

**MINUTES
REPRESENTATIVE TOWN MEETING
MARCH 20, 2017**

CALL TO ORDER

A Regular Meeting of the Representative Town Meeting was called to order at 8:10 p.m. by Donna Rajczewski, Town Clerk.

Upon Roll Call, the following members were present:

From District I, there were 13 members present, 1 absent.
From District II, there were 12 members present, 4 absent.
From District III, there were 11 members present, 4 absent.
From District IV, there were 13 members present, 3 absent.
From District V, there were 16 members present, 1 absent.
From District VI, there were 12 members present, 5 absent.

The absentee from District I was : Barsanti.
The absentees from District II were: Boulier, Mix, Russell, Sartoni.
The absentees from District III were: Anderson, Cardone, Vitale, Yarnell.
The absentees from District IV were: Hawkins, Montanaro, Peters.
The absentee from District V was : Haueisen.
The absentees from District VI were: Cantavero, Lauritzen, Natale, Plehaty, Ritchie.

The Moderator, Seth Morton, assumed the Chair.

ACCEPTANCE OF THE AGENDA

**** THE AGENDA WAS ACCEPTED BY UNIVERSAL CONSENT.**

APPROVAL OF THE MINUTES OF THE FEBRUARY 27, 2017 REGULAR MEETING

**** THE MINUTES WERE ACCEPTED BY UNIVERSAL CONSENT.**

ANNOUNCEMENTS

The Moderator spoke of the volume of work they have been able to accomplish thus far, which is a tribute to committee work, and asked everyone to keep a good thing going.

The Town Clerk reminded everyone that the Board of Finance will be voting on the budget on April 13, so requests for budget books must be made by April 13th.

**RECOMMENDATIONS OF AN RTM MEMBER TO THE BLIGHT REVIEW
COMMITTEE**

The Moderator said that letters had been received from Ann Reed, District V, and Elisabeth Bacon, District II, vying for this position. He asked them to address the body as to why they wanted the position.

Ann Reed, District V, said she wants to make sure that this is done in a proper and sensitive manner. She wants to be helpful.

Elisabeth Bacon, District II, said she was impressed by the diligence of the Rules Committee when this ordinance came forward. She supports this ordinance and would be happy to serve.

Jack Davis, District V, asked how they would be voting; the Town Clerk said they would be voting by secret ballot.

**** JAMES CAMERON, DISTRICT IV, MOVED TO VOTE.
** THE MOTION WAS SECONDED FROM THE FLOOR.**

Frank Kemp, District IV, spoke in support of Elisabeth Bacon

**** UPON SECRET BALLOT VOTE, ELISABETH BACON WON WITH 39 VOTES
VS. ANN REED WITH 36 VOTES.**

17-8

**CONSIDERATION AND ACTION ON AN APPROPRIATION FOR THE LOCAL
MATCH FOR A GRANT TO REDO THE NOROTON/WEST INTERSECTION**

**** MARK ADILETTA, DISTRICT V, CHAIRMAN OF THE PUBLIC WORKS
COMMITTEE, MOVED:**

WHEREAS, the Town of Darien has been designated to receive a grant from the Local Transportation Capital Improvement Program (LOTICIP) via Western CT Council of Government (WestCOG) in the amount of one million, two hundred thousand and 00/100 (\$1,200,000.00) for improvements of a new intersection at Noroton Avenue and West Avenue;

WHEREAS, it is the desire and the intent of the Town of Darien to design and construct a new intersection at that site; and

WHEREAS, it is necessary to appropriate funds for the consultant's fee to design a plan as well as the consultant's attendance at public forums and preparation of bid packages; and

WHEREAS, the Board of Finance has approved said funding.

NOW THEREFORE BE IT RESOLVED THAT the Representative Town Meeting of the Town of Darien appropriates One Hundred Sixty Thousand and 00/100 Dollars (\$160,000.00)

for the design consultant's fees for the new intersection at Noroton Avenue and West Avenue in the Town of Darien.

**** THE MOTION WAS SECONDED FROM THE FLOOR.**

Mark Adiletta, District V, Chairman of the Public Works Committee, read the Committee report (attached).

Joanne Hennessy, District V, Chairman of the PZ&H Committee, read the Committee report (attached).

James Patrick, District V, Chairman of the Public Health & Safety Committee, read the Committee report (attached).

Jack Davis, District III, Chairman of the Finance & Budget Committee, read the Committee report (attached).

Joseph Hardison, District IV, asked what contribution the developer in the Heights made and if they would make contributions in the future. Jeremy Ginsberg, P&Z Director, said that the Noroton Heights development project just went before the P&Z, and it will be discussed tomorrow night through April. Improvements are focused on Hollow Tree Ridge Road, road improvements and widening of the road. They will also focus on lighting and putting in sidewalks, widening of Heights Road. Federal Realty plans to come before P&Z in May through July regarding improvements and optimizing lights.

Caroline Luz, District VI, said they are hiring a lot of consultants, and she asked what they were for. Ed Gentile, Director of Public Works, said this project requires that they use a consultant. They are used because of their expertise in working with the D.O.T.

**** ITEM 17-8 CARRIED ON A RISING TALLY VOTE OF 73 IN FAVOR, 1 OPPOSED, 0 ABSTENTIONS.**

17-11

CONSIDERATION AND ACTION ON THE ACCEPTANCE OF A GIFT TO THE TOWN OF DARIEN IN THE AMOUNT OF ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$137,500.00) FROM THE DARIEN LAND TRUST

**** JOANNE HENNESSY, DISTRICT V, CHAIRMAN OF PZ&H COMMITTEE, MOVED:**

WHEREAS, pursuant to Section 2.33 of the codified Ordinances of the Town of Darien, the Board of Selectmen is empowered on behalf of the Town of Darien to accept gifts provided that the gifts do not have a value in excess of Ten Thousand and 00/100 Dollars (\$10,000.00); and

WHEREAS, pursuant to Section 2.33 of the Codified Ordinances of the Town of Darien, said gifts in excess of Ten Thousand and 00/100 Dollars (\$10,000.00) may be accepted with action by the Representative Town Meeting of the Town of Darien; and

WHEREAS, the Darien Land Trust wishes to donate funds towards the purchase of property located on Hecker Avenue as more particularly described as Schedule A attached hereto and made part hereof; and

WHEREAS, this project will help preserve open space in an area of Darien which has little open space.

NOW THEREFORE BE IT RESOLVED THAT the Representative Town Meeting of the Town of Darien hereby approves with thanks, the gift of the sum of One Hundred Thirty Seven Thousand Five Hundred and 00/100 Dollars (\$137,500.00) to the Town of Darien from the Darien Land Trust.

SCHEDULE A

All that certain piece or parcel of land with all of the improvements thereon situated on the southerly side of Hecker Avenue in the Town of Darien, County of Fairfield and State of Connecticut and labeled with "Lot Area = 54,245± Sq. Ft. or 1.2452± Acres" on a map entitled, "Property Survey Hecker Avenue Prepared for Town of Darien, Darien, Connecticut" Dated: December 18, 2015, Scale: 1"=20'. Said map being certified substantially correct by Mark S. Lebow, Conn. L.L.S. #15564 of William W. Seymour & Associates, P.C. , Land Surveyors~Zoning & Land Use Consultants, 170 Norton Avenue, Darien, Connecticut. Said map is on file in Volume _____ Page _____ in the Darien Town Clerk's Office, to which reference may be had for a more particular description, and which parcel is more particularly bounded and described as follows:

Beginning at a point on the southerly line of Hecker Avenue, said point having NAD '83 coordinates of N 586822.008 E 797820.560, and being the intersection of the division line between the herein described property and land now of formerly of Victor G.Vargha & Franciska Vargha (Assessor's Map 41, Lot 21) with said southerly line of Hecker Avenue;

Thence, running easterly along said southerly line of Hecker Avenue N86°03'11"E a distance of 222.50 feet to a point, said point having NAD '83 coordinates of N 586837.324 E 798042.535;

Thence, running along land N/F Spring Grove Cemetery Association and within the banks of Stony Brook S20°35'56"W a distance of 490.35 feet to a point, said point having NAD '83 coordinates of N 586378.323 E 797870.020;

Thence, running along land N/F of the Town of Darien S87°17'18"W a distance of 20.75 feet to a point;

Thence, running northerly along other land of said Town of Darien, the easterly terminus of Cherry Street, land N/F of John J. Ryan & Elyse A. Gittleman and land N/F of the aforesaid Victor G. & Franciska Vargha in part by each, N03°41'49"W a distance of 445.59 feet to the aforesaid southerly line of Hecker Avenue and the point of beginning.

Comprising an area of 54,245± Sq. Ft. or 1.2452± Acres

**** THE MOTION WAS SECONDED FROM THE FLOOR.**

Joanne Hennessy, District V, Chairman of PZ&H, read the Committee report (attached).

Mark Adiletta, District V, Chairman of the Public Works Committee, read the Committee report (attached) for this item as well as the remaining items.

Adele Conniff, District III, Chairman of the Parks & Recreation Committee, read the Committee report (attached) for this item as well as the remaining items.

Jack Davis, District III, Chairman of the Finance & Budget Committee, read the Committee report (attached) for this item as well as the remaining items.

First Selectman Jayme Stevenson recognized the President and Executive Director of the Land Trust and thanked them for their patience and generosity. She also thanked Jed Lawrence from the Spring Grove Cemetery Board. She said that these are dedicated grant funds and asked for approval.

**** ITEM 17-11 CARRIED ON A RISING TALLY VOTE OF 75 IN FAVOR, 0 OPPOSED, 1 ABSTENTION.**

17-9

CONSIDERATION AND ACTION ON THE ACQUISITION OF 1.2452± ACRES OF LAND ON HECKER AVENUE AND AUTHORIZING THE EXECUTION OF DOCUMENTS TO ACCEPT A STATE GRANT AND APPROPRIATE FUNDS FOR THE ACQUISITION OF SAID PROPERTY

**** JOANNE HENNESSY, DISTRICT V, CHAIRMAN OF PZ&H, MOVED:**

WHEREAS, the Town of Darien is desirous of purchasing 1.2452 ± acres of land located on Hecker Avenue in Darien, Connecticut as more particularly described in the Schedule A attached hereto and made a part hereof; and

WHEREAS, said property is currently owned by the Spring Grove Cemetery Association; and

WHEREAS, the purchase price for said property is Two Hundred Seventy-Five Thousand and 00/100 dollars (\$275,000.00); and

WHEREAS, the funds for said purchase are being acquired in part by a gift from the Darien Land Trust in the amount of One Hundred Thirty Seven Thousand Five Hundred and 00/100 Dollars (\$137,500.00); and

WHEREAS, the balance of said purchase price is being acquired by a grant in the amount of One Hundred Thirty Seven Thousand Five Hundred and 00/100 Dollars (\$137,500.00) by the State of Connecticut from a program known as Connecticut's Open Space and Watershed Land Acquisition program.

NOW THEREFORE BE IT RESOLVED that the Representative Town Meeting of the Town of Darien hereby approves and authorizes the acquisition of the 1.2452± acres of said property described in Schedule A attached hereto and made part hereof.

NOW THEREFORE BE IT FURTHER RESOLVED THAT the Representative Town Meeting of the Town of Darien hereby authorizes the First Selectman to execute the contract and other necessary documentation to acquire said property and to finalize the grant authorization with the State of Connecticut for the financial assistance to acquire the property located on Hecker Avenue, Darien, Connecticut. Said open space and watershed agreement is attached hereto as Schedule B and made part hereof.

BE IT FURTHER RESOLVED that the Representative Town Meeting of the Town of Darien appropriates the sum of Two Hundred Seventy Five Thousand and 00/100 Dollars (\$275,000.00) to the land acquisition fund for the purchase of said property on Hecker Avenue, this sum being money consisting of a grant from the State of Connecticut in the amount of One Hundred Thirty Seven Thousand Five Hundred and 00/100 Dollars (\$137,500.00) and a gift from the Darien Land Trust in the amount of One Hundred Thirty Seven Thousand Five Hundred and 00/100 Dollars (\$137,500.00).

SCHEDULE A

All that certain piece or parcel of land with all of the improvements thereon situated on the southerly side of Hecker Avenue in the Town of Darien, County of Fairfield and State of Connecticut and labeled with "Lot Area = 54,245± Sq. Ft. or 1.2452± Acres" on a map entitled, "Property Survey Hecker Avenue Prepared for Town of Darien, Darien, Connecticut" Dated: December 18, 2015, Scale: 1"=20'. Said map being certified substantially correct by Mark S. Lebow, Conn. L.L.S. #15564 of William W. Seymour & Associates, P.C. , Land Surveyors-Zoning & Land Use Consultants, 170 Norton Avenue, Darien, Connecticut. Said map is on file in Volume ____ Page ____ in the Darien Town Clerk's Office, to which reference may be had for a more particular description, and which parcel is more particularly bounded and described as follows:

Beginning at a point on the southerly line of Hecker Avenue, said point having NAD '83 coordinates of N 586822.008 E 797820.560, and being the intersection of the division line between the herein described property and land now of formerly of Victor G.Vargha & Franciska Vargha (Assessor's Map 41, Lot 21) with said southerly line of Hecker Avenue;

Thence, running easterly along said southerly line of Hecker Avenue N86°03'11"E a distance of 222.50 feet to a point, said point having NAD '83 coordinates of N 586837.324 E 798042.535;

Thence, running along land N/F Spring Grove Cemetery Association and within the banks of Stony Brook S20°35'56"W a distance of 490.35 feet to a point, said point having NAD '83 coordinates of N 586378.323 E 797870.020;

Thence, running along land N/F of the Town of Darien S87°17'18"W a distance of 20.75 feet to a point;

Thence, running northerly along other land of said Town of Darien, the easterly terminus of Cherry Street, land N/F of John J. Ryan & Elyse A. Gittleman and land N/F of the aforesaid Victor G. & Franciska Vargha in part by each, N03°41'49"W a distance of 445.59 feet to the aforesaid southerly line of Hecker Avenue and the point of beginning.

Comprising an area of 54,245± Sq. Ft. or 1.2452± Acres

SCHEDULE B

**OPEN SPACE AND WATERSHED LAND ACQUISITION
GRANT AGREEMENT**

MUNICIPALITY OF DARIEN

STONY BROOK OSWA-508

KNOW ALL THESE MEN BY THESE PRESENTS:

THIS AGREEMENT, is made between the TOWN OF DARIEN, a municipal corporation having its territorial limits within Fairfield County and the State of Connecticut, specially chartered under the laws of the State of Connecticut, hereinafter referred to as "CONTRACTOR", and the STATE OF CONNECTICUT, acting herein by its Commissioner of Energy and Environmental Protection duly authorized under the provisions of Connecticut General Statutes (CGS) Section 22a-6(a)(2) and Section 7-131d, hereinafter referred to as the "COMMISSIONER" or "STATE".

WHEREAS, the Contractor will purchase land for open space purposes and has applied for and received a grant to assist in the purchase of open space as described in CGS Section 7-131d; and

WHEREAS, the Contractor, in consideration for the provision by the State of financial assistance to purchase open space, desires to grant a perpetual Conservation Easement as defined in CGS Section 47-42a and Public Access Easement on land to be purchased by the Contractor, for purposes of open space conservation, watershed protection and/or passive outdoor recreation.

NOW, THEREFORE, in consideration of the mutual promises herein contained, and in granting a perpetual conservation and public access easement to the State, the parties agree as follows:

1. The State agrees to make a grant to the Contractor, in the amount of One hundred Thirty-seven Thousand Five Hundred (\$ 137,500.00) Dollars for purposes described in this Open Space and Watershed Land Acquisition Grant Agreement ("Agreement"). The payments of any and all sums pursuant to this Agreement are conditioned upon, and in consideration for, the Contractor meeting its obligations under the terms of the Agreement.
2. Upon approval of this Agreement by the Attorney General, the Contractor shall grant to the State of Connecticut with Warranty Covenants a Conservation and Public Recreation Easement and Agreement ("Conservation Easement") substantially in form and content set forth in Exhibit C of this Agreement, dedicating said land to conservation purposes and restricting the use of said land for such purposes except as otherwise approved by the Commissioner of Energy and Environmental Protection or his successor in accordance with CGS Section 7-131d. The restriction will run with the land in favor of the State of Connecticut and will be binding upon the Contractor and its successors and assigns. The recording of the Conservation Easement, as described, shall be completed within (6) six months from approval of this Agreement by the Attorney General.
3. The land on which the permanent Conservation Easement will be placed, is more fully described in Exhibit B, which is hereby incorporated as part of this Agreement. At the time of the grant of the Conservation Easement and restriction to the State, said land shall be free of all encumbrances that, in the State's sole determination, would prevent said land from being used for open space purposes in accordance with Exhibit C.
4. The Contractor will erect a permanent plaque or sign on said property within 6 (six) months after the recording of the Conservation Easement on the land using grant funds, acknowledging that said land is preserved open space allowing the public access for passive recreation and that said land was acquired through a grant from the State of Connecticut administered through the Department of Energy and Environmental Protection, Open Space and Watershed Land Acquisition Grant Program. Said property is a public recreation area and, as such, it will be open to the public. The public, for purposes of this Agreement, is defined as any resident of any municipality, state, country or nation. Should a parking/patron fee be levied on patrons to use this property, the Contractor agrees not to charge a fee to non-residents of the municipality, an amount that exceeds twice that charged to residents of the municipality. Where there is no charge to residents but a fee is charged to nonresidents, nonresident fees cannot exceed those charged at comparable State or local facilities. Reservation, membership or annual permit systems available to residents, must also be available to nonresidents and the period of availability must be the same for both residents and nonresidents. Said fees will be subject to approval by the Commissioner of Energy and Environmental Protection.
5. The Contractor agrees to properly and efficiently operate and maintain the project area after acquisition consistent with the Conservation Easement and provide assurance of such operation and maintenance as may be required by the Commissioner of Energy and Environmental Protection.
6. The Contractor agrees to comply with the "Executive Orders," "Indemnification" and "State Liability" provisions as set forth in Exhibit A.
7. **Audit Clause. Audit Requirements.** For purposes of this paragraph, the word "Contractor" shall be deemed to mean "nonstate entity," as that term is defined in CGS Section 4-230. The Contractor shall provide for an annual financial audit acceptable to the State for any expenditure of state-awarded funds made by the Contractor. Such audit shall include management letters and audit recommendations. The State Auditor of Public Accounts shall have access to all records and accounts for the fiscal year(s) in which the award was made. The Contractor will comply with federal and state single audit standards as applicable.
8. **Forum and Choice of Law.** The parties deem the Agreement to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.
9. **Sovereign Immunity.** The parties acknowledge and agree that nothing in the Solicitation or the Agreement shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees.

which they may have had, now have or will have with respect to all matters arising out of the Agreement. To the extent that this section conflicts with any other section, this section shall govern.

10. The provisions of this Agreement are severable. If any part of it is found unenforceable, all other provisions shall remain fully valid and enforceable, unless the unenforceable provision is an essential element of the bargain.

11. This Agreement shall be governed by the substantive laws of the State of Connecticut.

Said covenants and agreements will run with the land in favor of the State of Connecticut and will be binding upon the Contractor and its successors and assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands.

TOWN OF DARIEN

WITNESSES Signature
Name in print

Jayme J. Stevenson Date
First Selectman
Duly Authorized

Name

Name

STATE OF CONNECTICUT }
COUNTY OF FAIRFIELD } SS. TOWN OF DARIEN

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Jayme J. Stevenson the First Selectman for the Town of Darien, Connecticut.

Commissioner of the Superior Court
Notary Public
My Commission Expires _____



STATE OF CONNECTICUT

WITNESSES Signature
Name in print

Robert J. Klee Date
Commissioner
Department of Energy and Environmental Protection

Name

Name

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } SS. CITY OF HARTFORD

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Robert J. Klee, Commissioner, Department of Energy and Environmental Protection, State of Connecticut.

Commissioner of the Superior Court
Notary Public
My Commission Expires _____



STATUTORY AUTHORITY
Connecticut General Statutes
Section 7-131d(a)

APPROVED
George Jepsen
Attorney General

By: Joseph Rubln Date
Associate Attorney General

EXHIBIT A

EXECUTIVE ORDERS

This agreement is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices; Executive Order No. Seventeen of Governor Thomas J. Meskill promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the agreement as if they had been fully set forth in it. The agreement may also be subject to the applicable parts of Executive Order No. 14 of Governor M. Jodi Reil, promulgated April 17, 2006, concerning procurement of cleaning products and services and to Executive Order No. 49 of Governor Dannel P. Malloy, promulgated May 22, 2015, mandating disclosure of certain gifts to public employees and contributions to certain candidates for office. If Executive Order 14 and/or Executive Order 49 are applicable, they are deemed to be incorporated into and are made a part of the agreement as if they had been fully set forth in it. At the Contractor's request, the State shall provide a copy of these orders to the Contractor.

INDEMNIFICATION

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Agreement, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Agreement. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.
- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Agreement, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Agreement, and during the time that any provisions survive the term of the Agreement, sufficient general liability insurance to satisfy its obligations under this Agreement. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Agreement. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily or comparatively negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the termination of the Agreement and shall not be limited by reason of any insurance coverage.

STATE LIABILITY

The State of Connecticut shall assume no liability for payment for services under the terms of this Agreement until the Contractor is notified that this Agreement has been accepted by the contracting agency and, if applicable, approved by the Office of Policy and Management or the Department of Administrative Services and by the Attorney General of the State of Connecticut.

THE REMAINING PORTION OF THIS PAGE IS BLANK.

EXHIBIT B

The land upon which a permanent Conservation Easement will be placed by the Town of Darien is described further by means of the following property description.

All that certain piece or parcel of land with all of the improvements thereon situated on the southerly side of Hecker Avenue in the Town of Darien, County of Fairfield and State of Connecticut and labeled with "Lot Area = 54,245± Sq. Ft. or 1.2452± Acres" on a map entitled, "Property Survey Hecker Avenue Prepared for Town of Darien, Darien, Connecticut" Dated: December 18, 2015; Scale: 1"=20'. Said map being certified substantially correct by Mark S. Lebow, Conn. L.L.S. #15564 of William W. Seymour & Associates, P.C., Land Surveyors-Zoning & Land Use Consultants, 170 Norton Avenue, Darien, Connecticut. Said map is on file as Map Number _____ in the Darien Town Clerks' Office, to which reference may be had for a more particular description, and which parcel is more particularly bounded and described as follows

Beginning at a point on the southerly line of Hecker Avenue, said point having NAD '83 coordinates of N 586822.008 E 797820.560, and being the intersection of the division line between the herein described property and land now of formerly of Victor G. Vargha & Franciska Vargha (Assessor's Map 41, Lot 21) with said southerly line of Hecker Avenue;

Thence, running easterly along said southerly line of Hecker Avenue N86°03'11"E a distance of 222.50 feet to a point, said point having NAD '83 coordinates of N 586837.324 E 798042.535;

Thence, running along land N/F Spring Grove Cemetery Association and within the banks of Stony Brook S20°35'56"W a distance of 490.35 feet to a point, said point having NAD '83 coordinates of N 586378.323 E 797870.020;

Thence, running along land N/F of the Town of Darien S87°17'18"W a distance of 20.75 feet to a point;

Thence, running northerly along other land of said Town of Darien, the easterly terminus of Cherry Street, land N/F of John J. Ryan & Elyse A. Gittleman and land N/F of the aforesaid Victor G. & Franciska Vargha in part by each, N03°41'49"W a distance of 445.59 feet to the aforesaid southerly line of Hecker Avenue and the point of beginning.

Comprising an area of 54,245± Sq. Ft. or 1.2452± Acres

EXHIBIT C
**CONSERVATION AND PUBLIC RECREATION
EASEMENT AND AGREEMENT**

MUNICIPALITY OF DARIEN STONY BROOK OSWA-508

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

WHEREAS, The Town of Darien holds title to 1.2452 ± acres of real property in the territorial limit of the Town of Darien, formerly of Spring Grove Cemetery Association, Darien, Connecticut;

WHEREAS, in addition to its value as a natural area, said property is also a scenic resource of the State of Connecticut;

WHEREAS, the preservation of the above mentioned land will yield a significant public benefit for passive recreation and open space protection;

WHEREAS, the anticipated use of the land by the Town of Darien is consistent with the Department of Energy and Environmental Protection's (DEEP) conservation and preservation interests, and the town of Darien has a shared interest with DEEP in seeing that these conservation-minded practices continue;

WHEREAS, the State of Connecticut has established the Open Space and Watershed Land Acquisition Grant Program to provide grants to municipalities and nonprofit land conservation organizations to acquire land or permanent interests in land for open space and watershed protection and to water companies, as defined in Connecticut General Statutes (CGS) Section 25-32a, to acquire and protect land which is eligible to be classified as Class I or Class II land, as defined in CGS Section 25-37c, after acquisition;

WHEREAS, all lands or interests in land acquired under the Open Space and Watershed Land Acquisition Grant Program shall be preserved in perpetuity predominantly in their natural and scenic and open condition for the protection of natural resources while allowing for recreation consistent with such protection and, for lands acquired by water companies, allowing for the improvements necessary for the protection or provision of potable water;

WHEREAS, a permanent Conservation Easement, as defined in CGS Section 47-42a, shall be executed for any property purchased with grant funds through the Open Space and Watershed Land Acquisition Grant Program and which Conservation Easement shall provide that the property shall remain forever predominately in its natural and open condition for the specific conservation, open space or water supply purpose for which it was acquired;

WHEREAS, the Conservation Easement shall be in favor of the State acting through its Commissioner of Energy and Environmental Protection;

WHEREAS, such Conservation Easement shall include a requirement that the property be made available to the general public for appropriate recreational purposes, the maintenance of which recreational access shall be the responsibility of the Town of Darien;

WHEREAS, the Town of Darien and the State of Connecticut agree that limited public recreation on said property can be provided without significant impact to the natural resources on said property, conservation of those resources having been the primary reason for its acquisition by the Town of Darien.

NOW, THEREFORE, the TOWN OF DARIEN, a municipal corporation having its territorial limits within the County of Fairfield and State of Connecticut, (the "Grantor"), for One (\$1.00) Dollar and other good and valuable consideration received to its full satisfaction of the STATE OF CONNECTICUT, a sovereign, (the "Holder") and in consideration of the mutual covenants, terms, conditions and restrictions herein contained, GRANTOR, its successors and assigns, does hereby give, grant, bargain, sell, convey and confirm in perpetuity unto the HOLDER and its successors or assigns forever with Warranty Covenants, a Conservation and Public Recreation Easement ("Conservation Easement") in perpetuity, of the nature and character and to the extent hereinafter set forth, over property situated in the Town of Darien, County of Fairfield, State of Connecticut, (the "Protected Property"), as described in Schedule A.

1. Purpose: It is the purpose of this Conservation Easement to assure that the Protected Property will be retained forever predominantly in its natural, scenic, forested, and/or open space condition, and to provide opportunities for public recreation on the Protected Property, while preventing any use of the Protected Property that will significantly impair or interfere with the conservation values or interests of the Protected Property, described above. It is the intent of this Conservation Easement that any management activities or alterations of the natural landscape or provision for access or recreation shall be consistent with the conservation purposes above.

2. Development Rights and Restrictions: No building, residential dwelling, structure, parking lot, driveway, road or other temporary or permanent structure or improvement requiring construction shall be placed upon the Protected Property except as provided hereinbelow, the following reservations to be consistent with the conservation and public recreation purposes above:

a) Grantor reserves the right to maintain existing unpaved driveways, footpaths and other minor surface alterations; to excavate and fill as necessary to accomplish permitted building, recreational and silvicultural activities; and to construct, maintain and reconstruct additional unpaved footpaths or minor, roofless rustic improvements necessary or appropriate to assure safe passage, prevent erosion, or to enhance or protect the natural habitat.

b) All rights reserved herein by the Grantor may only be exercised subject to all applicable governmental permits and approvals required by law. Nothing herein shall commit the Holder to grant any such approval or permit.

c) The Grantor reserves the right to access for maintenance, repair or replacement the existing fiber optic cable within the identified 10-foot wide easement area, and the sanitary sewer lines that run through the Protected Property as shown on the referenced map in Schedule A of this Conservation Easement.

- d) The Grantor reserves the right to modify the Protected Property for purposes of flood mitigation.
- e) Grantor reserves the right to manage and monitor the Protected Property for rare and endangered species, such activities including, but not limited to:
- 1) The rerouting or closing of trail segments or public access points that pose a substantial threat to protected species, provided that a system of public access trails remains open to the public at all times;
 - 2) The right to grant access to the site for research;
 - 3) Use of the Protected Property for educational and outreach purposes, including limited attendance walks and on-site stewardship training programs.

Grantor agrees that the activities or uses contemplated above shall not unreasonably interfere with the use of the Protected Property by the general public. All rights not specifically granted are hereby reserved by Grantor.

3. Provision of Public Recreation. The Grantor agrees to allow the public access to the Protected Property for passive recreational purposes and to use such trails or other facilities as they may exist or be developed, or where such use is permitted by the Department of Health on Class I and Class II Watershed Land. The public shall be defined as any resident of any municipality, state, country or nation. The Grantor may develop passive recreational facilities and support facilities for those passive activities on the Protected Property if none exists. Passive recreation shall be defined as recreational trail usage (non-motorized), recreational activities which do not require a formalized delineated playing field or area, picnicking, and environmental education.

4. Other activities. No commercial, industrial, quarrying, or mining activities are permitted on the Protected Property.

5. Water Protection and Waste Disposal. The use of chemical herbicides, pesticides, fungicides, fertilizers and other agents must be limited to prevent any demonstrable adverse effect on wildlife, waters, and other important conservation interests to be protected by this Conservation Easement.

It is forbidden to dispose of or to store rubbish, garbage, debris, abandoned equipment, parts thereof, or other unsightly, offensive, toxic or hazardous waste material on the Protected Property except that vegetative waste may be composted, and other waste generated by permitted uses on the Protected Property may be stored temporarily in appropriate containment for removal at reasonable intervals, subject to all applicable local, state, and federal laws and regulations.

The Grantor covenants and represents that, to the best of Grantor's knowledge, no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks located on the Protected Property.

6. Costs and Taxes. Grantor acknowledges that the Holder has no possessory rights in the Protected Property, nor any responsibility or right to control, maintain, or keep up the Protected Property. Grantor is responsible to pay and discharge when due all property taxes and assessments and to avoid the imposition of any liens that may impact Holder's rights hereunder. Grantor is responsible for all costs and responsibility of ownership, control, operation, maintenance, and upkeep of the Protected Property and will, to the fullest extent permitted by law, defend, release, relieve, hold harmless, and indemnify Holder, its officers, directors, agents, and employees therefrom and from any claims for damages which arise therefrom, except for harm caused by the negligent act or misconduct of Holder, or as may arise out of its workers' compensation obligations. This provision shall not be construed as a waiver of sovereign immunity.

Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), and shall furnish Holder with satisfactory evidence of payment upon request. In order to assure the continued enforceability of this Conservation Easement, the Holder is authorized, but in no event obligated, to make or advance any payment of taxes, upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of two (2) percentage points over the prime rate of interest from time to time announced by J.P. Morgan Chase Bank or the maximum rate allowed by law. Holder shall have the right to place a lien on property of the Grantor in the event that the payment is not reimbursed to Holder within thirty (30) days.

7. Subdivision Limitation and Subsequent Transfers. The Protected Property must remain as an entity in a single ownership, and may not be divided, subdivided, partitioned or otherwise separated into parcels or lots, whether or not said Protected Property may be described herein, or have been described in any prior deed, as more than one piece or parcel of land.

Grantor agrees that the terms, conditions, restrictions, and purposes of this grant or reference thereto will be inserted by Grantor in any subsequent deed or other legal instrument by which the Grantor divests either the fee simple title or possessory interest in the Protected Property, and Grantor further agrees to notify Holder of any transfer at least thirty (30) days in advance thereof.

The State of Connecticut hereby acknowledges that the Town of Darien is granting a conservation easement to the Darien Land Trust, Inc. ("DLT") to be recorded immediately following this Agreement and acknowledges that the DLT conservation easement provides certain rights in and to the DLT relating to the preservation and protection of the Land which the State recognizes and with which will not interfere.

8. Miscellaneous:

a) Grantor represents that as of the date of this grant there are no liens or mortgages outstanding against the Protected Property. The rights of the Holder to enforce the terms, restrictions and covenants created under this Conservation Easement shall not be extinguished by foreclosure of any mortgage or any publicly or privately placed lien, regardless of any subsequently placed mortgage or lien.

b) If any provision(s) of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected hereby.

c) Any uncertainty in the interpretation of this Conservation Easement should be resolved in favor of conserving the Protected Property in its natural and scenic state.

d) If this Conservation Easement is extinguished by court order, or the powers of eminent domain, the proceeds of any taking or sale of the unrestricted property shall be divided between Grantor and Holder in the same proportion as the value of their respective interests, so calculated, as of the date of this grant, excepting any part of such proceeds attributable to improvements to the Protected Property made after the date of this grant. Holder will use such proceeds for its conservation purposes.

9. Remedies and Enforcement.

a) This Conservation Easement granted hereby constitutes a Conservation Restriction on the Protected Property in favor of the Holder and its successors and assigns pursuant to CGS Section 47-42a, as amended. Pursuant to CGS Section 47-42b, as amended, this Conservation Easement shall not be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land. Pursuant to CGS Section 47-42c, this Conservation Easement may be enforced by injunction or proceedings in equity, or in any other manner permitted by law. It is further agreed by the parties that the Conservation Easement granted hereby may be enforced at law or in equity.

b) The failure or delay of the Holder, for any reason whatsoever, to enforce this Conservation Easement shall not constitute a waiver of its rights and Grantor hereby waives any defense of laches, prescription, or estoppel.

c) Grantor is not responsible for injury to or change in the Protected Property resulting from "acts of God" so called, such as, but not limited to, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. If a Court (or other decision maker chosen by mutual consent of the parties) determines that this Conservation Easement has been breached, Grantor will reimburse Holder for any reasonable costs of enforcement, including court costs, reasonable attorneys' fees, and any other payments ordered by such Court.

d) The terms and conditions of said Conservation Easement hereinabove set forth shall be binding upon and inure to the benefit of the Holder and its successors or assigns. However, said Conservation Easement shall not entitle the Holder or its successors or assigns to any right of entry or use of the Protected Property except as provided herein and for periodic inspections in a reasonable manner and at reasonable times to ensure compliance with the conservation and recreation purposes above.

e) The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

10. **Notices.** Any notice to Holder required hereunder must be made by certified mail, return receipt requested, addressed to:

State of Connecticut
Department of Energy and Environmental Protection
Office of the Commissioner
79 Elm Street
Hartford, CT 06106

or such other address as may be furnished in writing.

Any notice to Grantor required hereunder must be made by certified mail, return receipt requested, addressed to:

Office of the First Selectman
Town of Darien
2 Renshaw Road
Darien, CT 06820

or such other address as may be furnished in writing.

Any notices to Holder or requests for Holder consent, required or contemplated hereunder, must include, at a minimum, sufficient information to enable the Holder to determine whether proposed plans are consistent with the terms of this Conservation Easement and the conservation and recreation purposes hereof.

TO HAVE AND TO HOLD the above granted and bargained Conservation Easement unto the said Holder and its successors and assigns forever.

AND THE GRANTOR, its successors and assigns, does COVENANT with the Holder that it will WARRANT AND DEFEND title to the Protected Property to the said Holder and its successors and assigns forever, against the lawful claims and demands of all persons claiming by, through or under it.

SCHEDULE A

The land upon which The Town of Darien is placing a permanent Conservation Easement is described further by means of the following property description.

All that certain piece or parcel of land with all of the improvements thereon situated on the southerly side of Hecker Avenue in the Town of Darien, County of Fairfield and State of Connecticut and labeled with "Lot Area = 54,245± Sq. Ft. or 1.2452± Acres" on a map entitled, "Property Survey Hecker Avenue Prepared for Town of Darien, Darien, Connecticut" Dated: December 18, 2015, Scale: 1"=20'. Said map being certified substantially correct by Mark S. Lebow, Conn. L.L.S. # 15564 of William W. Seymour & Associates, P.C., Land Surveyors-Zoning & Land Use Consultants, 170 Norton Avenue, Darien, Connecticut. Said map is on file as Map Number _____ in the Darien Town Clerks' Office, to which reference may be had for a more particular description, and which parcel is more particularly bounded and described as follows:

Beginning of a point on the southerly line of Hecker Avenue, said point having NAD '83 coordinates of N 586822.008 E 797820.540, and being the intersection of the division line between the herein described property and land now of formerly of Victor G. Vargha & Francisca Vargha (Assessor's Map 41, Lot 21) with said southerly line of Hecker Avenue;

Thence, running easterly along said southerly line of Hecker Avenue N86°03'11"E a distance of 222.50 feet to a point, said point having NAD '83 coordinates of N 586837.324 E 798042.535;

Thence, running along land N/F Spring Grove Cemetery Association and within the banks of Stony Brook S20°35'56"W a distance of 490.35 feet to a point, said point having NAD '83 coordinates of N 586378.323 E 797870.020;

Thence, running along land N/F of the Town of Darien S87°17'18"W a distance of 20.75 feet to a point;

Thence, running northerly along other land of said Town of Darien, the easterly terminus of Cherry Street, land N/F of John J. Ryan & Elyse A. Gilleman and land N/F of the aforesaid Victor G. & Francisca Vargha in part by each, N03°41'49"W a distance of 445.59 feet to the aforesaid southerly line of Hecker Avenue and the point of beginning.

Comprising an area of 54,245± Sq. Ft. or 1.2452± Acres.

Property is also known as Tax Assessor's Map 41, Lot 20

Together with and subject to right of way as set forth in a Warranty Deed dated August 12, 1897 and recorded on August 14, 1897 in Volume 16 Page 94 of the Darien Land Records

Said Property is subject to:

1. Effects, if any, of grant to purchase additional property by the State of Connecticut as set forth in a Certificate of Resolution of the Board of Directors Spring Grove Cemetery Association dated June 20, 1967 and recorded July 27, 1967 in Volume 273 Page 135 of the Darien Land Records.
2. Agreement with Nielsen Company dated December 16, 1969 and recorded on June 16, 1970 in Volume 289 Page 374 of the Darien Land Records.
3. Zoning Board of Appeals Adopted Resolution dated and recorded on August 5, 1999 in Volume 918 Page 188 of the Darien Land Records.
4. Zoning Board of Appeals Adopted Resolution dated and recorded on November 4, 1999 in Volume 926 Page 149 of the Darien Land Records.
5. Planning and Zoning Commission Notice dated May 3, 2007 and recorded on June 28, 2007 in Volume 1296 Page 414 of the Darien Land Records.
6. Planning and Zoning Commission Notice dated October 10, 2008 and recorded on October 27, 2008 in Volume 1337 Page 262 of the Darien Land Records.
7. Notes, notations, facts easements and conditions as shown on maps recorded in the Darien Town Clerks Office as maps numbers; 32, 331, 655, 3104, 3446, 4537, 4538, 4624 and _____, where reference may be had.
8. Local, state and federal inland/wetlands regulations concerning a brook on said premises as well as any riparian or littoral rights of other in and to said brook.

**** THE MOTION WAS SECONDED FROM THE FLOOR.**

**** ITEM 17-9 CARRIED ON A RISING TALLY VOTE OF 71 IN FAVOR, 3 OPPOSED, 2 ABSTENTIONS.**

17-10

CONSIDERATION AND ACTION AUTHORIZING THE ISSUANCE OF AN EASEMENT TO THE STATE OF CONNECTICUT IN CONJUNCTION WITH THE OPEN SPACE AND WATERSHED LAND ACQUISITION LAND AGREEMENT

**** JOANNE HENNESSY, DISTRICT V, CHAIRMAN OF PZ&H, MOVED:**

WHEREAS, the Town of Darien is desirous of purchasing 1.2452 ± acres of land located on Hecker Avenue in Darien, Connecticut as more particularly described in the Schedule A attached hereto and made a part hereof; and

WHEREAS, said property is currently owned by the Spring Grove Cemetery Association; and

WHEREAS, the purchase price for said property is Two Hundred Seventy-Five Thousand and 00/100 dollars (\$275,000.00); and

WHEREAS, the funds for said purchase are being acquired in part by a gift from the Darien Land Trust in the amount of One Hundred Thirty Seven Thousand Five Hundred and 00/100 Dollars (\$137,500.00); and

WHEREAS, the balance of said purchase price is being acquired through a grant of One Hundred Thirty Seven Thousand Five Hundred and 00/100 Dollars (\$137,500.00) from the State of Connecticut, in particular, what is known as Connecticut's Open Space and Watershed Land Acquisition Program; and

WHEREAS, the State of Connecticut is requiring as part of its grant that there be recorded on the Darien Land Records a conservation easement as more particularly described in Schedule C attached hereto and made part hereof.

NOW THEREFORE, be and it is hereby resolved that the Representative Town Meeting of the Town of Darien hereby approves the granting of this easement by the Town of Darien and authorizes the First Selectman to execute said easement and arrange for the filing of said document with the Town Clerk on the Land Records of the Town of Darien.

SCHEDULE A

All that certain piece or parcel of land with all of the improvements thereon situated on the southerly side of Hecker Avenue in the Town of Darien, County of Fairfield and State of Connecticut and labeled with "Lot Area = 54,245± Sq. Ft. or 1.2452± Acres" on a map entitled, "Property Survey Hecker Avenue Prepared for Town of Darien, Darien, Connecticut" Dated: December 18, 2015, Scale: 1"=20'. Said map being certified substantially correct by Mark S. Lebow, Conn. L.L.S. #15564 of William W. Seymour & Associates, P.C. , Land Surveyors-Zoning & Land Use Consultants, 170 Norton Avenue, Darien, Connecticut. Said map is on file in Volume ____ Page ____ in the Darien Town Clerk's Office, to which reference may be had for a more particular description, and which parcel is more particularly bounded and described as follows:

Beginning at a point on the southerly line of Hecker Avenue, said point having NAD '83 coordinates of N 586822.008 E 797820.560, and being the intersection of the division line between the herein described property and land now of formerly of Victor G.Vargha & Franciska Vargha (Assessor's Map 41, Lot 21) with said southerly line of Hecker Avenue;

Thence, running easterly along said southerly line of Hecker Avenue N86°03'11"E a distance of 222.50 feet to a point, said point having NAD '83 coordinates of N 586837.324 E 798042.535;

Thence, running along land N/F Spring Grove Cemetery Association and within the banks of Stony Brook S20°35'56"W a distance of 490.35 feet to a point, said point having NAD '83 coordinates of N 586378.323 E 797870.020;

Thence, running along land N/F of the Town of Darien S87°17'18"W a distance of 20.75 feet to a point;

Thence, running northerly along other land of said Town of Darien, the easterly terminus of Cherry Street, land N/F of John J. Ryan & Elyse A. Gittleman and land N/F of the aforesaid Victor G. & Franciska Vargha in part by each, N03°41'49"W a distance of 445.59 feet to the aforesaid southerly line of Hecker Avenue and the point of beginning.

Comprising an area of 54,245± Sq. Ft. or 1.2452± Acres

EXHIBIT C
**CONSERVATION AND PUBLIC RECREATION
EASEMENT AND AGREEMENT**

MUNICIPALITY OF DARIEN STONY BROOK OSWA-508

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

WHEREAS, The Town of Darien holds title to 1.2452 ± acres of real property in the territorial limit of the Town of Darien, formerly of Spring Grove Cemetery Association, Darien, Connecticut.

WHEREAS, in addition to its value as a natural area, said property is also a scenic resource of the State of Connecticut;

WHEREAS, the preservation of the above mentioned land will yield a significant public benefit for passive recreation and open space protection;

WHEREAS, the anticipated use of the land by the Town of Darien is consistent with the Department of Energy and Environmental Protection's (DEEP) conservation and preservation interests, and the Town of Darien has a shared interest with DEEP in seeing that these conservation-minded practices continue;

WHEREAS, the State of Connecticut has established the Open Space and Watershed Land Acquisition Grant Program to provide grants to municipalities and nonprofit land conservation organizations to acquire land or permanent interests in land for open space and watershed protection and to water companies, as defined in Connecticut General Statutes (CGS) Section 25-32a, to acquire and protect land which is eligible to be classified as Class I or Class II land, as defined in CGS Section 25-37c, after acquisition;

WHEREAS, all lands or interests in land acquired under the Open Space and Watershed Land Acquisition Grant Program shall be preserved in perpetuity predominantly in their natural and scenic and open condition for the protection of natural resources while allowing for recreation consistent with such protection and, for lands acquired by water companies, allowing for the improvements necessary for the protection or provision of potable water;

WHEREAS, a permanent Conservation Easement, as defined in CGS Section 47-42a, shall be executed for any property purchased with grant funds through the Open Space and Watershed Land Acquisition Grant Program and which Conservation Easement shall provide that the property shall remain forever predominately in its natural and open condition for the specific conservation, open space or water supply purpose for which it was acquired;

WHEREAS, the Conservation Easement shall be in favor of the State acting through its Commissioner of Energy and Environmental Protection;

WHEREAS, such Conservation Easement shall include a requirement that the property be made available to the general public for appropriate recreational purposes, the maintenance of which recreational access shall be the responsibility of the Town of Darien;

WHEREAS, the Town of Darien and the State of Connecticut agree that limited public recreation on said property can be provided without significant impact to the natural resources on said property, conservation of those resources having been the primary reason for its acquisition by the Town of Darien.

NOW, THEREFORE, the TOWN OF DARIEN, a municipal corporation having its territorial limits within the County of Fairfield and State of Connecticut, (the "Grantor"), for One (\$1.00) Dollar and other good and valuable consideration received to its full satisfaction of the STATE OF CONNECTICUT, a sovereign, (the "Holder") and in consideration of the mutual covenants, terms, conditions and restrictions herein contained, GRANTOR, its successors and assigns, does hereby give, grant, bargain, sell, convey and confirm in perpetuity unto the HOLDER and its successors or assigns forever with Warranty Covenants, a Conservation and Public Recreation Easement ("Conservation Easement") in perpetuity, of the nature and character and to the extent hereinafter set forth, over property situated in the Town of Darien, County of Fairfield, State of Connecticut, (the "Protected Property"), as described in Schedule A.

1. Purpose. It is the purpose of this Conservation Easement to assure that the Protected Property will be retained forever predominantly in its natural, scenic, forested, and/or open space condition, and to provide opportunities for public recreation on the Protected Property, while preventing any use of the Protected Property that will significantly impair or interfere with the conservation values or interests of the Protected Property, described above. It is the intent of this Conservation Easement that any management activities or alterations of the natural landscape or provision for access or recreation shall be consistent with the conservation purposes above.

2. Development Rights and Restrictions. No building, residential dwelling, structure, parking lot, driveway, road or other temporary or permanent structure or improvement requiring construction shall be placed upon the Protected Property except as provided hereinbelow, the following reservations to be consistent with the conservation and public recreation purposes above:

a) Grantor reserves the right to maintain existing unpaved driveways, footpaths and other minor surface alterations; to excavate and fill as necessary to accomplish permitted building, recreational and silvicultural activities; and to construct, maintain and reconstruct additional unpaved footpaths or minor, roofless rustic improvements necessary or appropriate to assure safe passage, prevent erosion, or to enhance or protect the natural habitat.

b) All rights reserved herein by the Grantor may only be exercised subject to all applicable governmental permits and approvals required by law. Nothing herein shall commit the Holder to grant any such approval or permit.

c) The Grantor reserves the right to access for maintenance, repair or replacement the existing fiber optic cable within the identified 10-foot wide easement area, and the sanitary sewer lines that run through the Protected Property as shown on the referenced map in Schedule A of this Conservation Easement.

- d) The Grantor reserves the right to modify the Protected Property for purposes of flood mitigation.
- e) Grantor reserves the right to manage and monitor the Protected Property for rare and endangered species, such activities including, but not limited to:
- 1) The rerouting or closing of trail segments or public access points that pose a substantial threat to protected species, provided that a system of public access trails remains open to the public at all times;
 - 2) The right to grant access to the site for research;
 - 3) Use of the Protected Property for educational and outreach purposes, including limited attendance walks and on-site stewardship training programs.

Grantor agrees that the activities or uses contemplated above shall not unreasonably interfere with the use of the Protected Property by the general public. All rights not specifically granted are hereby reserved by Grantor.

3. Provision of Public Recreation. The Grantor agrees to allow the public access to the Protected Property for passive recreational purposes and to use such trails or other facilities as they may exist or be developed, or where such use is permitted by the Department of Health on Class I and Class II Watershed Land. The public shall be defined as any resident of any municipality, state, country or nation. The Grantor may develop passive recreational facilities and support facilities for those passive activities on the Protected Property if none exists. Passive recreation shall be defined as recreational trail usage (non-motorized), recreational activities which do not require a formalized delineated playing field or area, picnicking, and environmental education.

4. Other activities. No commercial, industrial, quarrying, or mining activities are permitted on the Protected Property.

5. Water Protection and Waste Disposal. The use of chemical herbicides, pesticides, fungicides, fertilizers and other agents must be limited to prevent any demonstrable adverse effect on wildlife, waters, and other important conservation interests to be protected by this Conservation Easement.

It is forbidden to dispose of or to store rubbish, garbage, debris, abandoned equipment, parts thereof, or other unsightly, offensive, toxic or hazardous waste material on the Protected Property except that vegetative waste may be composted, and other waste generated by permitted uses on the Protected Property may be stored temporarily in appropriate containment for removal at reasonable intervals, subject to all applicable local, state, and federal laws and regulations.

The Grantor covenants and represents that, to the best of Grantor's knowledge, no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks located on the Protected Property.

6. Costs and Taxes. Grantor acknowledges that the Holder has no possessory rights in the Protected Property, nor any responsibility or right to control, maintain, or keep up the Protected Property. Grantor is responsible to pay and discharge when due all property taxes and assessments and to avoid the imposition of any liens that may impact Holder's rights hereunder. Grantor is responsible for all costs and responsibility of ownership, control, operation, maintenance, and upkeep of the Protected Property and will, to the fullest extent permitted by law, defend, release, relieve, hold harmless, and indemnify Holder, its officers, directors, agents, and employees therefrom and from any claims for damages which arise therefrom, except for harm caused by the negligent act or misconduct of Holder, or as may arise out of its workers' compensation obligations. This provision shall not be construed as a waiver of sovereign immunity.

Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), and shall furnish Holder with satisfactory evidence of payment upon request. In order to assure the continued enforceability of this Conservation Easement, the Holder is authorized, but in no event obligated, to make or advance any payment of taxes, upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of two (2) percentage points over the prime rate of interest from time to time announced by J.P. Morgan Chase Bank or the maximum rate allowed by law. Holder shall have the right to place a lien on property of the Grantor in the event that the payment is not reimbursed to Holder within thirty (30) days.

7. Subdivision Limitation and Subsequent Transfers. The Protected Property must remain as an entity in a single ownership, and may not be divided, subdivided, partitioned or otherwise separated into parcels or lots, whether or not said Protected Property may be described herein, or have been described in any prior deed, as more than one piece or parcel of land.

Grantor agrees that the terms, conditions, restrictions, and purposes of this grant or reference thereto will be inserted by Grantor in any subsequent deed or other legal instrument by which the Grantor divests either the fee simple title or possessory interest in the Protected Property, and Grantor further agrees to notify Holder of any transfer at least thirty (30) days in advance thereof.

The State of Connecticut hereby acknowledges that the Town of Darien is granting a conservation easement to the Darien Land Trust, Inc. ("DLT") to be recorded immediately following this Agreement and acknowledges that the DLT conservation easement provides certain rights in and to the DLT relating to the preservation and protection of the Land which the State recognizes and with which will not interfere.

8. Miscellaneous.

a) Grantor represents that as of the date of this grant there are no liens or mortgages outstanding against the Protected Property. The rights of the Holder to enforce the terms, restrictions and covenants created under this Conservation Easement shall not be extinguished by foreclosure of any mortgage or any publicly or privately placed lien, regardless of any subsequently placed mortgage or lien.

b) If any provision(s) of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

c) Any uncertainty in the interpretation of this Conservation Easement should be resolved in favor of conserving the Protected Property in its natural and scenic state.

d) If this Conservation Easement is extinguished by court order, or the powers of eminent domain, the proceeds of any taking or sale of the unrestricted property shall be divided between Grantor and Holder in the same proportion as the value of their respective interests, so calculated, as of the date of this grant, excepting any part of such proceeds attributable to improvements to the Protected Property made after the date of this grant. Holder will use such proceeds for its conservation purposes.

9. Remedies and Enforcement.

a) This Conservation Easement granted hereby constitutes a Conservation Restriction on the Protected Property in favor of the Holder and its successors and assigns pursuant to CGS Section 47-42a, as amended. Pursuant to CGS Section 47-42b, as amended, this Conservation Easement shall not be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land. Pursuant to CGS Section 47-42c, this Conservation Easement may be enforced by injunction or proceedings in equity, or in any other manner permitted by law. It is further agreed by the parties that the Conservation Easement granted hereby may be enforced at law or in equity.

b) The failure or delay of the Holder, for any reason whatsoever, to enforce this Conservation Easement shall not constitute a waiver of its rights and Grantor hereby waives any defense of laches, prescription, or estoppel.

c) Grantor is not responsible for injury to or change in the Protected Property resulting from "acts of God" so called, such as, but not limited to, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. If a Court (or other decision maker chosen by mutual consent of the parties) determines that this Conservation Easement has been breached, Grantor will reimburse Holder for any reasonable costs of enforcement, including court costs, reasonable attorneys' fees, and any other payments ordered by such Court.

d) The terms and conditions of said Conservation Easement hereinabove set forth shall be binding upon and inure to the benefit of the Holder and its successors or assigns. However, said Conservation Easement shall not entitle the Holder or its successors or assigns to any right of entry or use of the Protected Property except as provided herein and for periodic inspections in a reasonable manner and at reasonable times to ensure compliance with the conservation and recreation purposes above.

e) The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

10. **Notices.** Any notice to Holder required hereunder must be made by certified mail, return receipt requested, addressed to:

State of Connecticut
Department of Energy and Environmental Protection
Office of the Commissioner
79 Elm Street
Hartford, CT 06106

or such other address as may be furnished in writing.

Any notice to Grantor required hereunder must be made by certified mail, return receipt requested, addressed to:

Office of the First Selectman
Town of Darien
2 Renshaw Road
Darien, CT 06820

or such other address as may be furnished in writing.

Any notices to Holder or requests for Holder consent, required or contemplated hereunder, must include, at a minimum, sufficient information to enable the Holder to determine whether proposed plans are consistent with the terms of this Conservation Easement and the conservation and recreation purposes hereof.

TO HAVE AND TO HOLD the above granted and bargained Conservation Easement unto the said Holder and its successors and assigns forever.

AND THE GRANTOR, its successors and assigns, does COVENANT with the Holder that it will WARRANT AND DEFEND title to the Protected Property to the said Holder and its successors and assigns forever, against the lawful claims and demands of all persons claiming by, through or under it.

IN WITNESS WHEREOF, the parties hereto have set their hands.

TOWN OF DARIEN

WITNESSES Signature
Name in print

Jayne J. Stevenson **Date**
First Selectman
Duly Authorized

Name

Name

STATE OF CONNECTICUT)
)
COUNTY OF FAIRFIELD) **SS. TOWN OF DARIEN**

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by
Jayme J. Stevenson, First Selectman of the Town of Darien, Connecticut.

Commissioner of the Superior Court
Notary Public
My Commission Expires _____



The foregoing Conservation Easement is accepted this _____ day of _____, 2017, by Robert J. Klee,
Commissioner, Department of Energy and Environmental Protection, Pursuant to Connecticut General Statutes Section
7-131d(e).

STATE OF CONNECTICUT

WITNESSES Signature
Name in print

Robert J. Klee **Date**
Commissioner
Department of Energy and Environmental Protection

Name

Name

STATE OF CONNECTICUT)
)
COUNTY OF HARTFORD) **SS. CITY OF HARTFORD**

The foregoing instrument was acknowledged before me this _____ day of _____, 2017 by
Robert J. Klee, Commissioner, Department of Energy and Environmental Protection, State of Connecticut for the State
of Connecticut.

Commissioner of the Superior Court
Notary Public
My Commission Expires _____



STATUTORY AUTHORITY
Connecticut General Statutes
Section 7-131d(e)

APPROVED
George Jepsen
Attorney General

By: Joseph Rubln _____
Associate Attorney General **Date**

**** THE MOTION WAS SECONDED FROM THE FLOOR.**

**** ITEM 17-10 CARRIED ON A RISING TALLY VOTE OF 76 IN FAVOR, 0 OPPOSED, 0 ABSTENTIONS.**

17-12

CONSIDERATION AND ACTION ON AUTHORIZING THE ISSUANCE AND FILING OF A CONSERVATION EASEMENT TO THE DARIEN LAND TRUST

**** JOANNE HENNESSY, DISTRICT V, CHAIRMAN OF PZ&H, MOVED:**

WHEREAS, the Town of Darien is desirous of purchasing 1.2452 ± acres of land located on Hecker Avenue in Darien, Connecticut as more particularly described in the Schedule A attached hereto and made a part hereof; and

WHEREAS, said property is currently owned by the Spring Grove Cemetery Association; and

WHEREAS, the purchase price for said property is Two Hundred Seventy-Five Thousand and 00/100 dollars (\$275,000.00); and

WHEREAS, the funds for said purchase are being acquired in part by a gift from the Darien Land Trust in the amount of One Hundred Thirty Seven Thousand Five Hundred and 00/100 Dollars (\$137,500.00); and

WHEREAS, the balance of said purchase price is being acquired from a grant of One Hundred Thirty Seven Thousand Five Hundred and 00/100 Dollars (\$137,500.00) from the State of Connecticut, in particular, what is known as Connecticut's Open Space and Watershed Land Acquisition Program; and

WHEREAS, the Darien Land Trust is requiring as part of its gift that there be recorded on the Darien Land Records in its favor a conservation easement as more particularly described in Schedule B attached hereto and made part hereof.

NOW THEREFORE, be and it is hereby resolved that the Representative Town Meeting of the Town of Darien hereby approves the granting of the easement by the Town of Darien and authorizes the First Selectman to execute said easement and arrange for the filing of said document with the Town Clerk on the Land Records of the Town of Darien.

SCHEDULE A

All that certain piece or parcel of land with all of the improvements thereon situated on the southerly side of Hecker Avenue in the Town of Darien, County of Fairfield and State of Connecticut and labeled with "Lot Area = 54,245± Sq. Ft. or 1.2452± Acres" on a map entitled, "Property Survey Hecker Avenue Prepared for Town of Darien, Darien, Connecticut" Dated: December 18, 2015, Scale: 1"=20'. Said map being certified substantially correct by Mark S. Lebow, Conn. L.L.S. #15564 of William W. Seymour & Associates, P.C. , Land Surveyors~Zoning & Land Use Consultants, 170 Norton Avenue, Darien, Connecticut. Said map is on file in Volume ____ Page ____ in the Darien Town Clerk's Office, to which reference may be had for a more particular description, and which parcel is more particularly bounded and described as follows:

Beginning at a point on the southerly line of Hecker Avenue, said point having NAD '83 coordinates of N 586822.008 E 797820.560, and being the intersection of the division line between the herein described property and land now of formerly of Victor G.Vargha & Franciska Vargha (Assessor's Map 41, Lot 21) with said southerly line of Hecker Avenue;

Thence, running easterly along said southerly line of Hecker Avenue N86°03'11"E a distance of 222.50 feet to a point, said point having NAD '83 coordinates of N 586837.324 E 798042.535;

Thence, running along land N/F Spring Grove Cemetery Association and within the banks of Stony Brook S20°35'56"W a distance of 490.35 feet to a point, said point having NAD '83 coordinates of N 586378.323 E 797870.020;

Thence, running along land N/F of the Town of Darien S87°17'18"W a distance of 20.75 feet to a point;

Thence, running northerly along other land of said Town of Darien, the easterly terminus of Cherry Street, land N/F of John J. Ryan & Elyse A. Gittleman and land N/F of the aforesaid Victor G. & Franciska Vargha in part by each, N03°41'49"W a distance of 445.59 feet to the aforesaid southerly line of Hecker Avenue and the point of beginning.

Comprising an area of 54,245± Sq. Ft. or 1.2452± Acres

SCHEDULE B

After recording, please return to:
Att. Wayne Fox, [Grantor's attorney]
666 Summer St
Stamford, CT 06901-1416

CONSERVATION EASEMENT

This Grant of **CONSERVATION EASEMENT** made this _____ day of March, 2016 by and between the Town of Darien, a municipal entity having a principal place of business at 2 Renshaw Road, Darien, CT who with its successors in title to all or any portion of the Protected Property as hereinafter defined, including heirs, executors, administrators, successors and assigns, in perpetuity, are collectively referred to as "**Grantor,**" and the Darien Land Trust, Inc., having an address at Darien Land Trust, P.O. Box 1074, Darien, CT 06820 hereinafter referred to as "**Grantee.**" Grantor and Grantee are hereinafter collectively referred to as the "**Parties.**"

RECITALS:

- A. Grantor is the owner in fee simple of certain real property in the Town of Darien, County of Fairfield, and State of Connecticut, in particular, a parcel to be created which will become lot 20 on a map to be filed comprising approximately 1.234 acres, hereinafter called the "**Protected Property,**" which has ecological, scientific, educational and aesthetic value in its present state as a natural area which has not been subject to development or exploitation, which Protected Property is more particularly described in Schedule A attached hereto and incorporated by this reference and delineated on a certain map entitled "Property Survey, Hecker Avenue prepared for Town of Darien, December 18, 2015" attached as Schedule B/recorded in the Darien land records and incorporated herein by reference (hereinafter referred to as the "**Plan**").
- B. Grantee is a publicly-supported tax exempt, non-stock organization incorporated under the laws of the State of Connecticut, whose primary purpose is to preserve and conserve natural areas for aesthetic, scientific, charitable, and educational purposes. Grantee is qualified to acquire and hold conservation restrictions under the provisions of Connecticut General Statutes Section 47-42a et seq. and is a "qualified organization" under Section 170(h) of the Internal Revenue Code of 1986, as amended, (hereinafter referred to as the "Code") and the Treasury Regulations promulgated thereunder. Grantee has received determination letters from the Internal Revenue Service, on file at the offices of Grantee, to the effect that Grantee is a "publicly supported" charitable organization under Sections 501(c)(3) and 170(b)(1)(A)(vi) of the Code and is not a private foundation as defined in Section 509(a) of the Code.
- C. The Protected Property possesses significant natural, scenic, forested, and open space conservation values and interests (collectively "**Conservation Values**") of great importance to Grantor and the people of Darien, County of Fairfield, and State of Connecticut as set forth below in these Recitals E through I and as documented in the Baseline Report.

D. Grantor and Grantee have the common purpose of conserving the Protected Property in perpetuity by Grantor's placing voluntary restrictions upon the use of the Protected Property and by providing for the transfer from Grantor to Grantee of affirmative rights for its protection in perpetuity, intending the grant of such restrictions to be a "qualified conservation contribution" as that term is defined under Section 170(h)(2)(C) of the Code, (and as a "qualified conservation easement" under Section 2031(c) of the Code, and so as to qualify as a "Conservation Restriction" under the Connecticut General Statutes Sections 47-42a through 47-42e. Grantor and Grantee wish to avail themselves of the provisions of those laws through the protection of those Conservation Values hereinafter described in the following Recitals E through J.

In addition, the conservation of the Protected Property will accomplish a number of the factors that determine "significant public benefit" under Treas. Reg. Section 1.170A-14(d)(4)(iv), such as but not limited to the following: (i) development of the Protected Property beyond the development permitted hereunder would lead to or contribute to the degradation of the scenic, natural, and open character of the area, particularly in light of the fact that the region is under development pressure, (ii) by prohibiting development of the Protected Property and limiting its use there is created the potential to help prevent habitat fragmentation and the potential for restoring or increasing biological diversity and native plant communities, (iii) the Protected Property is an integral part of the scenic character of the local landscape in which it lies and (iv) this conservation easement is consistent with public programs for conservation in the region, some of which are enumerated below.

The protection of those Conservation Values hereinafter described is in fulfillment of, and consistent with the corresponding "conservation purposes" that are required to be protected under Section 170(h)(4) of the Code.

SCENIC ENJOYMENT:

E. The protection of the Protected Property is for the preservation of open space which will promote the scenic enjoyment by the general public and will yield a significant public benefit in accordance with Section 170(h)(4)(A)(iii)(I) of the Code. Specifically, the Protected Property is situated on and prominently visible from Hecker Avenue and the abutting properties including the Darien Town Hall property and Spring Grove Cemetery property.

HABITAT PRESERVATION:

F. The protection of the Protected Property protects a significant "natural habitat of fish, wildlife, and plants, or similar ecosystem," in accordance with Section 170(h)(4)(A)(ii) of the Code. Specifically, the Protected Property is habitat for or is adjacent to habitat for fish and wildlife, and is within an area which Grantor and Grantee have determined is of substantial scenic, aesthetic and ecological importance to the Town of Darien;

The Protected Property abuts and is contiguous to property owned by Spring Grove Cemetery and as a result is part of a corridor of protection for a diversity of species and

their associated habitat, including nesting and migratory birds, other woodland species and mammal and insect species.

OUTDOOR RECREATION AND EDUCATION:

G. The protection of the Protected Property preserves "land areas for outdoor recreation by, or for the education of, the general public" in accordance with Section 170(h)(4)(A)(i) of the Code. Specifically, the Protected Property abuts other lands of Grantor including sports fields and open space of the Town Hall and may contain a trail to facilitate access to sports field and other town facilities. Additionally the Protected Property will provide for public access for educational purposes for study of native plants, ecosystems and wildlife.

WATER QUALITY PROTECTION

H. The Protected Property is traversed by a watercourse called "Stony Brook" and its protection affords an ecologically important buffer for the protection of water quality and habitat in accordance with Section 170(h)(4)(A)(ii) of the Code.

PUBLIC POLICY:

I. The preservation of the Protected Property is for the preservation of open space pursuant to clearly delineated federal, state and local governmental conservation policies and will yield a significant public benefit in accordance with Section 170(h)(4)(A)(iii)(II) of the Code.

Specifically:

- a. in 1963, the Connecticut General Assembly declared "that it is in the public interest to encourage the preservation of farmland, forest land and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the state, to conserve the state's natural resources and to provide for the welfare and happiness of the inhabitants of the state..." (P.A. 490, Section 1; C.G.S. Section 12-107a), and
- b. in 1971, the Connecticut General Assembly passed Public Act 173 (C.G.S. Sections 47-42a through 47-42c which authorizes the creation and enforcement of conservation restrictions "whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural farming, forest or open space use," and
- c. The Darien Town Plan of Conservation and Development (effective June 25, 2006; amended July 10, 2007, effective July 22, 2007) (the "Town Plan") states that the town "seeks to preserve the ecological integrity and sustain all natural resources within the town" which are "critically important" and have "intrinsic value" to the quality of life in the town and established policies set forth in the Town Plan to further the conservation of open space, preservation and protection of environmental resources of the Town of Darien as well as

cooperation on regional issues including the protection of Long Island Sound and the coastline.

d. the Protected Property has been specifically designated on the Open Space Plan of the Town of Darien; and

e. Grantor endorsed the preservation of the Protected Property through this conservation easement, referencing the consistency of such preservation with the Town Plan of Conservation and Development, Open Space Plan of the Town and the conservation and preservation goals of the Town relating particularly to wetlands and flooding conditions and in recognition of the importance of the Protected Property as an ecological, scenic and recreational resource; and

NOW, THEREFORE, Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein and as an absolute and unconditional grant, does hereby grant and convey to Grantee this conservation easement (“**Easement**”) in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth.

1. PURPOSE. It is the purpose (“**Purpose**”) of this Easement:

i. to assure that the Protected Property will be retained forever predominantly in its natural, scenic, forested, and open space condition for the protection of the Protected Property’s Conservation Values;

ii. to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property described above.

iii. Grantor intends that this Easement will confine the use of the Protected Property to such activities as are consistent with the Purpose of this Easement. Any permitted uses reserved to Grantor must be carried out in a manner that is consistent with the Purpose of this Easement.

2. DEFINITIONS. The following definitions apply throughout this Easement. Many terms are defined within the individual paragraphs of this Easement. Defined terms are indicated as such in the body of this Easement by capitalization.

ALL TERMS ARE BROADLY WORDED AND ARE SUBJECT TO CONDITIONS, LIMITATIONS AND EXCLUSIONS AS FURTHER SET FORTH IN THIS EASEMENT.

2.1 “**Baseline Report**” is defined in Paragraph 19.10.

2.2 “**Best Management Practices**” are a series of guidelines or minimum standards recommended by governmental resource management agencies, professional organizations and universities for proper forestry operations and application of pesticides, with the goal of limiting non-point pollution of water resources and other

disturbances of soil, water, and vegetative resources and to protect wildlife habitats.

2.3 "Code" is defined in Recital B.

2.4 "Conservation Values" are defined in Recitals C and E through H.

2.5 "Environmental Laws" means any and all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, Hazardous Materials, worker and community right-to-know, light, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building, and land use restrictions as may now or at any time hereafter be in effect.

2.6 "Grantee" means the Darien Land Trust, Inc. and its successors and assigns, in perpetuity.

2.7 "Grantor" is defined in the first paragraph of this Easement and includes the owner of the Protected Property in whom the Protected Property is titled. It shall also mean the masculine, feminine, corporate, singular or plural form of the word as needed in the context of its use.

2.8 "Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

2.9 "Invasive Species" are: (i) non-native plants that are disruptive in a way that causes environmental or economic harm or harm to human health, and (ii) non-native insects, fungi, parasites, and other organisms that attack native species of flora and fauna or threaten the diversity and health of the forest or other natural ecological communities.

2.10 "Purpose" is defined in Paragraph 1 hereof.

2.11 "Qualified Natural Resource Professional" is a certified professional forester, forest ecologist, wildlife biologist, soil scientist or agricultural specialist with substantial training and expertise, and any necessary certifications, in the relevant environmental sciences.

2.12 "Structure" means anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground. This includes, but is not limited to: dwellings and

buildings.

3. LIMITATIONS AND PROHIBITED USES. In order to carry out the Purpose, and subject to the exceptions set forth in Paragraph 4 below, the following acts or uses are expressly prohibited on or in connection with the Protected Property:

3.1 Subdivision. The Protected Property may not be divided, partitioned, or subdivided, nor conveyed, except in its current configuration as an entity and except as may be permitted in Paragraph 4 below; provided, however, that with prior approval from Grantee, Grantor may convey any portion of the Protected Property to any organization or government entity that would qualify as an eligible assignee in accordance with Paragraph 16 of this Easement. Any portion of the Protected Property conveyed pursuant to this provision shall remain subject to this Easement in all respects.

3.2 Use for Development. The Protected Property and any portion thereof shall not be included as part of the gross area of other property not subject to this Easement for the purposes of determining density or lot coverage under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by the Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise. Nothing herein contained shall be construed to prevent Grantor from using any of the Protected Property as property qualifying for open space, forest or farmland for tax exemption purposes under applicable statutes and laws.

3.3 Prohibited Structures. There shall be no construction or placing of any building, tennis or other recreational court, landing strip, mobile home, swimming pool, crypt, fence or sign (other than those reasonably required by Grantor and Grantee for appropriate management), asphalt or concrete pavement, parking area, billboard or other advertising display, antenna, utility pole, tower, conduit, line, electric light or any other temporary or permanent Structure or facility on, under or above the Protected Property except as provided in Paragraph 4 below. No permanent structures are allowed on the Protected Property.

3.4 Changes in Topography and Mining. There shall be no ditching, draining, diking, filling, excavating, dredging, surface or subsurface mining or drilling, removal of topsoil, sand, gravel, rock, stone walls, minerals or other materials, nor any building of roads or change in the topography of the land in any manner except as provided in Paragraph 4 below.

3.5 Changes to Vegetation. There shall be no removal, destruction or cutting of trees, shrubs or plants, or planting of non-native species with invasive characteristics, introduction of non-native animals, grazing of domestic animals, or disturbance or change in the natural habitat except in connection with:

- (i) the maintenance of existing unpaved trails and open areas;
- (ii) the removal of Invasive Species;
- (iii) the removal or the pruning of dead, damaged, diseased or live trees and brush that pose a threat to safety or structures;

- (iv) the prevention of the spread of plant or animal species that pose a significant threat to the health of the forest;
- (v) any recommendations regarding the Protected Property by the Connecticut Department of Energy and Environmental Protection or other duly authorized governmental authority, or in a written forest and/or wildlife management plan prepared by a Qualified Natural Resource Professional which plan must be approved in writing by Grantee;
- (vi) with consent of Grantee; or
- (vii) as permitted by Paragraph 4 below.

3.6 **Pesticides.** There shall be no use of pesticides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, or other potentially harmful substances or the use or disposal of said products and by-products on the Protected Property, except as provided in Paragraph 4.6 below. (i) as used in a selective manner, in accordance with applicable law and Best Management Practices to treat non-native insects, fungi, parasites, invasive species and other organisms that attack native species of flora and fauna or threaten the diversity and health of the forest or other natural ecological communities on or adjacent to the Protected Property, (ii) as used by a licensed pesticide applicator in accordance with Best Management Practices established by the Natural Resources Conservation Service or its successor, (iii) as used by a licensed pesticide applicator in accordance with a written forest and/or wildlife management plan prepared by a Qualified Natural Resource Professional, which plan must be approved in writing by Grantee, except as provided in Paragraph 4 below or (iv) is approved in writing by Grantee.

3.7 **Trash.** There shall be no storage, placing, filling or dumping of ashes, trash, vehicles or vehicle parts, debris, junk, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks, in, on or under the Protected Property. The preceding restriction shall not apply to the aboveground presence, use or storage on the Protected Property of small quantities of the aforementioned substances that are generally recognized to be appropriate to normal residential use.

3.8 **Pollution and Alteration of Water Resources.** There shall be no pollution, alteration, depletion nor extraction of surface water, natural water courses, lakes, ponds, marshes, wetlands, subsurface water or any other water bodies, nor shall there be activities conducted on the Protected Property, which would be detrimental to water purity, or which could alter natural water level and/or flow in or over the Protected Property, except as provided in Paragraph 4 below.

3.9 **Recreational Vehicles.** There shall be no operation of motorcycles, bicycles, all-terrain vehicles or any other types of mechanized motorized recreational vehicles, except as provided in Paragraph 4 below.

3.10 **Commercial Recreational Activities.** There shall be no commercial or industrial uses of the Protected Property, other than de minimis commercial recreational activities as defined in accordance with Section 2031(c) of the Code.

3.11 **Other use.** Any other use of the Protected Property which would be inconsistent with the Purpose of this Easement or that would impair the Protected

Property's Conservation Values is prohibited, unless such use or activity is deemed necessary by Grantor and Grantee for the protection of the Protected Property's Conservation Values, in which case such use or activity shall be subject to the prior written approval of Grantee as provided in Paragraph 7.1.

4. GRANTOR'S RESERVED RIGHTS AND PERMITTED USES.

Grantor reserves the right to undertake or continue any activity or use of the Protected Property not prohibited by this Easement and not inconsistent with the Purpose of the Easement. Notwithstanding the Limitations and Prohibited Uses of Paragraph 3, the following activities and uses are hereby acknowledged by Grantor and Grantee to be consistent with the Purpose of this Easement, and are expressly permitted to be carried out on the Protected Property by Grantor and Grantor's guests and invitees in a manner that does not impair the Conservation Values protected by this Easement. Grantor agrees to notify Grantee in writing within a reasonable time prior to the exercise of any reserved right herein which may impair the Conservation Values that are protected by the Easement.

4.1 Mortgage and Convey subject to Easement. Grantor reserves the right to sell, give, mortgage, lease, devise or otherwise convey the Protected Property in its entirety, except as otherwise provided herein. Any such conveyance shall be subject to the terms of this Easement. Grantor shall provide written notice of any conveyance that is not a mortgage to Grantee at least ninety (90) days prior to such conveyance.

4.2 Existing Structures. There are no existing structures on the Protected Property. No stones from walls, forest floor, or any other location may be removed from the Protected Property.

4.3 Outdoor Recreational Activities. Grantor reserves the right to engage in non-commercial outdoor recreational activities that do not require development of, or the construction of Structures on the Protected Property, including by way of illustration and not limitation, walking, hiking, running, fishing, cross country skiing, wildlife observation, ecological education, snowshoeing, and similar uses, but not those activities involving the recreational use of bicycles or non-motorized or motorized vehicles (excluding those required for a person's mobility such as a wheelchair) or that would impair the Conservation Values protected by this Easement.

4.4 Signs. Grantor reserves the right to place signs identifying the Protected Property and to post all or a portion of the Protected Property about permitted uses and against trespass, hunting or prohibited uses.

4.5 Habitat Enhancement. Grantor reserves the right to improve wildlife habitat through the creation and placement of improvements, including but not limited to bird houses, brush piles, sunning logs and the planting of specific habitat vegetation, to temporarily erect fences to exclude deer and other animals for the purpose of protecting habitat from browse, and to conduct other habitat enhancement activities recommended by a Qualified Natural Resource Professional who is approved by Grantee.

4.6 **Invasive Species Removal.** Grantor reserves the right to remove or control Invasive Species or species which are a threat to the health of humans, animals or native species of flora and fauna. The use of herbicides, fungicides, insecticides, biological agents, and pesticides for such purposes shall be undertaken in accordance with Best Management Practices established by the Natural Resources Conservation Service of the U.S. Department of Agriculture or its successor in a manner reasonably designed to control the identified threat with the least possible damage to non-target species; for example, by use of the narrowest spectrum, least persistent, material appropriate for the target species. Such use is subject to all applicable laws and regulation.

4.7 **Trails.** Grantor may create a trail on the property which Grantee would provide guidance and consultation if so requested in its creation. Grantor shall be solely responsible for the maintenance, upkeep and repair of any such trail(s).

4.8 **Other Reserved Rights of Grantor.**

A. Grantor shall have the right to access the Protected Property for required maintenance and/or repair of the existing fiber optic line within ten-foot wide easement across the Protected Property, as shown on the survey attached hereto as Exhibit B, and said easement is recorded in Volume ___ at page ___ of the Darien Land Records. Grantor may have the right to repair sanitary and sewer line which runs across the Protected Property as shown on the survey attached hereto as Exhibit B provided Grantor holds such right pursuant to an unrecorded easement agreement. Grantor shall restore the areas disturbed by any such maintenance and repair of these easements to their natural state.

B. Grantor may use a portion of the Protected Property for flood mitigation pursuant to a written plan following the suggestion(s) set forth in the Milone & MacBroom study (on file with the Town of Darien). Any such work relating to flood mitigation would be done with the intention to maintain the property predominately in its natural state. Prior to commencement of any work on the Protected Property relating to a flood mitigation plan, Grantor shall provide Grantee advanced written notice of at least sixty (60) days allowing Grantee to review the plan to be executed.

5. **GRANTEE'S RIGHTS OF ENTRY.** To accomplish the Purpose of this Easement, the following rights of entry are conveyed to Grantee by this Easement:

5.1 **Right of Entry for Stewardship and Monitoring Purposes.** Grantee has the right to enter the Protected Property at all reasonable times and in a reasonable manner for the purposes of: (i) inspecting the Protected Property to determine if Grantor is complying with the terms of this Easement; and (ii) documenting Grantor's compliance with this Easement and the condition of the Protected Property through photographs and other forms of visual media. Grantee will make a reasonable effort to notify Grantor prior to entry onto any area of the Protected Property, except when emergency circumstances or prevention of a threatened breach of this Easement requires immediate entry.

5.2 **Signs.** Grantee shall have the right to install and maintain signs on the boundary of the Protected Property in furtherance of the rights and responsibilities of

Grantee under this Easement. Grantee may erect sign(s) to recognize its contribution enabling the acquisition of the Protected Property.

6. **PUBLIC ACCESS.** Grantee may allow public access to the Protected Property.

7. **NOTICE AND APPROVAL.**

7.1 **Notice.** Whenever notice to or approval by Grantee is required under the provisions of this Easement, or whenever Grantor intends to undertake any activity or to exercise any right that may have a material adverse effect on the Conservation Values of the Protected Property, Grantor shall notify Grantee in writing not less than ninety (90) days prior to the date Grantor intends to undertake the activity in question or exercise such right. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement.

7.2 **Approval.** Where Grantee's approval is required by the terms of this Easement, Grantee shall approve or withhold its approval in writing. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon Grantee's finding that the proposed activity is not inconsistent with the Purpose of this Easement and will not impair the Conservation Values protected hereby. Grantee may establish reasonable conditions for the conduct of activities approved under this provision.

7.3 **Approval in Changed or Unforeseen Circumstances.** Recognizing that Best Management Practices, technologies, climate and the ecological state of the region, and scientific knowledge will change over time, Grantee's approval for activities otherwise restricted or prohibited, or for which no provision is made in this Easement, may be given in limited circumstances if Grantee determines, in its sole discretion, that due to: (i) disease, pests, fire, storm or natural disaster, (ii) changes in scientific knowledge, technology, or best land management practices, (iii) the existence of threatened or endangered species on or abutting the Protected Property; (iv) changes in climate affecting the ecological condition of the surrounding area or ecological system; or (v) other unforeseen circumstances, such activities enhance or are consistent with the Purpose and substantially conform to the intent of the original Grantor. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would affect the perpetual duration of this Easement, or impair the qualification of this Easement or the status of the Grantee under any applicable laws, including C.G.S. § 47-42a through 47-42e, and Sections 170(h) and 501(c)3 of the Code. All requests for approval shall be in writing and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activities with the Purpose. Grantee shall not be liable for any failure to grant approval under this paragraph.

8. **COSTS AND LIABILITIES.**

8.1 **In General.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property including the removal of dead trees and invasive plants and planting

of native species, also including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep Grantee's interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor.

8.2 Taxes. Grantor agrees to pay any real estate taxes or other assessments levied on the Protected Property.

8.3 Indemnification by Grantor. Grantor acknowledges that Grantee has neither possessory rights in the Protected Property, nor any right to control, maintain, or keep up the Protected Property. Grantor agrees to release, hold harmless, indemnify and defend Grantee from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees which Grantee may suffer or incur as a result of or arising out of the condition of the Protected Property or the activities of Grantor, Grantor's invitees, licensees and lessee on the Protected Property, other than those caused by the negligent acts or acts of misconduct of Grantee, and except those arising out of Grantee's workers' compensation obligations.

8.4 Indemnification by Grantee. Grantee agrees to release, hold harmless, defend and indemnify Grantor from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expense and fees which Grantor may suffer or incur as a result of or arising out of the activities of Grantee on the Protected Property, other than those caused by the negligent acts or acts of misconduct of Grantor, and except those arising of Grantor's workers' compensation obligations.

8.5 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm, earth movement, natural disease, unauthorized wrongful acts of third persons, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes; and nothing in this Easement shall require Grantor to take any action to restore the condition of the Protected Property after any act or event over which Grantor has no control. Notwithstanding the foregoing, nothing contained herein shall limit or preclude Grantor's and Grantee's rights to pursue any third party for damages to the Protected Property from vandalism, trespass, or any other violation of the terms of this Easement. In the event of violations of this Easement caused by unauthorized wrongful acts of third persons, at Grantee's option, Grantor agrees to assign its right of action to Grantee, to join in any suit, and/or to appoint Grantee its attorney-in-fact for the purposes of pursuing enforcement action.

9. GRANTEE'S REMEDIES.

9.1 In General. Grantee has the right to preserve and protect the Conservation Values of the Protected Property.

9.2 Enforcement. Grantee has the right generally to (i) prevent any activity on or use of the Protected Property by Grantor or third persons (whether or not claiming by, through, or under Grantor) that is inconsistent with the Purpose of this Easement; (ii)

to require Grantor or third persons to restore such areas or features of the Protected Property that may be damaged by any inconsistent activity or use to a condition substantially similar to that which existed prior to such violation; and (iii) to enforce this Easement in the case of violation of its terms by Grantor or by third persons (whether or not claiming by, through, or under Grantor) by appropriate legal proceedings.

Specifically, in the event that Grantee becomes aware of a violation of the terms of this Easement, Grantee shall give notice to Grantor, and request corrective action sufficient to abate such violations and restore the Protected Property to its previous condition prior to the violation. Grantor agrees that the Baseline Report shall be deemed to provide objective information concerning the Protected Property's conditions at the time of this grant. Failure by Grantor to discontinue or take such other corrective action as may be requested by Grantee within thirty (30) days after receipt of such notice shall entitle Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Easement; to require the restoration for the Protected Property to its condition substantially similar to that which existed prior to the violation; to enjoin such non-compliance by ex parte temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from such noncompliance. Such damages when recovered may be applied by Grantee, in its sole discretion, to corrective action on the Protected Property.

9.3 Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Paragraph 9 without prior notice to Grantor or without waiting for the period for the thirty (30) day cure to expire.

9.4 Forbearance Not a Waiver. Any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Grantor hereby waives any defense of laches with respect to any delay by Grantee, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Easement.

10.COSTS. Grantor acknowledges that Grantee has accepted this Easement in reliance on its entitlement to costs as set forth hereafter. By accepting a deed to the Protected Property, any successor Grantor agrees to be personally bound by the terms and conditions of this Easement, including the obligations of this paragraph.

10.1 Grantee's Entitlement to Costs of Enforcement. Recognizing that Grantee is a charitable organization with limited resources that has a duty to protect the Protected Property and property rights it holds in the public interest, Grantor agrees to reimburse Grantee for all reasonable costs incurred by Grantee in enforcing this Easement or in taking reasonable measures to remedy or abate any violation hereof by Grantor, Grantor's agents, employees, lessees, guests or others for whose action on the Protected Property the Grantor is responsible, including without limitation the costs of suit and reasonable expert and attorneys' fees, mediation and, if

applicable, arbitration costs, the drafting any related new conservation protection or enhancement documents, and other payments ordered by such court or arbitrator; provided that a violation of this Easement is acknowledged by Grantor or determined to have occurred by an arbitrator or court of competent jurisdiction, as the case may be. If Grantor ultimately prevails in a judicial enforcement action, each party shall bear its own costs.

10.2 Non-Enforcement Costs. Grantor acknowledges that any stewardship endowment does not cover Grantee's non-monitoring costs in considering and documenting any request made to Grantee by Grantor to interpret, clarify, amend or approve requested activities. Grantee may require Grantor to pay all reasonable costs incurred by Grantee, whether or not the request is granted, pertaining to such requests and, if applicable, of implementing any permission granted. Such costs shall include, as applicable, staff time and consulting fees for reviewing the request and evaluating its potential environmental impacts, appraisal costs to determine if such approval would result in private inurement or confer an impermissible private benefit, and any necessary boundary surveys and monumentation.

11. TITLE. Grantor covenants and represents that Grantor is the sole owner and is seized of the Protected Property in fee simple and has good right to grant and convey the aforesaid Easement; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Easement, and that Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Easement.

12. GRANTOR'S ENVIRONMENTAL WARRANTY AND HOLD HARMLESS. Grantor warrants that Grantor has no actual knowledge of any notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with, or any liability under any Environmental Laws relating to the operations or conditions of the Protected Property. Grantor further warrants that Grantor has no actual knowledge of a release or threatened release on, at, beneath or from the Protected Property of Hazardous Materials.

Grantor hereby promises to hold harmless and indemnify Grantee against all litigation, claims, demands, penalties, and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property by Grantor, or arising from or connected with a violation of any Environmental Laws by Grantor.

13. DURATION; PARTIES SUBJECT TO EASEMENT. The covenants agreed to and the terms, conditions, and restrictions imposed by this Easement shall not only be binding upon the Parties but also their lessees, agents, personal representatives, successors and assigns, and all other successors to Grantor and Grantee in interest and shall continue as a servitude running in perpetuity with the Protected Property; A party's rights and obligations under this Easement shall terminate upon the transfer of the party's interest in the Easement or Protected Property to a party assuming its obligations hereunder, except that liability for acts or omissions occurring prior to transfer

shall survive transfer, but this Easement shall not be affected by such transfer, the transferee having the rights and obligations of the transferring party.

14.SUBSEQUENT TRANSFERS. Grantor agrees that the terms, conditions, restrictions and Purpose of this Easement or reference thereto will be inserted by Grantor in any subsequent deed or other legal instrument by which Grantor divests either the fee simple title or possessory interest in the Protected Property; and Grantor further agrees to notify Grantee of any pending transfer at least ninety (90) days prior to the said transfer. By acceptance of any deed or other conveyance of the Protected Property, any successor Grantor personally accepts and agrees to comply with the covenants and obligations set forth in this Easement. The Parties recognize that Grantee has accepted this Easement in reliance on every successor Grantor's acceptance of such obligations and liabilities.

15.NO EXTINGUISHMENT BY MERGER. Grantor and Grantee agree that the terms of this Easement shall survive any merger of the fee and Easement interest in the Protected Property in view of the public interest in the enforcement of this Easement. In the event of merger, (i) Grantee as successor in title to Grantor shall observe and be bound by the obligations of Grantor and the restrictions imposed upon the Protected Property by this Easement; (ii) Grantor and Grantee shall immediately undertake such steps as are necessary under the laws of the State of Connecticut to re-instate the terms and conditions of this Easement; and (iii) Grantee as promptly as practicable shall assign the Grantee interests in this Easement of record to another holder in conformity with the requirements of this Paragraph 15 and with the assignment provisions of Paragraph 16. Any instrument of assignment of this Easement or the rights conveyed herein shall refer to the provisions of this Paragraph 15, and shall contain language necessary to continue it in force. Further, no deed, transfer, or assignment shall be effective if it will result in merger, until a like conservation easement has been granted to avoid merger. This provision survives the extinguishment of the Easement.

16.ASSIGNMENT. The parties hereto recognize and agree that the benefits of this Easement are in gross and assignable. Grantee hereby covenants and agrees that in the event it transfers or assigns this Easement, the organization receiving the interest must be a qualified organization as that term is defined in Section 170(h)(3) of Code (or any successor section) and the regulations promulgated thereunder, which is organized and operates primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code. Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which Easement was originally intended to advance.

17.AMENDMENT. In the event that unusual and unforeseen circumstances arise which, in the judgment of Grantor and Grantee, justify the modification of any provision of this Easement, Grantor and Grantee by mutual consent may amend such provision; provided that the amendment (i) is not inconsistent with the Purpose of this Easement; (ii) will not result in impairment of the Protected Property's Conservation Values; (iii) will not negatively affect the enforceability of the Easement; (iv) will not adversely affect

the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of Connecticut; and (v) is accomplished in compliance with Grantee's Policy regarding amendments, any applicable state statute and with the Code. No portion of the Protected Property may be removed from the protection of this Easement. Any amendment of this Easement shall be recorded in the official land records where the Protected Property is located. Notwithstanding the foregoing, Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Easement.

18. EXTINGUISHMENT. Grantor hereby agrees that at the time of the conveyance of this Easement to Grantee, this Easement gives rise to a real property right, immediately vested in Grantee. The value of the real property right is represented by the ratio of the value of the Easement on the date of this Easement to the value of the Protected Property, without deduction for the value of the Easement, on the date of this Easement, as determined in accordance with the valuation substantiation requirements of Treas. Reg. Section 1.170A-14(h)(3) (the "Grantee's percentage interest").

The Parties shall maintain, together with the Baseline Report [and the appraisal on which Grantor's claimed tax deduction attributable to this Easement is based], a record of the ratio of those values and Grantee's resulting percentage interest and shall amend such values and Grantee's percentage interest, if necessary, to reflect any final determination thereof by the Internal Revenue Service or court of competent jurisdiction. For purposes of this Paragraph, the ratio of the value of the Easement to the value of the Protected Property unencumbered by the Easement shall remain constant, and Grantee's percentage interest in the fair market value of the Protected Property thereby determinable shall remain constant, except that the value of any improvements made by Grantor after the date of this Easement is reserved to Grantor to the extent permitted by Treas. Reg. Section 1.170A-14(g)(6).

If a subsequent unexpected change in the conditions surrounding the Protected Property can make impossible or impractical the continued use of the Protected Property for conservation purposes, this Easement can only be terminated or extinguished, whether with respect to all or part of the Protected Property, by judicial proceedings in a court of competent jurisdiction and in accordance with state law. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Protected Property (or any other property received in connection with an exchange or involuntary conversion of the Protected Property) after such termination or extinguishment, and prior to the payment of any costs or expenses associated with such sale, Grantee shall be entitled to receive Grantee's percentage interest in the gross proceeds of such sale, exchange, or involuntary conversion of the Protected Property in priority to the owner of the Protected Property in whom the Protected Property is titled at the time of such post-extinguishment sale, exchange, or involuntary conversion, and in priority to any other lien or claim encumbering the Protected Property, as such percentage interest is determined under the provisions of this Paragraph 18.

The owner of the Protected Property in whom the Protected Property is titled at the time of such post-extinguishment sale, exchange, or involuntary conversion shall bear the responsibility for the payment and satisfaction of any claims or liens against the Protected Property. If Grantee does not receive its percentage interest from the proceeds

of such sale, exchange, or involuntary conversion, then Grantee may recover the resulting deficiency from the post-extinguishment owner of the Protected Property in whom the Protected Property is titled at the time of such post-extinguishment sale, exchange, or involuntary conversion. Grantee may record a lien to secure its recovery of such deficiency. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with the Purpose of this Easement.

Any extinguishment of this Easement in accordance with the provisions of this Paragraph 18 shall be recorded in the official land records where the Protected Property is located and Grantee shall, upon request, promptly and without charge, execute in recordable form and deliver to Grantor such instrument as Grantor may reasonably request for this purpose. In the event of extinguishment, the provisions of this Paragraph 18 shall survive extinguishment.

Whenever all or any part of the Protected Property or an interest therein is taken by public authority under power of eminent domain or other act of public authority, then Grantor and Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. Prior to any reimbursement of related expenses incurred by Grantor and Grantee, Grantee shall first be entitled to its percentage interest from the recovered proceeds in conformity with the provisions of this Paragraph 18 (with respect to the allocation of proceeds). The respective rights of Grantor and Grantee set forth in this subparagraph shall be in addition to, and not in limitation of, any rights they may have at common law. Grantee shall use its share of the proceeds in a manner consistent with the Purpose set forth herein.

19. GENERAL AND MISCELLANEOUS PROVISIONS.

19.1 **In General.** The interpretation and performance of this Easement shall be governed by the laws of the State of Connecticut. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect. The obligations imposed by this Easement upon Grantor, if more than one, shall be joint and several.

19.2 **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to effect the purposes of this Easement and the policy and purpose of Sections 47-42a through 47-42e of the Connecticut General Statutes. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid and perpetually enforceable shall be favored over any interpretation that would render it invalid. Reference to any paragraph herein shall be construed to include all subparagraphs and subsections under the referenced paragraph.

19.3 **Severability.** If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions for this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

19.4 **Entire Agreement.** This Easement and the Exhibits attached hereto

set forth the entire agreement of the parties with respect to the Easement and supersede all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

19.5 Re-recording. Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement; for such purpose, Grantor appoints Grantee its attorney-in-fact to execute, acknowledge and deliver any necessary instrument on its behalf. Without limiting the foregoing, Grantor agrees to execute any such instruments upon request.

19.6 Governmental Approvals. The conveyance of this Easement by Grantor to Grantee shall not relieve Grantors of the obligation and responsibility, to obtain any and all applicable federal, state, and local governmental permits and approvals, if necessary, to exercise Grantor's retained rights and uses of the Protected Property even if consistent with the conservation purposes of this Easement.

19.7 Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this Easement and shall have no effect upon construction or interpretation.

19.8 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

19.9 Notices. Any notices required in this Easement shall be sent by registered or certified mail return receipt requested, or sent by receipted delivery service or acknowledged facsimile transmission, or delivered by an official authorized to make service of process in the recipient's jurisdiction, to the following address or such address as may be hereafter specified by notice in writing:

Grantor:
First Selectman's Office
Darien Town Hall
2 Renshaw Road
Darien, CT 06820
cc: Town Attorney

Grantee:
Darien Land Trust
P.O. Box 1074
Darien, CT 06820
Attn: Executive Director
cc: President of the Board

If no address has been designated, notice shall be provided to the address shown for the owner of the Protected Property or Grantee on the Assessor's records of the Town where

the property is located.

19.10 Baseline Report. In order to establish the condition, present uses and state of improvement of the Protected Property and its Conservation Values as of the date of this Easement, Grantee and Grantor have prepared an inventory of the Protected Property's relevant features and conditions (the "Baseline Report") including maps, photographs, and other documentation, and have certified the same as an accurate representation of the condition of the Protected Property as of the date of this Easement. The Baseline Report is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. It may be used by Grantee to establish that a change in the use or character of the Protected Property has occurred, but its existence shall not preclude the use by Grantee or Grantor of other evidence to establish the condition of the Protected Property as of the date of this Easement. Grantee shall maintain copies of the Baseline Report. If after the date of this Easement, the Parties wish to supplement the Baseline Report they may do so by mutual consent.

19.11 ECONOMIC HARDSHIP. In making this grant, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both Grantor and Grantee that any such changes shall not be deemed to be a circumstance justifying the amendment, termination or extinguishment of this Easement. In addition, the inability of Grantor, or Grantor's successors and assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

20.NO TAX ADVICE. Each Party hereto acknowledges and agrees that it has not received and is not relying upon tax or other advice from any other Party, and that it has and will continue to consult its own advisors. Grantee makes no representation or warranty whatsoever regarding the tax treatment to Grantor of this Easement.

21.RECITALS AND EXHIBITS INCORPORATED HEREIN. Any and all recitals in this Easement are agreed by the parties to be accurate, are incorporated into this Easement by reference, and shall constitute integral terms and conditions of this Easement. Any and all exhibits and addenda attached to and referred to in this Easement are hereby incorporated into this Easement as if fully set out in their entirety herein.

22. ACCEPTANCE AND ACKNOWLEDGMENT OF EASEMENT. As attested by the signature of its authorized officer affixed hereto, Grantee hereby accepts the interest in real property and the rights and responsibilities conveyed by this Easement, in accordance with the provisions of section 47-6b of the Connecticut General Statutes.

Except for the monetary consideration, if any, specifically set forth herein, Grantee acknowledges that no goods or services were provided as consideration for this Easement.

SCHEDULE A

All that certain piece or parcel of land with all of the improvements thereon situated on the southerly side of Hecker Avenue in the Town of Darien, County of Fairfield and State of Connecticut and labeled with "Lot Area = 54,245± Sq. Ft. or 1.2452± Acres" on a map entitled, "Property Survey Hecker Avenue Prepared for Town of Darien, Darien, Connecticut" Dated: December 18, 2015, Scale: 1"=20'. Said map being certified substantially correct by Mark S. Lebow, Conn. L.L.S. #15564 of William W. Seymour & Associates, P.C., Land Surveyors~Zoning & Land Use Consultants, 170 Norton Avenue, Darien, Connecticut. Said map is on file in Volume ____ Page ____ in the Darien Town Clerk's Office, to which reference may be had for a more particular description, and which parcel is more particularly bounded and described as follows:

Beginning at a point on the southerly line of Hecker Avenue, said point having NAD '83 coordinates of N 586822.008 E 797820.560, and being the intersection of the division line between the herein described property and land now of formerly of Victor G.Vargha & Franciska Vargha (Assessor's Map 41, Lot 21) with said southerly line of Hecker Avenue;

Thence, running easterly along said southerly line of Hecker Avenue N86°03'11"E a distance of 222.50 feet to a point, said point having NAD '83 coordinates of N 586837.324 E 798042.535;

Thence, running along land N/F Spring Grove Cemetery Association and within the banks of Stony Brook S20°35'56"W a distance of 490.35 feet to a point, said point having NAD '83 coordinates of N 586378.323 E 797870.020;

Thence, running along land N/F of the Town of Darien S87°17'18"W a distance of 20.75 feet to a point;

Thence, running northerly along other land of said Town of Darien, the easterly terminus of Cherry Street, land N/F of John J. Ryan & Elyse A. Gittleman and land N/F of the aforesaid Victor G. & Franciska Vargha in part by each, N03°41'49"W a distance of 445.59 feet to the aforesaid southerly line of Hecker Avenue and the point of beginning.

Comprising an area of 54,245± Sq. Ft. or 1.2452± Acres

**** THE MOTION WAS SECONDED FROM THE FLOOR.**

**** ITEM 17-12 CARRIED ON A RISING TALLY VOTE OF 76 IN FAVOR, 0 OPPOSED, 0 ABSTENTIONS.**

**** UPON MOTION MADE AND SECONDED FROM THE FLOOR, THE MEETING WAS UNANIMOUSLY ADJOURNED BY VOICE VOTE AT 9:15 P.M.**

Respectfully submitted,

Cheryl Telesco Blois
Telesco Secretarial Services

APPENDIX

<u>DISTRICT I</u>	<u>(17-8)</u>	<u>(17-11)</u>	<u>(17-9)</u>	<u>(17-10)</u>	<u>(17-12)</u>
Baldwin	yes	yes	yes	yes	yes
Barsanti	absent	absent	absent	absent	absent
Bumgardner	yes	yes	yes	yes	yes
Butler	yes	yes	yes	yes	yes
Carter	yes	yes	yes	yes	yes
Conologue	yes	yes	yes	yes	yes
Ezbiansky	yes	yes	yes	yes	yes
Keane	yes	yes	yes	yes	yes
Kelly, C.	yes	yes	yes	yes	yes
Lee	yes	yes	yes	yes	yes
Lublin	yes	abstain	abstain	yes	yes
Pattelli	yes	yes	yes	yes	yes
Schneider	yes	yes	yes	yes	yes
von Stuelpnagel	yes	yes	yes	yes	yes

DISTRICT II

Bacon	yes	yes	yes	yes	yes
Boulier	absent	absent	absent	absent	absent
Cusack	yes	yes	yes	yes	yes
Goertel	yes	yes	yes	yes	yes
Handler, S.	yes	yes	yes	yes	yes
Howe	yes	yes	yes	yes	yes
McNally	yes	yes	yes	yes	yes
Miller	yes	yes	yes	yes	yes
Mix	absent	absent	absent	absent	absent
Pommernelle	yes	yes	yes	yes	yes
Russell	absent	absent	absent	absent	absent
Sartori	absent	absent	absent	absent	absent
Sawitsky	?	yes	yes	yes	yes
Thorne, B.	yes	yes	yes	yes	yes
Tie	yes	yes	yes	yes	yes
Wheeler	yes	yes	yes	yes	yes

DISTRICT III

Anderson	absent	absent	absent	absent	absent
Cardone	absent	absent	absent	absent	absent
Conniff	yes	yes	yes	yes	yes
Jack Davis	yes	yes	yes	yes	yes
Feldman	?	yes	yes	yes	yes
Giordano	yes	yes	yes	yes	yes
Maroney	yes	yes	yes	yes	yes
McGoey	yes	yes	yes	yes	yes
Mitchell	yes	yes	yes	yes	yes
Moore	yes	yes	yes	yes	yes
Morton	DOES NOT VOTE				
Riordan	yes	yes	yes	yes	yes
Vitale	absent	absent	absent	absent	absent
Washecka	yes	yes	yes	yes	yes
Yarnell	absent	absent	absent	absent	absent

<u>DISTRICT IV</u>	<u>(17-8)</u>	<u>(17-11)</u>	<u>(17-9)</u>	<u>(17-10)</u>	<u>(17-12)</u>
Banks	yes	yes	yes	yes	yes
Cameron	yes	yes	yes	yes	yes
Joan Davis	yes	yes	yes	yes	yes
Fiore	yes	yes	no	yes	yes
Hardison	no	yes	no	yes	yes
P. Hawkins	absent	absent	absent	absent	absent
Kemp	yes	yes	yes	yes	yes
McKay	yes	yes	no	yes	yes
Miceli	yes	yes	yes	yes	yes
Millar	yes	yes	yes	yes	yes
Montanaro	absent	absent	absent	absent	absent
Morrison	yes	yes	yes	yes	yes
Peters	absent	absent	absent	absent	absent
Raben	yes	yes	yes	yes	yes
Rayhill	yes	yes	yes	yes	yes
Savage	yes	yes	yes	yes	yes

DISTRICT V

Adiletta	yes	yes	yes	yes	yes
Bayne, C.	yes	yes	yes	yes	yes
Bayne, D.	yes	yes	yes	yes	yes
Boulton	yes	yes	yes	yes	yes
Duffy	yes	yes	yes	yes	yes
Fiveson	yes	yes	yes	yes	yes
Haueisen	absent	absent	absent	absent	absent
Hayes, M.	yes	yes	yes	yes	yes
Hennessy	yes	yes	abstain	yes	yes
Martin	yes	yes	yes	yes	yes
McLachlin	yes	yes	yes	yes	yes
Mosher	yes	yes	yes	yes	yes
Patrick	yes	yes	yes	yes	yes
Reed	yes	yes	yes	yes	yes
Smith	yes	yes	yes	yes	yes
Sparkman	yes	yes	yes	yes	yes
Ven	yes	yes	yes	yes	yes

DISTRICT VI

Adelman	yes	yes	yes	yes	yes
Cantavero	absent	absent	absent	absent	absent
Chickles	yes	yes	yes	yes	yes
Grogan	yes	yes	yes	yes	yes
Handler, M.	yes	yes	yes	yes	yes
Ted Hawkins	yes	yes	yes	yes	yes
Lauritzen	absent	absent	absent	absent	absent
Luz	yes	yes	yes	yes	yes
McDermott	yes	yes	yes	yes	yes
Muchhal	yes	yes	yes	yes	yes
Natale	absent	absent	absent	absent	absent
Plehaty	absent	absent	absent	absent	absent
Poli	yes	yes	yes	yes	yes
Ritchie	absent	absent	absent	absent	absent
Silby	yes	yes	yes	yes	yes
Swenson	yes	yes	yes	yes	yes
Van Loan	yes	yes	yes	yes	yes

Good evening.

My name is *Mark Adiletta* and I am Chair of the Public Works Sub-Committee to the RTM.

At this time I would like to move Item 17-8 for the special appropriation of \$160,000 for a consultant to redesign the intersection of Noroton Avenue and West Avenue here in Darien.

Without objection I move to waive the reading of the Resolution.

At ^{combined} a joint sessions of PW, PH&S and F&B committees held March 13, with 8 of 11 members present, the PWC considered and voted "**unanimously**" to recommend approval of this item to the full RTM.

At the meeting last Monday Director of Public Works Ed Gentile provided the committee with background on this opportunity.

Background:

This opportunity first came up during a BOS meeting. At that time it was noted the State (or in this instance the WestCOG) does not often offer grant dollars to Darien. With that the PWD and P&Z immediately went to work. This item is coming to the RTM early and ahead of the broader Budget in an effort to demonstrate to the WestCOG we are serious and moving ahead with design this project. The \$160k request represents the Town's share of the total to cover design only. The State and Federal government \$ will fund the construction and right-of-way. In other words everything else including: title searches, legal fees, negotiations, easement mapping, etc.

Ed and Jeremy worked up an initial estimate of just over \$1.0MM in March of last year. It was recommended a request for a \$1.2MM LOTCIP Grant be put forward. (Local Transportation Capital Improvement Program) *All 70 pages of guidelines for this program can be found on line @ the DMV website.*

The design will including widening of the intersection to add left-turn lanes. As most drivers know, queuing of cars in this intersection has been a long-time problem especially heading east and north into the intersection. The effort is to increase efficiency of the intersection. The traffic signal hardware will be upgraded. And the timing plan improved there and at the intersection feeding into this one such as at Ledge and Heights Roads.

That said, Ed Gentile and Jeremy Ginsberg have been working on it and the grant application since March 2016.

recent

It was noted traffic numbers related to the upcoming Heights redevelopment were taken into account in the analysis and this intersection was still determined to be the first priority target for the grant. The Noroton Ave intersection at Ledge was reviewed and is identified as a second tier future priority.

This project will give the Town a chance to get familiar with this new LOTCIP process. The process has strict guidelines set out by the DOT, *including* phase and review stages. Included are several requirements beyond what a typical Town might require such as soil testing, deep borings and signal improvements.

The plan also includes improvement to the handicap accessibility of the intersection.

One issue noted is the existing right-of-way is only 40' wide, not enough for some of the proposed design improvements. While the Town obtained one required easement when the Allen O'Neil project was redeveloped, discussions with neighbors for additional easements will be required.

To date a survey of the area has been completed. This will enable a design consultant to be engaged.

Construction is targeted to commence spring 2018 and should run 4 months. While there will be some disturbance during construction it is not anticipated the intersection will be shut down completely.

The Committee wishes to thank Mr. Gentile for his assistance. *He and Jeremy are to be commended for chasing diligently these grant \$rs for Darien.* The Public Works Committee asks that you vote "Yes" and ratify Item 17-8 for appropriation of \$160,000 to retain a consultant to redesign this overstressed portion of our Town infrastructure.

Thank you.

PZ & H Committee Report to the RTM

Noroton/West intersection

March 20, 2017

The Planning, Zoning and Housing Committee met on March 15, with 7 of 12 members present, comprising a quorum. First Selectman Stevenson and Jeremy Ginsberg of P & Z were also present . We discussed the appropriation of \$160,000 for the redesign of the Noroton/West intersection, making a left turn lane on the westbound portion of West Avenue. After some discussion as to whether this would actually have a positive impact given the gridlock on southbound Noroton during busy hours, the committee voted unanimously to approve the appropriation.

Respectfully submitted,

Joanne Hennessy, Chair Planning, Zoning and Housing Committee of the RTM

RTM Public Health & Safety Committee

Special Joint Meeting with

RTM Finance & Budget Committee

RTM Public Works Committee

March 13, 2017

7:30 pm

Darien Town Hall Auditorium

The RTM Public Health and Safety Committee met with 7 of 13 members present to discuss and vote on the Appropriation of \$160,000 for design fees in connection with a State grant of \$1,200,000 for improvements to the West Avenue / Noroton Avenue intersection.

The Committee heard a presentation on the project from Ed Gentile, Director of Public Works.

The Director answered questions regarding the project and our Committee focused on the safety aspects of the project, of note: Left turn lanes will be added for increased traffic flow and safer turning, more visible stop lights and pedestrian cross walk lights will be added, quality concrete curbing with handicap access and sidewalks will be included.

The Public Health and Safety Committee voted unanimously to approve the appropriation and ask that the Full RTM do the same.

Respectfully submitted,

James M. Patrick, Chairman PH&S

RTM F&B Report

March 20, 2017

(17-8) RESOLUTION TO APPROPRIATE \$160,000.00 FOR A CONSULTANT TO DESIGN THE NEW INTERSECTION BETWEEN NOROTON AVENUE & WEST AVENUE IN THE TOWN OF DARIEN

The RTM Finance & Budget Committee met on Monday, March 13, 2017 with 11 of 14 members present constituting a quorum. The RTM Public Works and RTM Public Health & Safety Committees were also present and had quorums. Ed Gentile, Darien's Director of Public Works presented to the committees.

This item is being expedited at the request of the RTM Finance & Budget Committee. It was presented during the BOS budget review of Public Works and the BOS agreed.

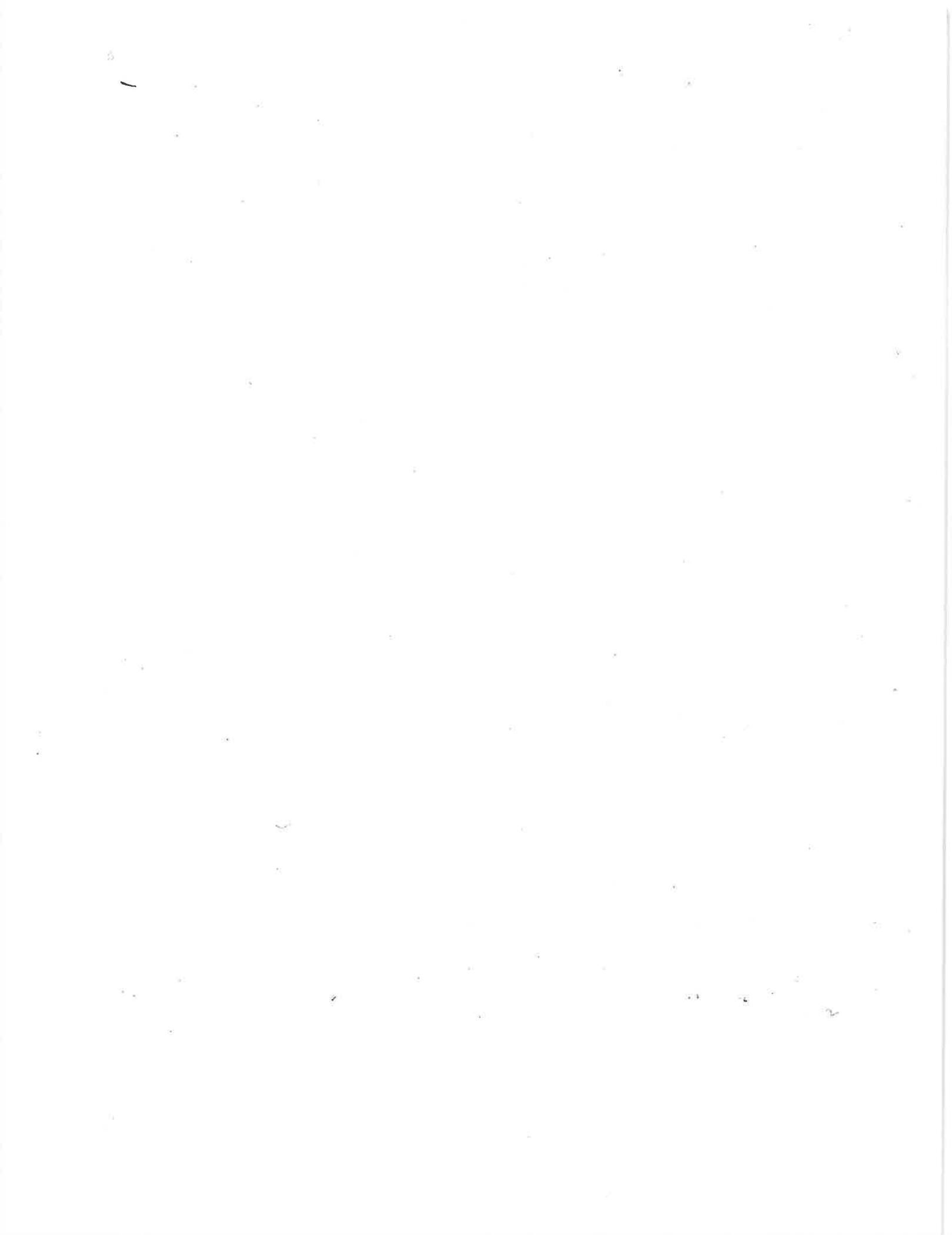
As has already been discussed, Darien has an opportunity to receive from the CT Local Transportation Capital Improvement Program (LOTICIP) via the Western CT Council of Government a grant to improve the intersection at Noroton Avenue and West Avenue in the amount of \$1.2MM. Darien is required to pay for the design of the intersection and receive approval from DOT prior to the funds being released. If the design indicate that the cost of construction is in excess of the \$1.2MM, the additional amount could be covered by the grant.

The RTM F&B committee voted unanimously (11 in favor, 0 opposed) to approve this appropriation and recommend the same to the full RTM.

Respectfully submitted

Jack Davis

Chairman, RTM F&B committee



PZ & H Committee Report to the RTM

Hecker Street

March 20, 2017

The Planning, Zoning and Housing Committee met on March 15, with 7 of 12 members present, comprising a quorum. First Selectman Stevenson and Jeremy Ginsberg of P & Z were also present . We discussed the Town's acquisition of the Hecker Street property using grants from the State and the Land Trust. There was some discussion on the merits of using State tax dollars for this type of purchase. We voted 6 in favor of acquisition with one abstention and recommend the RTM do the same. The votes for the other resolutions to complete the acquisition were all unanimously in favor.

Respectfully submitted,

Joanne Hennessy, Chair Planning, Zoning and Housing Committee of the RTM

Good evening.

My name is *Mark Adiletta* and I am Chair of the Public Works Sub-Committee to the RTM.

At a joint sessions of PW, PH&S and F&B committees held March 13, with 8 of 11 members present, the PWC considered and voted “**unanimously**” to recommend approval of items ~~17-9 thru 12~~ relating to the acquisition of the Hecker Property parcel to the full RTM.

Background:

17-11, 9, 10, 12

There are a series of easements and gifts related to this acquisition as summarized by PZ&H and the Resolutions. As described the Town is acquiring the property from Spring Grove Cemetery for \$275K 1) using a \$137.5k grant from CT’s Open Space & Watershed Land Acquisition program and 2) a \$137.5K gift from the Darien Land Trust. Both entities will have easements containing minor provisions on the property and require a sign be posted noting their respective involvement. The Town will be responsible for ancillary transaction costs and minimal ongoing maintenance costs. These ongoing costs relate to removal of any invasive plants and replanting at inception. There is an option for a natural foot path down the road.

Kate Busch, Town Administrator explained at the meeting the intent is for the land is to remain in its natural state.

The plan is for the property to be managed by the Parks & Rec Dept. and maintained, what little maintenance there may be, by the Public Works Department.

From flood mitigation perspective it was noted the Stony Brook Watershed Drainage Evaluation commissioned by the Town and prepared by Milone & McBroom in 2008 as well as FEMA maps reviewed at the time show this property to be in a flood zone. In a memo dated August, 2013 regarding this parcel the then PWD Director noted acquisition of vacant developable land such as this along a stream channel permanently achieves the most complete and permanent protection from periodic inundation. No other flood mitigation alternative achieves this level of risk reduction.

I thank Kate for her time with the committee last week.

The Public Works Committee asks that you vote "Yes" and ratify Items 17-9 thru 12 relating to the acquisition of the parcel.

Thank you.

(17-9), (17-10), (17-11), (17-12)
Report from RTM Parks & Recreation Committee
3/20/2017

The RTM Parks & Recreation Committee met on 3/6/2017 and had a preliminary discussion on the purchase of 41 Hecker Ave. by the Town of Darien. We discussed that the acquisition cost of \$275,000 will be covered by the Darien Land Trust and the State of Connecticut with the only purchase cost to the town being closing costs. We had not received the back-up documents.

We have since received the agreements and contracts.

The committee met again this evening with 9 of 15 members present. We reviewed and discussed the documents.

One of our members was particularly interested that the RTM recognize that flood mitigation was of primary importance in the use of this property.

The property will be maintained by the Parks & Recreation Department. Some clearing of brush and removal of invasive plants may be necessary, but maintenance costs are expected to be minimal. The land will be included in the Master Parks Plan.

We voted 9 in favor of supporting the acquisition of 41 Hecker Ave., accepting the State Grant, authorizing an Open Space and Watershed Easement with the State, accepting a gift from the Darien Land Trust, and authorizing the Conservation Easement with the Darien Land Trust. 0 voted against. One additional member arrived late and concurred with the unanimous support of this purchase.

Adele Conniff
RTM Parks & Recreation Committee Chairman

RTM F&B Report

March 20, 2017
ACCEPTANCE OF GIFT FROM DARIEN LAND TRUST
(17-11) RESOLUTION TO AUTHORIZING THE ACQUISITION OF 1.252+/- ACRES OF LAND ON HECKER AVENUE AND AUTHORIZING THE EXECUTION OF DOCUMENTS TO ACCEPT A STATE GRANT AND APPROPRIATE FUNDS FOR THE ACQUISITION OF SAID PROPERTY

The RTM Finance & Budget Committee met on Monday, March 13, 2017 with 11 of 14 members present constituting a quorum. This was a joint meeting with the RTM Public Works. Kate Buch, Darien's Town Administrator presented to the committees. Also in attendance was First Selectman, Jayme Stevenson.

As has already been discussed, the Town is purchasing 1,252+/- acres from Spring Grove Cemetery. Finance and Budget will only report on the financial aspects of this purchase and thus only two of the four resolutions. The Darien Land Trust is providing a gift to the Town in the amount of \$137,500.00 towards the purchase of the Hecker Avenue property from the Spring Grove Cemetery. There is a request for a sign noting their contribution, that the property be maintained and an easement to be covered under another resolution. The Finance & Budget committee discussed the conditions associated with this gift. The committee would like to thank the Darien Land Trust for their generous gift.

The RTM F&B committee voted unanimously (11 in favor, 0 opposed, 0 abstention) to approve this resolution to accept the Darien Land Trust gift and recommend the same to the full RTM.

Respectfully submitted

Jack Davis

Chairman, RTM F&B committee

RTM F&B Report

March 20, 2017

(17-9) RESOLUTION TO AUTHORIZING THE ACQUISITION OF 1.252+/- ACRES OF LAND ON HECKER AVENUE AND AUTHORIZING THE EXECUTION OF DOCUMENTS TO ACCEPT A STATE GRANT AND APPROPRIATE FUNDS FOR THE ACQUISITION OF SAID PROPERTY

The RTM Finance & Budget Committee met on Monday, March 13, 2017 with 11 of 14 members present constituting a quorum. This was a joint meeting with the RTM Public Works. Kate Buch, Darien's Town Administrator presented to the committees. Also in attendance was First Selectman, Jayme Stevenson.

As has already been discussed, the Town is purchasing 1,252+/- acres from Spring Grove Cemetery. Finance and Budget will only report on the financial aspects of this purchase and thus only two of the four resolutions. The State of CT through DEEP is providing \$137,500.00 and the Darien Land Trust is providing the other \$137,500.00 comprising the total amount for purchase.

The only potential costs to the Town associated with the actual purchase are closing costs estimated to be between \$2,500 and \$3,000. Those funds are coming from the Town's Land Acquisition Fund (which appears to have been established about the time of the dinosaurs as no one can recall when it was established.) The current fund balance approximates \$58,000 prior to this acquisition. There are no property tax revenue losses to the Town as commentaries are exempt from paying land property taxes. Thus the property tax revenue from this property is zero.

As previously discussed, there is a potential for this property to have a path from Town Hall to Hecker Avenue. This is not currently in the town budget and would consist of a natural or gravel path. Cost estimates to establish such path would approximate \$3,000.

To maintain the property potentially removing invasive plants, clearing brush, etc. would be completed by Public Works town staff and thus would only be an economic opportunity cost.

The committee also discussed the grant from the State, and while several members expressed that the State using such funds for such purchases was a waste of State monies during its poor fiscal condition; the committee also felt that as Darien is being slashed from all other funding, the Town should accept these funds.

The RTM F&B committee voted (10 in favor, 0 opposed, 1 abstention) to approve this resolution to acquire the land; execute documents to accept the State grant and appropriate funds for the acquisition of said property and recommend the same to the full RTM. The person that abstained believed that the State was wasting funds with this purchase considering the financial condition of the State and could not vote in favor.

Respectfully submitted

Jack Davis

Chairman, RTM F&B committee