

# Executive Summary

**Date:** August 30, 2016  
**To:** Sarah Seelye, RTM Moderator  
**From:** Kate Clarke Buch, Town Administrator  
**RE:** Lease of Town Property to Felix and Sylvia Callari (BMW)

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At the special meeting of the Board of Selectmen on August 24, 2016, the Board recommended approval of the referenced lease to the Representative Town Meeting. They also requested a report from Planning & Zoning in accordance with §8-24 of the Connecticut General Statutes. It is expected that Planning & Zoning will take the matter up at their September 6, 2016 meeting

The proposed lease is between the Town of Darien and Felix and Sylvia Callari for approximately 14,000 square feet of property located at 140 Ledge Road. This is land that is at the Town's Recycling and Refuse Center and is adjacent to the BMW dealership. The purpose of the lease is to allow the BMW dealership to store a portion of their inventory on this land. The Town had a lease with the same parties for the same property beginning in 2006, which recently expired.

The lease is for ten (10) years with two five (5) year renewal options. The primary purpose of this lease is continued viability of this business and the monetary terms of the lease. The lease begins with rent of \$21,494.71 annually for the first 5 years and increases to \$24,918.26 at the end of the original ten (10) year period.

I have attached copies of the Board of Selectmen resolution as well as the lease to this memo.

**LEASE  
BETWEEN THE TOWN OF DARIEN AND  
FELIX F. CALLARI, Inc.  
D/B/A BMW OF DARIEN**

THIS AGREEMENT, effective October , 2016 between the Town of Darien, a municipal corporation, hereinafter referred to as the “LESSOR”, acting herein by Jayme Stevenson, its First Selectman who is duly authorized to act for the town; and Felix F. Callari, Inc. d/b/a BMW of Darien, a Connecticut corporation having an address at 140 Ledge Road, Darien, Connecticut 06820, hereinafter referred to as the “LESSEE”.

WITNESSETH:

LESSOR does hereby lease to LESSEE for its exclusive use the following described property, Parcel “D,” which consists of the 14,505 sq. ft. as shown on Map 4257 on file in the office of the Darien Town Clerk, (hereinafter referred to as the “Premises”), situated in the Town of Darien, Connecticut located at 140 Ledge Road, Darien Connecticut, and shown on the print marked Exhibit A attached hereto as part of this Lease.

TO HAVE AND TO HOLD unto said LESSEE on the following terms and conditions:

1. Term. Except as otherwise provided in this Lease, the term of this Lease shall be ten years beginning on October 1, 2016 through and including September 30, 2026. Unless LESSEE has exercised an Option to Renew pursuant

to Article 3 below, LESSEE may not holdover and shall vacate the premises upon the completion of Lease Year 10.

2. Rental. LESSEE agrees to pay LESSOR rent as follows:

A. Base Rent for such leased premises as follows:

<u>Lease Year</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
Year 1	\$21,494.71	\$1,791.23
Year 2	\$21,494.71	\$1,791.23
Year 3	\$21,494.71	\$1,791.23
Year 4	\$21,494.71	\$1,791.23
Year 5	\$21,494.71	\$1,791.23
Year 6	\$22,139.55	\$1,844.96
Year 7	\$22,803.74	\$1,900.31
Year 8	\$23,487.85	\$1,957.32
Year 9	\$24,192.49	\$2,016.04
Year 10	\$24,918.26	\$2,076.52

B. Monthly rental installments shall be paid in advance on the first day of each month commencing on October 1, 2016 until the termination of this Lease without delay, deduction or default.

C. Rent shall be made payable to the Town of Darien and submitted to the Town of Darien, 2 Renshaw Road, Darien, Connecticut 06820, Attention Town Administrator.

D. This lease and the Town's obligations hereunder are contingent upon the following:

1. The issuance of a favorable report by the Planning and Zoning Commission of the Town.

2. Approval of this lease by the Town's Board of Selectman.

3. Approval of this lease by Resolution of the Representative Town Meeting.

3. Options to Renew. Provided LESSEE is not at the time of the exercise of this Option to Renew in default in the payment of Rent, Additional Rent or other material matter which default has not been cured within any applicable grace period, LESSEE shall have the option of renewing this lease for an additional term of five (5) years (the “First Renewal Term”) commencing on October 1, 2026 by sending to LESSOR written Notice by registered or certified mail postmarked on or before April 1, 2026 that it elects to extend the Term of this lease. Upon LESSOR’S receipt of such written Notice, the Rent shall be as follows:

<u>Lease Year</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
Year 11	\$25,416.63	\$2,118.05
Year 12	\$25,924.96	\$2,160.41
Year 13	\$26,443.46	\$2,203.62
Year 14	\$26,972.33	\$2,247.69
Year 15	\$27,511.78	\$2,292.65

Provided LESSEE is not at the time of the exercise of this Option to Renew in default in the payment of Rent, Additional Rent or other material matter which default has not been cured within any applicable grace period, LESSEE shall have the option of renewing this lease for an additional term of five (5) years (the “Second Renewal Term”) commencing on October 1, 2031 by sending to

LESSOR written Notice by registered or certified mail postmarked on or before April 1, 2031 that it elects to extend the Term of this lease. Upon LESSOR'S receipt of such written Notice, the Rent shall be as follows:

<u>Lease Year</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
Year 16	\$28,062.02	\$2,338.50
Year 17	\$28,623.26	\$2,385.27
Year 18	\$29,195.73	\$2,432.98
Year 19	\$29,779.64	\$2,481.64
Year 20	\$30,375.23	\$2,531.27

Except for said annual Rent change, all of the other covenants and agreement contained herein shall remain in force and effect during said Renewal Term.

4. Purposes. Said Premises shall be used solely for parking of cars and other vehicles for the automobile dealership located on adjoining properties of LESSEE and as more specifically described in Special Permit Number #194-E that has been issued by the Darien Planning and Zoning Commission and Environmental Protection Commission, and for no other purposes. Any application to amend the Special Permit is subject to the prior approval of LESSOR. No building or structure, either permanent or temporary, shall be constructed upon the Premises. No repair work or other servicing of vehicles shall be performed on the Premises. LESSEE shall not permit any other party to use or occupy the Premises without LESSOR'S consent.

LESSEE agrees that during the lease, all alterations and improvements and the use of the premises will conform to all then applicable laws, ordinances and regulations enacted or adopted pursuant to law, and that all changes, alterations or other work required to conform to such laws, ordinances and regulations shall be performed by and at the expenses of LESSEE and in accordance with the terms and conditions of any approvals from the Darien Planning and Zoning Commission and the Environmental Protection Commission.

5. Access to Premises

LESSOR, acting through its agent, representatives or employees shall have the right after reasonable notice (except in an emergency in which case notice is not necessary) to enter upon the Premises at any reasonable hours for the purpose of making inspections. Except in an emergency, such inspections and repairs shall not interfere with LESSEE'S use of premises.

6. Liability.

A. LESSEE shall defend, indemnify and save LESSOR its officials, officers, agents, employees and servants harmless from any loss, claim, cost or damage, that may arise out of the failure of LESSEE, its agents or employees to comply with any laws or regulations of the United States of America, the State of Connecticut, the Town of Darien, or their respective agencies, as well as LESSEE'S negligence or intentional acts.

B. Neither LESSOR nor its agents shall be liable to LESSEE for any injury or damage caused to its property or to its business resulting directly or

indirectly from any act or failure to act (other than breach of this Lease) by or on behalf of the LESSOR or its agents or caused by water, rain, snow, ice, fire, the elements of dampness or by breakage, stoppage, or leaking of water, heating, sewer pipes, plumbing, electrical or heating or air conditioning equipment or by stoppage of electricity or water to the Premises.

7. Insurance.

A. Liability Insurance. During the term of this Lease, LESSEE shall maintain a comprehensive general liability policy with a Broad Form endorsement in the minimum amount of \$1,000,000.00 for injury to any one person, \$2,000,000.00 for personal injuries resulting from any one accident, and coverage of \$1,000,000.00 for such property damage, or in such higher amounts as the Town may, from time to time reasonably require. Such comprehensive general liability policy shall name the LESSOR as an additional insured and this liability policy shall be deemed the primary insurance.

LESSEE shall furnish LESSOR with a duly executed insurance certificate in form and substance reasonably satisfactory to LESSOR, evidencing such insurance. The certificate shall provide for 30 days written notice of cancellation to the LESSOR.

B. Lessor's Insurance. During the term of this Lease LESSOR shall maintain a comprehensive general liability policy with a Broad Form endorsement in the minimum amount of \$1,000,000 and extended risk property and casualty insurance for the full replacement cost of any Town owned buildings

on the Premises, without application of any coinsurance clause. The LESSOR'S liability insurance shall be deemed excess over any other applicable liability insurance.

C. Waiver of Claims. Each party hereby waives all claims it may have against the other party which is covered by insurance of LESSOR or LESSEE or would be covered by insurance which is required to be maintained by the party making such claim hereunder, except for claims for the amount of any applicable deductibles. All rights of subrogation pursuant to such policies are waived.

8. Assignment and Subletting. Neither the Premises nor any portion thereof shall be sublet, nor shall this Lease or any interest herein be assigned or mortgaged by LESSEE. Any attempted assignment, subletting, mortgaging or transfer of this Lease shall be of no force and effect, and shall confer no rights upon any assignee, sublessee, mortgagee or transferee.

9. Termination by Lessee. This lease shall terminate sixty days after either: (a) Title to "Parcel 'A' 2.0180 Acres (total)" shown on Map 4257 on file in the office of the Darien Town Clerk is no longer owned by Felix Callari, Sylvia Callari, or their heirs(s) or an entity or entities, including but not limited to trusts, family limited partnerships and limited liability corporations, in which Felix F. Callari or Sylvia S. Callari or their heirs have a controlling interest. "Controlling interest" means that Felix F. Callari, Sylvia S. Callari or their heirs own a majority of the stock, membership interest, beneficiary interest or other interest in the

property or entity in question: or (b) "Parcel 'A' is no longer used as an automobile dealership.

10. Termination by LESSOR. This Lease shall terminate one year (365 days) after Notice in accordance with paragraph 17 is provided to Lessee that Lessor needs to take back possession of the Premises for municipal purposes.

11. Default. In the event that LESSEE shall fail to pay any rent within 10 days after the same shall become due and payable, or shall fail to cure any default in the performance of its non-monetary obligations hereunder within 10 days of written receipt of notice from LESSOR specifying the default (or within a reasonable time if such default cannot reasonably be cured within 10 days) then in that event, LESSOR may terminate this Lease, forthwith and LESSOR may enter upon said Premises and remove all persons and property therefrom, and LESSEE shall not be entitled to any money paid hereunder or any part thereof. In the event LESSOR shall bring a legal action to enforce any of the terms hereof, or to obtain possession of said Premises by reason of any default of LESSEE or otherwise, LESSEE agrees to pay LESSOR all reasonable costs of such legal action, including, but not limited to, reasonable attorney's fees.

12. Surrender of the Premises. LESSEE agrees that on the last day of the term of this Lease or on the last day of any renewal or extension hereof, LESSEE will peaceably and quietly leave and surrender the Premises in as good condition as they now are and all Lessee improvements to the premises shall be owned by LESSOR.

13. Damage to the Premises. Except for damages covered by insurance of LESSOR or LESSEE or required to be covered by LESSOR'S insurance herein, LESSEE shall be obligated to reimburse the LESSOR for any and all damages to the Premises resulting from any acts and/or failure(s) to act on the part of the LESSEE, its officers, agents, or employees or from any failure of the LESSEE to fulfill any of its obligations under this Lease.

14. Holdover. In the event that LESSEE shall hold over and remain in possession of the Premises without the consent of LESSOR, such holding over shall be deemed to be from month to month only and at a rent of 150% of the last year's Base Rent of the Term.

15. Compliance with Law. LESSEE agrees to comply with all laws, ordinances, rules and regulations which may pertain or apply to the Premises and the use thereof. LESSEE shall comply with all applicable rules and regulations specified by the State of Connecticut, and the Town of Darien and their respective regulating agencies. In particular, LESSEE shall comply with all of the terms, conditions and stipulations in any Darien Planning and Zoning and Environmental Protection Commission Resolutions as they may be amended from time to time.

16. Waiver. Waiver by LESSOR of any default in performance by LESSEE of any of the terms, covenants or conditions contained herein shall not be deemed a continuing waiver of the same or any subsequent default herein.

17. Notices and Consents. All written notices and documents required to be given to the LESSOR shall be addressed and mailed to Town Administrator,

Town Hall, 2 Renshaw Road, Darien, Connecticut 06820 and all written notices and documents required to be given to the LESSEE shall be addressed and mailed to Felix F. Callari, Inc. Attention: Paula C. Callari at 140 Ledge Road, Darien, Connecticut 06820. Any consents received by LESSEE from the Darien Town Administrator or Darien First Selectman shall be deemed to be consent of the LESSOR hereunder.

18. Environmental Indemnity. LESSEE hereby indemnifies, defends and holds LESSOR harmless from any loss, cost or damage, including reasonable attorney's fees, incurred by generation, manufacture, production, process, installation, release, or discharge of any Hazardous Materials (as hereinafter defined) in, on or about the Premises arising out of activities of LESSEE or its automobile dealership on adjacent property which causes harm to the Premises or other property of the LESSOR or causes LESSOR to incur any liability. As used herein, the term "Hazardous Materials" shall include, without limitation, petroleum and petroleum products, flammable explosives, polychlorinated biphenyls, asbestos in any form that is or could become friable, hazardous waste, toxic or hazardous substances or other related materials, including, but not limited to, those materials defined as "hazardous substances", "extremely hazardous substances", "hazardous chemicals", "hazardous materials", "toxic substances", "toxic chemicals", "air pollutants", "toxic pollutants", "hazardous wastes", "extremely hazardous waste" or "restricted hazardous waste" by Hazardous Materials Laws. As used herein, the term "Hazardous Materials Laws" shall mean

any federal, state, or local law, ordinance or regulation relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Materials including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act and the Occupational Safety and Health Act, and all regulations adopted in respect of the foregoing laws.

Dated at Darien, Connecticut this \_\_\_\_\_ day of \_\_\_\_\_,

2016.

Signed, sealed and delivered  
in the presence of.

TOWN OF DARIEN

By \_\_\_\_\_  
Jayme Stevenson  
Its First Selectman,  
duly authorized



STATE OF CONNECTICUT    )  
  ) ss:  
COUNTY OF FAIRFIELD    )

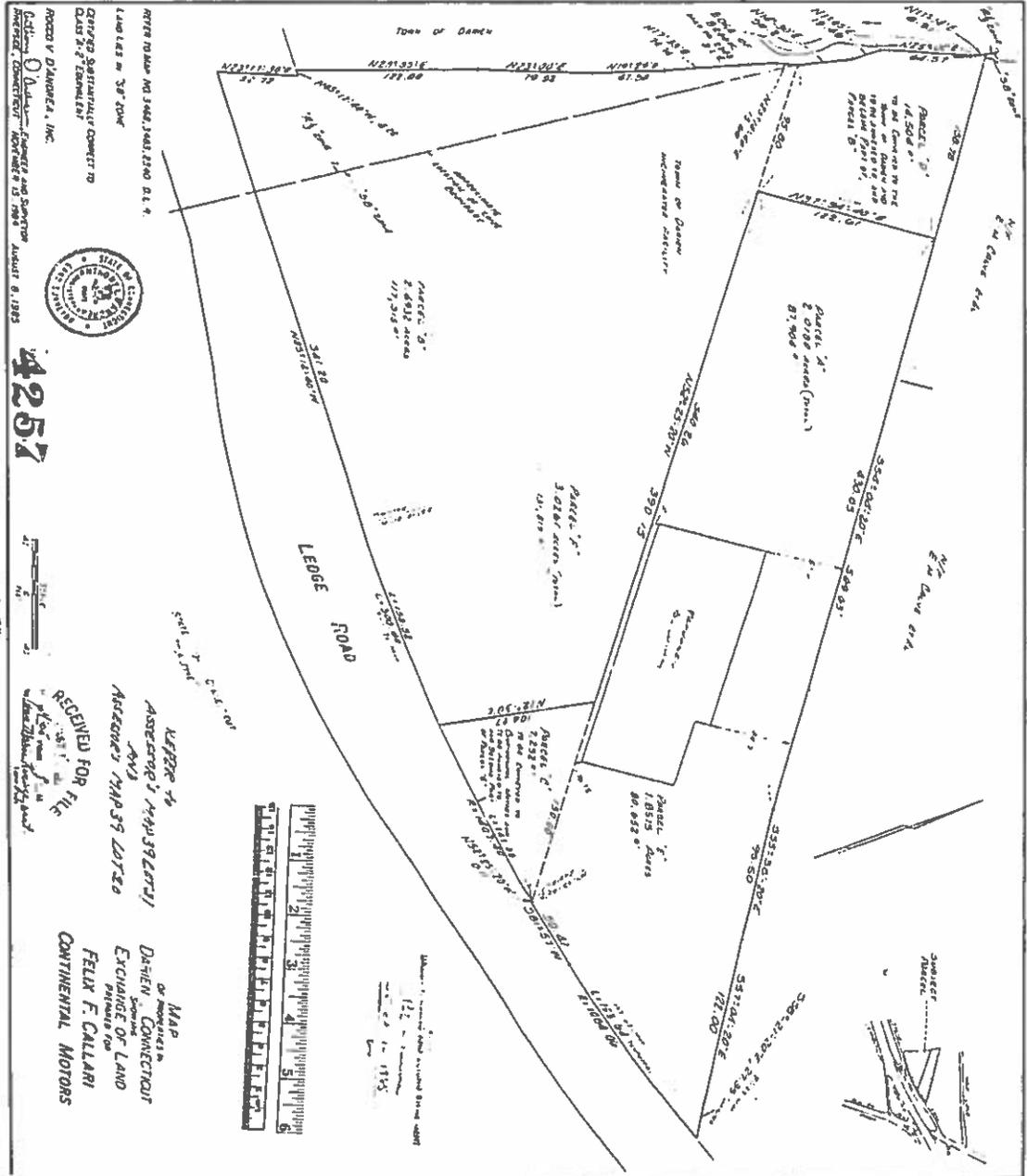
On this the \_\_ day of \_\_\_\_\_, 2016, before me, \_\_\_\_\_, the undersigned officer, personally appeared Paula C. Callari, who acknowledged herself, executed the foregoing instrument for the purposes therein contained, by signing her name.

IN WITNESS WHEREOF, I hereunto set my hand and seal.

\_\_\_\_\_  
Notary Public  
Commissioner of the Superior Court

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# EXHIBIT A



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