

REAL ESTATE PURCHASE AND SALE AGREEMENT

BETWEEN

THE TOWN OF DARIEN,

AS BUYER

AND

OX RIDGE HUNT CLUB, INCORPORATED,

AS SELLER

RE: APPROXIMATELY 16.296 ACRES OF LAND  
LOCATED AT 512 MIDDLESEX ROAD, DARIEN, CONNECTICUT 06820

## REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (hereinafter referred to as this "Agreement") is executed as of the 16<sup>th</sup> day of November, 2016 (the "Effective Date") by and between **THE TOWN OF DARIEN**, a Connecticut municipal corporation with an address of 2 Renshaw Road, Darien, Connecticut, 06820 ("Buyer"); and **OX RIDGE HUNT CLUB, INCORPORATED**, a Connecticut non-stock corporation with an address of 512 Middlesex Road, Darien, Connecticut 06820 ("Seller").

### RECITALS:

A. Seller is the owner of an approximately 36.915 acre parcel of land located at 512 Middlesex Road, Darien, Connecticut 06820 (the "Land");

B. Buyer is desirous of purchasing an approximately 16.296 acre parcel (the "Transfer Property") to be subdivided from the Land upon the terms and conditions hereinafter set forth; and

C. Seller shall retain the remaining approximately 20.619 acre parcel (the "Retained Property") to be subdivided from the Land.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

### SECTION 1. THE PROPERTY.

Seller shall sell to Buyer and Buyer shall purchase from Seller the Transfer Property and certain related assets, consisting of the following (collectively, the "Property"):

A. The Transfer Property described on Exhibit A hereto.

B. All intangible property ("Intangible Property") owned by Seller and pertaining to the Transfer Property including such transferable licenses and permits related to the operation of the Transfer Property; plans and specifications, engineering plans and studies, and landscape plans as may be owned by and in the possession of Seller, if any;

C. All rights, privileges, easements and appurtenances owned by Seller and belonging or appurtenant to the Transfer Property; and

D. Buyer expressly acknowledges and agrees that all bank accounts, cash, cash equivalents, replacement reserves and accounts receivable, whether currently held by or in the name of Seller or Seller's mortgagee are excluded from the Property and shall be retained by Seller.

### SECTION 2. PURCHASE PRICE.

The purchase price for the Property (the "Purchase Price") shall be **Six Million Two Hundred Fifty Thousand and 00/100 Dollars (\$6,250,000.00)**. The Purchase Price, plus or

minus net prorations, shall be paid by payment of immediately available funds delivered at the Closing (as defined below).

### SECTION 3. TITLE AND DEED; SURVEY.

A. *Title and Deed.* On the Closing Date, Seller shall convey to Buyer fee simple title to the Transfer Property by limited warranty deed (the "Deed") in the form attached hereto as Exhibit B, subject only to the Permitted Exceptions (listed below and as further as defined in Section 4B below):

(1) Taxes on the October 1, 2015 grand list and subsequent years, not yet due and payable;

(2) Easements, covenants, restrictions, agreements and/or reservations of record which are included as Schedule B exceptions to the Title Policy, as hereinafter defined, which have not been removed as Permitted Exceptions, as hereinafter defined;

(3) Open Space, Deed Restriction and Right of First Refusal dated April 23, 2012 and recorded in Volume 1458 at Page 462 of the Darien Land Records;

(4) First Amendment to Declaration of Open Space, Deed Restriction and Right of First Refusal (the "Declaration Amendment") in the form attached hereto as Exhibit C to be entered into by and between Seller and Buyer and recorded in the Land Records of the Town of Darien prior to the Deed at Closing.

B. *Survey.* Buyer may, at its sole cost and expense and prior to the expiration of the Contingency Period (as defined below), obtain an updated survey (the "Survey") from a surveyor licensed in the State of Connecticut. If the Survey shall show any additional survey matters which would materially affect the value of the Transfer Property, Buyer may terminate this Agreement prior to the expiration of the Contingency Period. Following the expiration of the Contingency Period, Buyer may only terminate this Agreement based upon a failure of this condition due solely to the existence of a new material survey matter affecting the Property that first arose or first existed following the expiration of the Contingency Period.

### SECTION 4. TITLE INSURANCE; SURVEY;

A. *Commitment and Title Policy.* Within fifteen (15) days following the Effective Date, Buyer shall, at Buyer's sole cost and expense, obtain (1) a title insurance commitment (the "Commitment") issued by a title insurance company of Buyer's choosing (the "Title Company"), pursuant to which the Title Company shall agree to issue to Buyer, at Buyer's expense, an owner's policy of title insurance (the "Title Policy"), in the amount of the Purchase Price, insuring marketable fee simple title to the Transfer Property in Buyer upon recording of the Deed, subject to the exceptions therein; and (2) copies of all exception instruments listed in the Commitment (the "Exception Instruments"). The Title Policy may include such endorsements as Buyer shall specify to the Title Company, but the cost thereof (the "Special Title Coverage") and the cost of the Title Policy shall be borne by Buyer and obtaining such Special Title Coverage shall not be a condition precedent to Buyer's obligations under this Agreement. Buyer shall provide to Seller complete copies of the Commitment and the Exception Instruments within

fifteen (15) days following the Effective Date.

B. **Title Defects.** Buyer shall have until the expiration of the “Contingency Period” (hereinafter defined) to object, by delivering written notice (“Objection Notice”) to Seller with respect to any matters shown in the Commitment and Survey which are not Permitted Exceptions, and any matters shown therein and not objected to by Buyer within said Contingency Period shall be deemed approved by Buyer (and shall be included in the definition of “Permitted Exceptions”). If Buyer does give such notice within the timeframe described above and objects to title or survey matters, then Seller shall have ten (10) days to deliver a written response to which objections, if any, Seller agrees to cure. If Buyer is not satisfied with the objections Seller agrees to cure, then Buyer may terminate this Agreement by delivering a written notice of termination, within ten (10) days after receipt of Seller’s response whereupon neither party shall have any further obligation to the other, except for those obligations that expressly survive the termination of this Agreement. Seller shall have until thirty (30) days after the delivery of the Objection Notice to cure the objections Seller has agreed to cure; provided, however, if such objection is to a monetary lien or monetary encumbrance voluntarily granted by Seller which can be cured by the payment of money, Seller shall satisfy such lien or encumbrance at or prior to Closing. With respect to those title matters that Seller is obligated hereunder to satisfy, a title matter shall be considered remedied if Seller secures the agreement of the Title Company to issue the Title Policy to Buyer without making exception for the matter in question, or to provide affirmative insurance with respect to such matter at no additional cost to Buyer. If Seller does not so remedy any matters to which Buyer has objected and Seller has agreed to cure, then Buyer shall have the option of either (1) completing this transaction and accepting such title as Seller is able to convey, without reduction of the Purchase Price, or (2) terminating this Agreement, in which event neither party shall have any further obligation to the other hereunder, except for those obligations which expressly survive the termination of this Agreement. From time to time, at any time after the expiration of the Contingency Period and prior to the Closing Date, Buyer may give written notice of objections to matters of title first recorded in the Darien, Connecticut Land Records after the date of the initial Title Commitment or matters of survey which would not have been disclosed by an accurate updated ALTA Survey prepared on or prior to the date of the Survey, and all such additional objections shall be subject to procedures for resolution of title and survey objections set forth in this Section 4B.

#### **SECTION 5. DUE DILIGENCE MATERIAL; CONDITIONS PRECEDENT.**

A. **Seller’s Due Diligence Materials.** Seller represents to Buyer that Seller is not in possession of any third party reports or studies relating to the Transfer Property.

B. **Buyer Conditions Precedent.** Buyer’s obligation to consummate the purchase of the Property hereunder is expressly conditioned on satisfaction of each of the following conditions:

(1) **Buyer Review.** Prior to the expiration of the Contingency Period, Buyer having reviewed and approved, in Buyer’s sole and absolute discretion, (i) such reports, studies, investigations, analyses and information as Buyer may elect to conduct or obtain during the Contingency Period, and (ii) any and all other aspects of the Property and the transaction and shall have obtained such other assurances as Buyer deems necessary or

desirable in Buyer's discretion. The "Contingency Period" shall be the period commencing on the Effective Date and ending at the close of business on the date which is thirty (30) days after the Effective Date. If any of the foregoing conditions precedent has not been satisfied prior to the end of the Contingency Period, Buyer shall have the option of either (a) waiving compliance with the condition precedent and proceeding under this Agreement, without reduction of the Purchase Price, or (b) canceling this Agreement on or before the last day of the Contingency Period, in which latter event neither party shall have any further obligation to the other hereunder, except for those obligations which expressly survive the termination of this Agreement. If Buyer fails to cancel this Agreement by written notice to Seller given on or before the expiration of the Contingency Period, then Buyer shall automatically be deemed to have irrevocably waived the conditions set forth in this Section 5B(1), and thereafter shall have no right to cancel this Agreement by reason of the non-satisfaction thereof.

(2) Approvals. Buyer's obligation to consummate the purchase of the Property hereunder is expressly conditioned on the satisfaction of the following conditions during the period commencing on the Effective Date and ending at the close of business on the date which is one hundred sixty-five (165) days after the Effective Date (the "Approvals Period"):

i. Buyer shall have received all permits and approvals from the Town of Darien necessary to subdivide the Land in order to create the Transfer Property as a separate parcel and tax lot, all of which such permits and approvals shall be in form and substance reasonably acceptable to Buyer and Seller, with all appeal periods from the granting of any such permit, approval or action having expired, with no appeal taken (or if such an appeal has been taken, the appeal having been finally adjudicated or dismissed to Buyer's and Seller's satisfaction) (the "Subdivision Approval"). Buyer shall use its best efforts to obtain the Subdivision Approval. Seller shall cooperate, at no cost or expense to Seller, with Buyer in obtaining the Subdivision Approval. If the Subdivision Approval has not been obtained by Buyer prior to the expiration of the Approvals Period, each of Seller and Buyer shall have the right, by written notice to the other party within five (5) business days following the expiration of the Approvals Period, to cancel this Agreement. If either party so cancels this Agreement, neither party shall have any further obligation to the other hereunder except for those obligations which expressly survive the termination of this Agreement. If neither party cancels this Agreement, the Approvals Period shall be automatically extended for successive thirty (30) day periods ("Approvals Extension Period"). Either party shall have the right, by written notice to the other party, to cancel this Agreement at the end of any Approvals Extension Period.

ii. Buyer shall have received approvals to purchase the Transfer Property in accordance with the terms of this Agreement from each of the following municipal boards and authorities within the Town of Darien (i) the Planning and Zoning Commission, (ii) the Board of Finance, (iii) the Board of Selectmen, and (iv) the Representative Town Meeting, all of which such approvals shall be in form and substance reasonably acceptable to Buyer and

Seller, with all appeal periods from the granting of any such approval or action having expired, with no appeal taken (or if such an appeal has been taken, the appeal having been finally adjudicated or dismissed to Buyer and Seller's satisfaction) (collectively, the "Purchase Approvals"). Buyer shall use its best efforts to obtain the Purchase Approvals. Seller shall cooperate, at no cost or expense to Seller, with Buyer in obtaining the Purchase Approvals. If the Purchase Approvals have not been obtained by Buyer prior to the expiration of the Approvals Period, each of Seller and Buyer shall have the right in its sole and absolute discretion, by written notice to the other party within five (5) business days following the expiration of the Approvals Period, to cancel this Agreement. If either party so cancels this Agreement, neither party shall have any further obligation to the other hereunder except for those obligations which expressly survive the termination of this Agreement. If neither party cancels this Agreement, the Approvals Period shall be automatically extended for successive thirty (30) day Approvals Extension Periods. Either party shall have the right, by written notice to the other party, to cancel this Agreement at the end of any Approvals Extension Period.

(3) Seller shall have (i) removed the existing sand ring on the Transfer Property shown and designated on the map attached hereto as Exhibit D as the "Existing Sand Ring", (ii) removed the arborvitae trees immediately surrounding the Existing Sand Ring, and (iii) leveled and raked the Existing Sand Ring area on the Transfer Property.

C. *Additional Buyer Conditions Precedent.* This Agreement is further expressly conditioned on all of the following conditions precedent being in effect or complied with on and as of the Closing Date, and Seller covenants that it will use its commercially reasonable efforts to cause such conditions to be in effect or complied with on such date:

(1) Condition of Title. The Transfer Property shall be free and clear of encumbrances and title exceptions of any kind whatsoever except the Permitted Exceptions.

(2) Other Obligations of Seller. Seller shall have complied with all of its material obligations under this Agreement, and all of Seller's representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and the Closing Date.

If any one or more of the conditions precedent hereinabove set forth in this Section 5C shall not be in effect or complied with on the Closing Date, Buyer shall have the option of either (a) waiving compliance with any one or more of said conditions precedent and closing this transaction, without reduction of the Purchase Price, or (b) canceling this Agreement, in which event neither party shall have any further obligation to the other hereunder, except for those obligations which expressly survive the termination of this Agreement. Notwithstanding the foregoing or the provisions of Section 14A, in the event that the condition which has not been satisfied consists of any of (x) the encumbrance of title to the Property by the voluntary action of Seller after the issuance of the Commitment, or (y) the willful failure of Seller to comply with

any obligation of Seller under this Agreement, Buyer shall retain the right to seek specific performance by Seller of Seller's obligations under this Agreement.

D. *Seller's Condition Precedent.* Seller's obligation to consummate the sale of the Property hereunder is expressly conditioned on Seller, prior to the expiration of the Contingency Period, having obtained approval of the sale from its Active Members, as that term is defined in the Seller's by-laws (the "Active Member Approval"). If Seller has not obtained the Active Member Approval prior to the end of the Contingency Period, each of Seller and Buyer shall have the right, by written notice to the other party within five (5) business days following the expiration of the Contingency Period, to cancel this Agreement. If either party so cancels this Agreement, neither party shall have any further obligation to the other hereunder except for those obligations which expressly survive the termination of this Agreement. If neither party cancels this Agreement, the Contingency Period shall be automatically extended for successive thirty (30) day periods ("Contingency Extension Period"). Either party shall have the right, by written notice to the other party, to cancel this Agreement at the end of any Contingency Extension Period.

## SECTION 6. REPRESENTATIONS AND WARRANTIES OF SELLER.

A. *Seller's Representations and Warranties.* As used herein, "Seller's Knowledge" and similar phrases shall mean the actual knowledge of the President of the Board of Stewards of the Seller (the "Knowledge Party") without any specific duty of inquiry or investigation in connection with this Agreement. As of the Effective Date and the Closing Date Seller represents and warrants to Buyer that the Knowledge Party is on the Board of Seller with managerial level responsibility for the operation and maintenance of the Property and further represents and warrants the following:

(1) Seller is duly organized, validly existing, and in good standing under the laws of the state of its formation. Seller has the full power and authority to execute, deliver and perform its obligations under this Agreement.

(2) This Agreement and all agreements, instruments and documents herein provided to be executed by Seller (a) subject to Seller's receipt of the Active Member Approval, are and as of the Closing will be duly authorized, executed and delivered by and are and will be binding upon Seller, and (b) do not and, at the time of Closing will not, violate any provision of any agreement or judicial order to which Seller or the Property is subject.

(3) Seller has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy under the federal bankruptcy law or any state insolvency laws or laws for the reorganization of debtors or suffered the filing of an involuntary petition by Seller's creditors, suffered the appointment of a receiver to take possession of all, or substantially all, of Seller's assets, suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, admitted in writing its inability to pay its debts as they generally come due or made an offer of settlement, extension or composition to its creditors generally. Seller is not insolvent and the consummation of the transactions contemplated by this Agreement shall not render Seller

insolvent.

(4) Seller is not a person or entity with whom the United States persons or entities are restricted or prohibited from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s specially designated and blocked persons list) or under any statute, executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities, nor is Seller or, to Seller’s actual knowledge, any of Seller’s affiliates acting, directly or indirectly, on behalf of terrorists, terrorist organizations or narcotics traffickers.

(5) FIRPTA. Seller is not a “foreign corporation”, “foreign partnership” or “foreign estate” as those terms are defined in the Internal Revenue Code of 1986, as amended, and that Seller will furnish to Buyer such further assurances with respect to this representation and warranty as Buyer shall reasonably request.

(6) Conflicts and Pending Action. There is no agreement to which Seller is a party or to the best of Seller’s knowledge binding on Seller which is in conflict with this Agreement. There is no action or proceeding pending, and Seller has received no written notice of any proceeding including condemnation proceedings, or against the Seller which challenges or impairs Seller’s ability to execute or perform its obligations under this Agreement.

(7) Environmental. Seller does not have in its possession any environmental site assessment reports for the Property. To the best of Seller’s knowledge, with no specific inquiry or testing, there are no underground storage tanks located on the Property.

B. *Pre-Closing Breach*. If any representation or warranty above is actually known by Buyer prior to Closing to be untrue and is not remedied by Seller prior to Closing, then Buyer may as Buyer’s sole and exclusive remedy either: (i) terminate this Agreement whereupon neither party shall have any further rights or obligations pursuant to this Agreement, other than as set forth herein with respect to rights or obligations that survive termination; or (ii) waive its objections and close the transaction.

C. *Operations*.

(1) Ongoing Operations. During the pendency of this Agreement, Seller shall carry on its business and activities relating to the Property, including maintenance of the Transfer Property, substantially in the same manner as it did before the Effective Date.

(2) New Contracts. During the pendency of this Agreement, Seller will not enter into any lease or contract that will be an obligation affecting the Property subsequent to the Closing, except, prior to the expiration of the Approvals Period Property contracts affecting the Transfer Property entered into in the ordinary course of business with independent third parties that are terminable without cause on 30-days’

notice and without penalty or cancellation fee.

(3) Performance under Existing Contracts. During the pendency of this Agreement, Seller will perform all of its material obligations under the existing contracts affecting the Transfer Property.

#### **SECTION 7. TAXES AND ASSESSMENTS.**

The Transfer Property is subject to general real property taxes and installments of special assessments (collectively, "Taxes"). Seller shall be fully responsible for all Taxes for any period prior to the Closing Date, and Seller shall indemnify Buyer and its successors and assigns against, all such Taxes payable as of the Closing Date for any period prior to the Closing Date and interest and penalties thereon. Buyer shall be fully responsible for, and shall indemnify Seller and its successors and assigns against all such Taxes for any period from and after the Closing Date and interest and penalties thereon. Taxes will be prorated between Seller and Buyer at Closing in accordance with the customary practice in Fairfield County, Connecticut. Buyer and Seller agree that the transaction contemplated by this Agreement will be exempt from the Connecticut Real Estate Conveyance Tax because the grantee or transferee is the Town of Darien, a political subdivision of the State of Connecticut.

#### **SECTION 8. OTHER PRORATIONS, ADJUSTMENTS AND CLOSING COSTS.**

##### **A. *Prorations.***

(1) Utility Deposits. Seller will not assign to Buyer, and Buyer will not be entitled to, any deposits held by any utility company or other company servicing the Property; but rather such deposits will be returned to Seller and Buyer will arrange and bear all responsibility to arrange with all utility companies to have accounts styled in Buyer's name beginning on the Closing Date. To the extent necessary, utility charges in respect of the Property shall be prorated between Seller and Buyer as of the Closing Date. If the utility charges for the last utility period cannot be ascertained on the Closing Date, Seller and Buyer shall estimate the amount thereof, based on the charges for the immediately preceding utility period or current meter readings taken on the day before the Closing Date, for the purpose of determining the tentative amount thereof for proration at the time of Closing.

(2) Survival. The obligations under this Section shall survive the Closing and delivery of the Deed.

**B. *Buyer's Costs.*** At closing Buyer shall pay (1) the cost of recording the Declaration Amendment and the Deed; (2) the cost of the Title Policy; (3) the cost of the Survey; and (4) the cost of any State of Connecticut and Town of Darien conveyance taxes, to the extent such taxes are due and payable.

**C. *Legal Fees.*** Each party shall pay its own legal fees in connection with this transaction.

## SECTION 9. CONDEMNATION.

If, prior to the Closing Date, all or any material part of the Transfer Property shall be condemned or become the subject of any proceedings, judicial, administrative, or otherwise with respect to the taking by eminent domain or condemnation by any Governmental Body or other lawful authority (but expressly excluding Buyer), Buyer shall have the option of either (1) completing this transaction, in which event (a) there shall be no reduction of the Purchase Price, (b) Seller shall have no duty to repair or restore, (c) Seller shall pay to Buyer all condemnation proceeds theretofore or thereafter received by Seller with respect to such condemnation, and (d) Seller shall assign to Buyer all rights of Seller in and to such condemnation proceeds; or (2) canceling this Agreement, in which event neither party shall have any further obligation to the other hereunder, except for those obligations which expressly survive the termination of this Agreement.

## SECTION 10. CLOSING.

This transaction shall be consummated at a closing ("Closing") at the offices of Rucci Law Group, LLC 19 Old Kings Highway South, Darien, CT. The Closing shall occur after the expiration of the Approvals Period on a date designated by Buyer by giving not less than ten (10) days' written notice to Seller, which date (the "Closing Date") shall be not later than thirty (30) days after the expiration of the Approvals Period. If Buyer fails to provide such written notice to Seller establishing the Closing Date, the Closing Date shall be deemed to be the date that is thirty (30) days following the expiration of the Approvals Period. Once the Closing Date has been set, Buyer may extend the Closing Date one time for up to fifteen (15) days by providing Seller with written notice of such extension prior to the initial Closing Date. Closing shall be effectuated by deposit by the parties of the following with the Title Company:

- A. *By Seller.* Seller shall furnish the following:
- (1) the Deed;
  - (2) a non-foreign affidavit as permitted by Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder;
  - (3) evidence of its authority for the closing of this transaction, including the Active Member Approval;
  - (4) a Seller/Owner Affidavit in such customary form as the Title Company may reasonably require to issue the standard title coverage plus gap coverage;
  - (5) originals or photocopies of all surveys, reports, soils and environmental studies, plans, specifications of the Transfer Property in Seller's possession;
- B. *By Buyer.* Buyer shall furnish the following:
- (1) the Purchase Price, by wire transfer or by certified check or official cashier's check drawn by and upon a federally regulated or state chartered bank of immediately available funds (reduced by any amounts to be credited to Buyer at the

Closing pursuant to the provisions of this Agreement); and

(2) evidence of its capacity and authority for the closing of the transaction contemplated herein.

C. *Jointly Executed Documents.* The parties shall jointly execute the following:

(1) the Declaration Amendment; and

(2) a Closing Statement, which shall set forth the Purchase Price and all credits thereto required by this Agreement, together with all prorations as required by the provisions of Section 8 hereof. At least three days prior to the Closing Date, Buyer shall prepare or cause the Title Company to prepare and deliver to Buyer and Seller a preliminary closing statement for each party, showing all amounts due from each party, including all closing costs and expenses computed as set forth in this Agreement.

#### **SECTION 11. POSSESSION.**

Possession of the Property (subject to the Permitted Exceptions) shall be delivered to Buyer on the Closing Date.

#### **SECTION 12. ACCESS BY BUYER; INDEMNITY.**

Buyer and its agents and designees shall have the right, at reasonable times prior to the Closing Date and upon reasonable notice to Seller, to go upon the Property for the purpose of inspecting the same and making such tests, inquiries and examinations as Buyer shall deem necessary, but, in exercising such rights, Buyer shall not interfere with the operation of the Property, and Buyer shall not cause any damage to the Property. Buyer shall not conduct any invasive testing without securing Seller's prior written consent, which shall not be unreasonably withheld. Upon completion of such inspections, tests, inquiries and examinations Buyer shall, at its sole expense, cause the Property to be restored to substantially the same condition it was in prior thereto, including filling, compaction and resodding of all excavations. If this Agreement fails to close for any reason, other than a Seller default, Buyer shall promptly deliver to Seller copies of all tests, engineering reports and similar studies obtained by Buyer. Buyer shall be liable for all damage or injury resulting from, relating to or arising out of any such inspection, whether occasioned by the acts of Buyer or any of its employees, agents, representatives or contractors, and Buyer shall indemnify and hold harmless Seller and its agents, employees, officers, directors, affiliates and asset managers from any liability resulting therefrom. The provisions of this Section shall survive the termination or closing of this Agreement. Prior to gaining access to the Property for Buyer or Buyer's agents, representatives or consultants, Buyer shall deliver to Seller evidence that Buyer and Buyer's agents, representatives and contractors maintain general liability insurance in an amount not less than \$1,000,000 per occurrence, and Seller shall be named as an additional insured party on each such policy.

#### **SECTION 13. BROKERAGE.**

Each party represents and warrants to the other party that it has not dealt with any consultant, agent, broker or finder in connection with this transaction, and each party agrees to

indemnify and save harmless the other party from and against all claims, costs, liabilities and expense (including court costs and reasonable attorneys' fees actually incurred) incurred by the other party as a result of a breach of this representation.

#### **SECTION 14. DEFAULTS.**

A. *Default by Seller.* In the event that Seller shall fail to consummate the transaction contemplated by this Agreement for any reason, except Buyer's default or a termination of this Agreement by Buyer or Seller pursuant to a right to do so under the provisions hereof, Buyer, as its sole and exclusive remedy, may either (i) enforce specific performance of Seller's obligations hereunder, or (ii) terminate this Agreement by giving written notice of termination to Seller, whereupon this Agreement shall terminate, and neither party shall have any further rights or obligations hereunder, except as otherwise expressly provided herein.

B. *Default by Buyer.* Unless otherwise provided for herein, if the transaction contemplated hereby is not consummated by reason of Buyer's breach or other failure to timely perform all material obligations and conditions to be performed by Buyer under this Agreement, then Seller shall have all rights and remedies afforded to it at law and equity; provided, however, Seller's right to recover damages from Buyer in connection with Buyer's breach or other failure to timely perform all material obligations and conditions to be performed by Buyer under this Agreement shall be capped at \$625,000.00.

#### **SECTION 15. ATTORNEYS' FEES.**

If either party obtains a judgment against the other party by reason of a breach of this Agreement, a reasonable attorneys' fee actually incurred as fixed by the court shall be included in such judgment.

#### **SECTION 16. Intentionally Omitted.**

#### **SECTION 17. NO WAIVER.**

Except as herein expressly provided, no waiver by a party of any breach of this Agreement or of any warranty or representation hereunder by the other party shall be deemed to be a waiver of any other breach by the other party, and no acceptance of payment or performance by a party after any breach by the other party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other party, whether or not the first party knows of such breach at the time it accepts such payment or performance. No failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right by the first party while the other party continues to be so in default.

#### **SECTION 18. EXHIBITS; INSTRUMENTS IN WRITING.**

All exhibits attached hereto are incorporated herein by this reference. No agreement, consent, approval, notice, amendment, modification, understanding or waiver of or with respect to this Agreement or any agreement or instrument entered into pursuant to or with respect to this Agreement, or any term, provision, covenant or condition hereof or thereof, nor any approval or

consent given under or with respect to any of the foregoing, shall be effective for any purpose unless contained in a writing signed by the party against which such agreement, amendment, modification, understanding, waiver, approval or consent is asserted.

**SECTION 19. TERMINOLOGY.**

The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The words “herein”, “hereof”, “hereunder” and similar terms shall refer to this Agreement unless the context requires otherwise. Whenever the context so requires, the neuter gender includes the masculine and/or feminine gender, and the singular number includes the plural and vice versa.

**SECTION 20. SUCCESSORS AND ASSIGNS.**

Neither party may assign this Agreement without the prior written consent of the other, and any such prohibited assignment shall be void.

**SECTION 21. NOTICES.**

All notices hereunder shall be sent by overnight delivery service or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

- If to Buyer:                   Town of Darien  
  2 Renshaw Road  
  Darien, Connecticut 06820  
  Attn: First Selectman
  
- With a copy to:               Curtis, Brinckerhoff & Barrett, P.C.  
  666 Summer Street  
  Stamford, CT 06901  
  Attention: Wayne Fox, Esq.
  
- If to Seller:                   Ox Ridge Hunt Club, Incorporated  
  512 Middlesex Road  
  Darien, Connecticut 06820  
  Attn: Richard Colligan, President
  
- With copies to:  
  
  Rucci Law Group, LLC  
  19 Old Kings Highway South  
  Darien, CT 06820  
  Attention: Amy Zabetakis, Esq.

and

Day Pitney LLP  
One Canterbury Green  
Stamford, Connecticut 06901-2047  
Attention: Michael P. Byrne, Esq.

Either party may designate a different address or addresses for itself by notice similarly given. Any notice given by nationally recognized overnight courier shall be deemed to have been given on the next business day. Any notice given by registered or certified mail shall be deemed to have been given on the third day after the same is deposited in the mail.

**SECTION 22. ENTIRE AGREEMENT.**

This Agreement contains the entire agreement with respect to the transactions contemplated herein and therein, and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, concerning the same.

**SECTION 23. HEADINGS.**

The headings in this Agreement have been inserted for convenience of reference only, and shall not be deemed to modify or restrict any provision hereof, nor be used to construe any such provision.

**SECTION 24. GOVERNING LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut.

**SECTION 25. INTENTIONALLY OMITTED.**

**SECTION 26. WAIVER OF JURY TRIAL.**

EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE THEREOF.

[Signature pages follow]

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

**SELLER:**

**OX RIDGE HUNT CLUB, INCORPORATED**  
a Connecticut non-stock corporation

By: *Richard Colligan*  
Name: *RICHARD COLLIGAN*  
Title: *President, OX RIDGE HUNT CLUB*

**BUYER:**

**THE TOWN OF DARIEN**  
a Connecticut municipal corporation

By: *Jayne J. Stevenson*  
Name: *Jayne J. Stevenson*  
Title: *First Selectman*

EXHIBIT A

TRANSFER PROPERTY

All that certain lot, piece or parcel of land, together with all buildings and improvements thereon, shown and designated as Parcel B, 16.296 +/- Acres on that certain map entitled, "Data Accumulation Plan Prepared For OX Ridge Hunt Club, Darien, Connecticut Scale: 1" = 60' dated November 10, 2015 and Revised November 17, 2015 by John M. Farnsworth & Associates, New Milford, CT. " to be filed on the Darien Land Records. Meets and Bounds Description to be Provided by Surveyor.

Said Premises are conveyed subject to:

1. Any and all provisions of any municipal, ordinance or regulation or public or private law with special reference to the provisions of any zoning regulations and regulations governing the said Premises.
2. Real property taxes on the current Grand List and any municipal liens or assessments becoming due and payable on or after the delivery of this Deed.
3. Declaration of Open Space, Deed Restriction and Right of First Refusal by Ox Ridge Hunt Club, Incorporated dated April 23, 2012 and recorded June 7, 2012 in Volume 1458 at Page 462 of the Darien Land Records as Amended.
4. Effect, if any, of Motion for Judgment from Grace DeMilo ET AL VS. Anthony Frate, ET AL, dated May 8, 1985 and recorded July 8, 1985 in Volume 515 at Page 466 of the Darien Land Records.
5. Effect, if any, of Grant from Ox Ridge Hunt Club, Incorporated to the Connecticut Light and Power Company dated January 31, 1956 and recorded March 21, 1956 in Volume 195 at Page 405 of the Darien Land Records.
6. Notes and State of Facts as set forth on the Map referenced above.

EXHIBIT B

FORM OF LIMITED WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS THAT:

**OX RIDGE HUNT CLUB, INCORPORATED**, a Connecticut non-stock corporation with an address of 512 Middlesex Road, Darien, Connecticut 06820 (the "Grantor"), for good and valuable consideration received to its full satisfaction of **THE TOWN OF DARIEN**, a Connecticut municipal corporation with an address of 2 Renshaw Rd., Darien, Connecticut, 06820 (the "Grantee"), does hereby give, grant, bargain, sell and convey unto the Grantee, its successors and assigns forever, all that certain piece or parcel of land more particularly set forth and described in Exhibit A attached hereto and made a part hereof, together with all improvements and fixtures thereon and all easements, covenants and rights appurtenant thereto.

TO HAVE AND TO HOLD the premises hereby conveyed, with the appurtenances thereof, to the Grantee and unto the Grantee's successors and assigns forever, to its and their own proper use and behoof;

AND ALSO, the Grantor does, for itself and its successors and assigns, covenant with the Grantee, its successors and assigns, that said premises are free from all encumbrances made or suffered by the Grantor, except as is set forth in Exhibit A;

AND FURTHERMORE, the Grantor does by these presents bind itself and its successors and assigns forever, to warrant and defend the premises hereby conveyed to the Grantee, its successors and assigns against the claims and demands made or suffered by the Grantor, except as aforesaid, but against none other.

IN WITNESS WHEREOF, the undersigned has executed this deed this \_\_\_\_ day of \_\_\_\_\_, 201\_.

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

**OX RIDGE HUNT CLUB  
INCORPORATED**  
a Connecticut non-stock corporation

By: \_\_\_\_\_  
Name:  
Title:



EXHIBIT A TO DEED

PROPERTY DESCRIPTION

All that certain lot, piece or parcel of land, together with all buildings and improvements thereon, shown and designated as Parcel B, 16.296 +/- Acres on that certain map entitled, "Data Accumulation Plan Prepared For OX Ridge Hunt Club, Darien, Connecticut Scale: 1" = 60' dated November 10, 2015 and Revised November 17, 2015 by John M. Farnsworth & Associates, New Milford, CT. " to be filed on the Darien Land Records. Meets and Bounds Description to be Provided by Surveyor.

Said Premises are conveyed subject to:

1. Any and all provisions of any municipal, ordinance or regulation or public or private law with special reference to the provisions of any zoning regulations and regulations governing the said Premises.
2. Real property taxes on the current Grand List and any municipal liens or assessments becoming due and payable on or after the delivery of this Deed.
3. Declaration of Open Space, Deed Restriction and Right of First Refusal by Ox Ridge Hunt Club, Incorporated dated April 23, 2012 and recorded June 7, 2012 in Volume 1458 at Page 462 of the Darien Land Records as Amended.
4. Effect, if any, of Motion for Judgment from Grace DeMilo ET AL VS. Anthony Frate, ET AL, dated May 8, 1985 and recorded July 8, 1985 in Volume 515 at Page 466 of the Darien Land Records.
5. Effect, if any, of Grant from Ox Ridge Hunt Club, Incorporated to the Connecticut Light and Power Company dated January 31, 1956 and recorded March 21, 1956 in Volume 195 at Page 405 of the Darien Land Records.
6. Notes and State of Facts as set forth on the Map referenced above.

**Record and Return to:**  
Rucci Law Group, LLC  
19 Old Kings Highway South  
Darien, CT 06820  
Attention: Amy Zabetakis, Esq.

**EXHIBIT C**

**FORM OF DECLARATION AMENDMENT**

**FIRST AMENDMENT TO DECLARATION OF OPEN SPACE, DEED  
RESTRICTION AND RIGHT OF FIRST REFUSAL**

THIS FIRST AMENDMENT TO DECLARATION OF OPEN SPACE, DEED RESTRICTION AND RIGHT OF FIRST REFUSAL (this "**First Amendment**") made as of this \_\_\_\_ day of \_\_\_\_\_ 2017, by and between **THE TOWN OF DARIEN**, a Connecticut municipal corporation with an address of 2 Renshaw Road, Darien, Connecticut, 06820 ("**Buyer**"); and **OX RIDGE HUNT CLUB, INCORPORATED**, a Connecticut non-stock corporation with an address of 512 Middlesex Road, Darien, Connecticut 06820 ("**Seller**").

**RECITALS:**

A. By that certain Declaration of Open Space, Deed Restriction and Right of First Refusal dated April 23, 2012 and recorded on June 7, 2012 in Volume 1458 at Page 462 of the Darien land records (the "**Original Declaration**") between Buyer and Seller, Seller agreed to place certain restrictive covenants on a portion of the land known as 512 Middlesex Road, Darien, Connecticut 06820 consisting of approximately 36.915 acres (the "**Land**"). The Original Declaration, as amended by this First Amendment, shall be referred to herein, collectively, as the "**Declaration**".

B. Seller has agreed to sell to Buyer and Buyer has agreed to purchase from Seller an approximately 16.296 acre parcel (the "**Transfer Property**") as further described in Exhibit A attached hereto, which has been subdivided from the Land.

C. Seller shall retain the remaining approximately 20.619 acre parcel (the "**Retained Property**") as further described in Exhibit B attached hereto, which has been subdivided from the Land.

D. In order to allow Buyer to make certain uses of the Transfer Property, as further described herein, Buyer and Seller have agreed to amend the terms of the Original Declaration, as set forth in this First Amendment.

E. All capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Original Declaration.

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

I. Until June 6, 2042, Buyer's use of the Transfer Property shall be limited to the following permitted uses:

- a. All uses currently permitted under the Original Declaration;
- b. Passive recreational uses, including but not limited to picnicking, walking trails and hiking;
- c. Athletic fields (the "Athletic Field Use"), Buyer expressly acknowledges and agrees that artificial turf fields are prohibited on the Transfer Property;
- d. Irrigation system, sewer and septic systems, and drainage and stormwater management systems serving the Transfer Property and landscaping;
- e. Grading and filling reasonably necessary for the uses of the Transfer Property permitted hereunder, provided said grading and filling shall not divert stormwater to the Retained Property;
- f. Required parking ancillary to the Athletic Field Use and the passive recreational uses permitted hereunder, subject to the review and approval of the Darien Planning and Zoning Commission;
- g. Temporary, removable seating ancillary to the Athletic Field Use;
- h. One (1) building (the "Permitted Building") containing only restroom facilities, a concession stand and storage ancillary to the uses permitted hereunder; provided, however, that (i) the Permitted Building shall be no taller than one story with a Gross Floor Area (as that term is defined in Section 210 of the Darien Zoning Regulations) of not more than one thousand (1,000) square feet, and (ii) the location of the Permitted Building shall allow for connection to the public water and sewer lines, but it shall be subject to Seller's prior written approval, which approval not to be unreasonably withheld. Buyer expressly acknowledges and agrees that backstops, permanent bleachers and other permanent structures are prohibited on the Transfer Property; and
- i. Such other uses as may be agreed upon in advance and in writing between Seller and Buyer, which agreement shall be in each party's sole and absolute discretion.

2. Notwithstanding the expiration of the use restrictions set forth in Sections 1 and 2 of the Original Declaration and in Section 1 of this First Amendment, for so long as Seller owns the Retained Property, the following uses shall be prohibited on the Transfer Property:

- a. Any use that will compete with a Special Permit use of the Retained Property granted to Seller by the Darien Planning and Zoning Commission; or
- b. Uses that are dangerous in nature or will cause unreasonable noise so as to be incompatible with Seller's use of the Retained Property, it being expressly acknowledged and agreed by Seller that the uses permitted under Section 1 of this First Amendment shall not be deemed to violate the provisions of this Section 2.b.

3. Seller shall be permitted to use the parking areas and restroom facilities in the Permitted Building on the Transfer Property (a) for one week in June each year for Seller's annual June horse show currently known as the Ox Ridge Hunt Club Five Day June Charity Horse Show, and (b) at such other times in order to accommodate special events held at the Retained Property, subject to the prior approval of such use at other times by Buyer in Buyer's sole discretion and subject to Buyer's determination that such use at other times will not interfere with the permitted uses of the Transfer Property by Buyer.

4. Any notice, demand, consent, approval, direction, agreement or other communication required or permitted under the Declaration shall be in writing and shall be directed as follows:

If to Buyer: Town of Darien  
2 Renshaw Road  
Darien, Connecticut 06820  
Attn: First Selectman

With a copy to: Curtis, Brinckerhoff & Barrett, P.C.  
666 Summer Street  
Stamford, Connecticut 06901  
Attention: Wayne Fox, Esq.

If to Seller: Ox Ridge Hunt Club, Incorporated  
512 Middlesex Road  
Darien, Connecticut 06820  
Attn: President

With copies to: Rucci Law Group, LLC  
19 Old Kings Highway South  
Darien, Connecticut 06820  
Attention: Amy Zabetakis, Esq.

or to such changed address as a party hereto shall designate to the other parties hereto from time to time in writing. Notices shall be (i) personally delivered (including delivery by Federal Express, United Parcel Service or other comparable nation-wide overnight courier service) to the offices set forth above, in which case they shall be deemed delivered on the date notice was received or rejected by the receiving party. (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date received or rejected by the receiving party.

5. Except as expressly modified by this First Amendment, the Original Declaration shall remain in full force and effect, and as further modified by this First Amendment, is expressly ratified and confirmed by the parties hereto. This First Amendment shall be (i) binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, and (ii) governed by the laws of the State of Connecticut.

6. This First Amendment contains all of the agreements of the parties with respect to the subject matter hereof, and supersedes all prior dealings between them with respect to such subject matter.

7. In the event of any conflicts or inconsistencies between the provisions of the Original Declaration and the provisions of this First Amendment, the provisions of this First Amendment shall control.

8. Seller and Buyer each warrant to the other that the person or persons executing this First Amendment on its behalf has or have authority to do so and that such execution has fully obligated and bound such party to all terms and provisions of this First Amendment.

[Signatures Commence on Following Page]



EXHIBIT A to Delcaration Amendment

Transfer Property

All that certain lot, piece or parcel of land, together with all buildings and improvements thereon, shown and designated as Parcel B, 16.296 +/- Acres on that certain map entitled, "Data Accumulation Plan Prepared For OX Ridge Hunt Club, Darien, Connecticut Scale: 1" = 60' dated November 10, 2015 and Revised November 17, 2015 by John M. Farnsworth & Associates, New Milford, CT. " to be filed on the Darien Land Records. Meets and Bounds Description to be Provided by Surveyor.

EXHIBIT B to Delcaration Amendment

Retained Property

All that certain lot, piece or parcel of land, together with all buildings and improvements thereon, shown and designated as Parcel A, 20.619 +/- Acres on that certain map entitled, "Data Accumulation Plan Prepared For OX Ridge Hunt Club, Darien, Connecticut Scale: 1" = 60' dated November 10, 2015 and Revised November 17, 2015 by John M. Farnsworth & Associates, New Milford, CT. " to be filed on the Darien Land Records. Meets and Bounds Description to be Provided by Surveyor.

