night games, playoff games are estimated to add an average of an additional 5 games per year, and are permitted during the evening.

D. Lighting Facilities Limited to Football Stadium:

- i. No other field at the DHS property may be lit or illuminated for evening athletic or other activities.

III. Proposed Conditions for New Balanced Sound System:

A. Audio Specifications:

- i. The PA system will be permitted to be used only during DHS games. Music over the PA system is allowable only prior to DHS games. Music is not allowable during practices. Music from the High School band incidental to the game (e.g., musical cheer on scoring), will be allowable throughout the entirety of all DHS Varsity games. However, a performance by a DHS marching band (in the event that a marching band was formed in the future) would be limited to half time and/or prior to the game. Similar to the current DHS band, a marching band could play throughout the game from the bleachers. All band practice would be limited to daytime hours.
- ii. Operation of the PA system must comply with the sound pressure levels as presented by the applicant and depicted on Exhibit A-1 attached hereto, which is Appendix 4.4: "Sound Pressure Levels" in applicant's application material.

IV. Project Monitoring:

- i. A compliance committee will be formed at the outset of each fall season, chaired by the Director of Facilities and including not more than two DHS neighbors chosen by abutting neighbors from the North and East sides of the DHS property, to review issues of non-compliance that are registered by community members and any other concerns that may arise. The compliance committee may make recommendations to DHS concerning alleged non-compliance or impacts associated with the approved permanent lighting facilities and new balance sound or PA system. The compliance committee shall be advisory only and will meet at least one time per year or as needed to ensure compliance with any approval conditions.

V. Timeframe:

The conditions provided in this Exhibit A shall apply to the approved permanent lighting facility and PA system for a period of five (5) years from the effective date of this approval. During this five (5) year time period, the Darien Board of Education ("BOE") agrees not to submit, nor consent to the submission of, any application to the Planning and Zoning Commission seeking to modify any condition contained herein that would be less or more restrictive unless such modification is required to comply with any law, or approval to install, construct or use permanent or temporary lighting facilities or an upgraded PA system at any other field, including a track, located on the DHS property, or any other BOE property. After such five (5) year time period, the conditions contained herein shall remain in effect, unless BOE files an application with the Planning and Zoning Commission seeking: (a) approval to modify, change or eliminate any condition contained herein; or (b) approval for any new or upgraded permanent or temporary lighting facilities or PA systems on the DHS property or any other BOE property.

