

return to:  
Wade Schmelter  
7 Justin Dr.  
Ellington CT  
06029

**EASEMENT AGREEMENT BETWEEN THE DISTRICT OF  
CHAPMAN BEACH AND 7 HOGAN ROAD, LLC**

**KNOW ALL PERSONS BY THESE PRESENTS:**

**A. PARTIES:** The Parties to this Easement Agreement (“Agreement”) are:

1. **Grantor:** The Grantor (“Grantor” or “District”) is **District of Chapman Beach**. The District is a taxing district, organized and operating under the laws of the state of Connecticut, including without limitation Chapter 105 of the Connecticut General Statutes.

2. **Grantee:** The “Grantee” is **7 Hogan Road, LLC** of New York, New York (“Grantee” or “Hogan”), a limited liability corporation organized and operating under the laws of the state of Connecticut.

**B. RECITALS**

**WHEREAS**, Grantee owns a property located at 7 Hogan Road, Westbrook, Ct. (Parcel ID: 180-059) (“Property”), on which it plans to make improvements to an existing one family residence (“House”) within the footprint of the existing structure so as to make the House useable as a year-round rather than merely a seasonal residence; and

**WHEREAS**, Grantee proposes that it connect the House to public water facilities located in Marvin Drive, a public highway owned and controlled by the Town of Westbrook, Ct., but to do so must install, operate and maintain facilities under Hogan Road (“Utility Connections”), and that it be allowed to have access to and to establish the requisite legal setback from the private septic system on or to be built on the Property, as depicted on Exhibit A, a Plan entitled, “PRESENTATION PLAN, LAND OF 7 HOGAN, LLC, 7 HOGAN ROAD, TOWN OF WESTBROOK, MIDDLESEX COUNTY, CONNECTICUT, Sheet No. PP-1, Date: 3/2/2023” (“Plan”);

**WHEREAS**, the District, without making any representations as to its title to or rights in the Easement Area, is willing to authorize the Grantee to use Hogan Road for the purpose of providing the Utility Connections to the House, subject to the terms and conditions set forth below; and

**WHEREAS**, the District is willing to make this Agreement solely on the express condition that Grantee may not at any time erect the House or any house or structure, including

decks, patios and the like, on the Property that is larger in area than or outside of the footprint of the existing structure or nearer to the beach to the south than is the nearest portion of the existing house is now.

### **C. TERMS AND CONDITIONS/GRANT OF EASEMENT**

1. The Grantor, for valuable consideration, including the mutual promises herein, the receipt and sufficiency of which it acknowledges, and acting pursuant to authority granted it by the laws of the state of Connecticut, does hereby give, grant, bargain, sell and confirm unto the Grantee and its successors and assigns forever, including without limitation its successors and assigns as to the Property, solely for the benefit of the Property, a permanent non-exclusive easement in, on, over and under the Easement Area as depicted in Exhibit A, to plan, design, construct, operate, alter, inspect, repair, replace and maintain the Utility Connections to the House on the Property, which shall consist of state of the art facilities customarily constructed and operated to connect public water utility facilities to service a single-family residence and to have access to and a required setback from said septic system (“Permitted Uses”).

2. Grantee for itself and on behalf of its successors and assigns acknowledges and agrees that it is of the essence of this Agreement from the District’s perspective that the House, including decks, patios and the like, and any replacement or modified House, shall be entirely within the footprint of the existing structure on the Property, and shall be no nearer to the beach to the south than any part of the existing structure is now. Nor may the Grantee occupy and/or reside in the House or allow anyone else to do so until after the Utility Connections and the repaving of Hogan Road as required hereby are complete and all necessary governmental and utility approvals have been issued.

a. Grantee therefore consents to enforcement by the District of the covenant in section C (2) administratively or at law or equity, and acknowledges that monetary damages would not be adequate or sufficient to compensate the District for a breach of it. Accordingly, in addition to any other remedies available to the District administratively, at law or equity, under this Agreement or otherwise, the District may obtain a mandatory and/or prohibitory injunction compelling Grantee to specifically comply with the limitation stated in section C (2) and/or to remedy any failure by it to do so by the Grantee or any of its successors, assigns, legal representatives, lessees and transferees. Grantor need not plead or prove irreparable harm or lack of an adequate remedy at law. Remedies may include at the option of the District and in the discretion of the court an



order to terminate all Grantee rights hereunder and the removal/disconnection of the Utility Connections necessary to allow the year-round use of the House.

b. No right or remedy conferred upon the Grantor by this section C (2) (a) and (b) is intended to be exclusive of any other right or remedy contained in this Agreement or at law or equity. Every such right or remedy shall be cumulative and shall be in addition to each other right and remedy contained in this Agreement or now or hereafter available to the District at law, in equity, by statute or otherwise.

3. Grantee's rights but not its obligations under this Agreement shall terminate without need of notice from the District if Grantee has not completed all of its work under this Agreement on or before one year from the date of its execution, and the District may record a notice of termination on the Land Records of the Town of Westbrook.

#### **D. CONSTRUCTION AND USE OF THE UTILITY CONNECTIONS**

1. The Grantee shall install the Utility Connections in the locations, in the manner, and with the components depicted and described by the Exhibit A only, and shall use them only for the Permitted Uses, including the provision of public water service to the Property, and Grantee shall perform all work pursuant to a written work schedule it shall submit to Grantor for its approval.

2. Grantee has procured or it shall procure before construction soil boring, percolation, engineering procedures, environmental investigation or other tests or reports (collectively the "Tests") on, over, and under the Easement Areas necessary to confirm that the Easement Area may be used for the Utility Connections and/or will comply with all required Government Approvals, as defined below (provided that Phase 1 or Phase 2 environmental tests shall be mandatory only if required by a governmental authority with jurisdiction).

a. The Grantees shall provide the Grantor copies of all test results/reports promptly upon their receipt by Grantees, and shall advise Grantor of all tests performed.

b. Grantee shall have no responsibility for any environmental conditions existing within the Easement Area at the time of the execution of this Agreement. However, Grantees shall be solely responsible vis-à-vis Grantor for any exacerbation by Grantees and/or by any of their respective authorities, boards, commissions, departments, officers, employees, agents, volunteers, contractors, insurers, consultants, s e r v a n t s ,

representatives, and/or of their respective successors and assigns of any p r e e x i s t i n g environmental condition and/or for any environmental condition caused by their activities under this Agreement.

c. In addition to any other insurances required by this Agreement, Grantees, before entering the Easement Area to perform such testing, shall give Grantor insurance certificates establishing that Grantee and each of its consultants, subcontractors, surveyors and/or agents have general liability, worker's compensation and automobile insurance coverage in such amounts and insuring against such risks as Grantor may reasonably require, and shall name Grantor as an additional insured on such policy(ies).

d. Grantee may not commence construction of the Utility Connections until it establishes to the written satisfaction of the District that it has obtained, at no expense to the District, all federal, state and/or local permits, licenses and approvals required for the work, beyond any chance of being overturned by any possible means of appeal.

i. Notwithstanding the foregoing, Grantee may enter the Easement Areas to perform the site testing, such as borings, before obtaining all such approvals and upon reasonable notice to the District.

e. The Grantee may prepare, execute and file all applications for governmental approvals required for the work, after giving the District a reasonable opportunity to review and comment on each application before it is filed.

f. Immediately after the installation of the Utility Connections is complete and before the House may be occupied for any purpose, the Grantee shall repave and restore the portions of Hogan Road depicted on the sketch attached to the Proposal that is Marked Exhibit B hereof and is Exhibit C to the Parties' **AGREEMENT FOR AN EASEMENT TO BE GRANTED TO 7 HOGAN ROAD LLC BY THE DISTRICT OF CHAPMAN BEACH** ("Agreement"), dated May , 2023 (the areas to be repaved and restored are not be limited to areas actually disturbed by the utility installation work) ("Road Work"). Payment for the Road Work will be made as provided in Paragraph 5(b) of the Agreement.



i. As soon as practicable after any future disturbance of the surface of the Easement Area after the Road Work is completed, Grantee shall repair any damage to the Easement Area caused thereby and shall restore the affected areas of the Easement Area to the condition they were in immediately prior to such disturbance. The approved Construction Plan and the As-Built (see Section 4(b)) shall not be changed or deviated from except by written agreement of the Parties, but such changes will not require this Agreement to be amended to be effective.

ii. Maintenance, use and upkeep of the Utility Connections in working order shall be the obligation solely of the Grantee.

g. Grantee shall cause all work under this Agreement to be performed in a good and workmanlike manner, using state of the art construction practices and materials and reputable Connecticut-licensed contractors, and shall prosecute the work continuously from commencement to completion in as expeditious and diligent a manner as practicable.

h. As soon as practicable after construction of the Utility Connections and the repaving of Hogan Road is complete, Grantee shall provide Grantor an As-Built plan of the Utility Connections, prepared by a Connecticut licensed engineer.

i. After the start of construction of the Utility Connections, Grantee may not terminate its obligations under this Agreement without the written consent of the Grantor, which writing shall provide for the disposition of facilities constructed as of that time and the repaving and restoration of the Easement Area to the reasonable satisfaction of Grantor, all at Grantee's sole expense.

j. Grantee shall comply with all present and future Federal, State and local statutes, codes, rules, regulations, ordinances, court decisions and other laws, including but not limited to environmental laws and regulations (collectively "Laws") governing the planning, design, construction, operation, use, maintenance, repair, and/or removal/relocation of the Utility Connections. If a term of this Agreement is more restrictive or demanding than a provision of any such Laws and/or of a license and/or permit, the more restrictive shall apply.

k. Hogan will accept responsibility for shall and indemnify and hold harmless the District from responsibility for the water line from the shut off at Marvin Drive to the house on the Property. Hogan and its successors and assigns at all times will carry Line Backer

Coverage offered by the Connecticut Water Company, or its reasonable equivalent satisfactory to the District Board, and/or ensure that the Line Backer warranty remains in full force and effect as to the Property and the Easement Area and shall provide proof thereof to the District at its request.

l. The existing fence on the Property will not be replaced or removed as part of the installation of the Utility Services or the restoration and repaving of Hogan Road pursuant to this Easement. Any new fencing installed on the Property thereafter shall be no higher than 36" in height (as measured from the ground) and shall be split rail, picket or some similar type that is not solid and can readily be seen through.

m. The owners/occupants of the Property shall not use or allow anyone to use the surface of the Easement Area to park any vehicle(s) or for storage or any other such purpose or in any other way obstruct its use by vehicles, bicycles or pedestrians.

n. Hogan shall not move, or allow the single-family residence, any part thereof, or any deck, patio or fence, or any replacement of or addition to the House, or any deck, patio or fence, to be constructed on the Property at any time any closer to the beach to the south than the house is now, without approval by the District Board.

o. Any temporary power structure Hogan installs or may have installed on the east side of Hogan Road Hogan per paragraph 13 of the Agreement shall be fully removed by Hogan no later than 10 calendar days after the Closing.

#### **E. INDEMNIFICATION**

1. The Grantee, to the fullest extent allowed by law, shall indemnify, defend and hold harmless the District, its property owners, residents, Board of Directors and each member thereof, authorities, boards, commissions, departments, officers, employees, agents, volunteers, contractors, insurers, consultants, servants, representatives, and all of their respective heirs, successors and assigns from and against any and all claims, injuries to persons (including death), damage to real and/or personal property, suits, causes of action, penalties, charges, liens, actions, fines, judgments, costs, losses, liabilities, expenses (including reasonable attorney's fees, expert fees, consultant fees and court costs) and/or damages of any kind and nature whatsoever, whether in tort, contract or otherwise, legal or equitable, special or consequential, which arise out of,



relate to or are in any way attributable to the acts or omissions of the Grantee and/or of officers, members, employees, agents, volunteers, contractors, insurers, consultants, servants, representatives, and/or of their respective successors and assigns in their exercise of the rights and performance of the obligations under this Agreement; their use and/or disturbance of the Easement Areas, including for due diligence and/or construction, operation, repair, and maintenance of the Utility Connections; the design, planning, installation, use, occupancy, maintenance, construction, repair, replacement, and/or restoration of the Utility Connections, or any part of it; their breach of this Agreement; and/or their violation of any federal, state and/or local laws, permits and/or licenses applicable to the Utility Connections.

2. The provisions of this section (E) shall survive termination or expiration of this Agreement, and shall not be limited by applicable insurance.

**F. INSURANCE**

1. Grantee shall maintain at least the following minimum insurance coverage and limits to cover the design, planning and construction of the Utility Connections:

General Liability	(minimum limits)
Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Products/completed operations aggregate	\$2,000,000
 Auto Liability	
Combined Single Limit	
Each Accident	\$1,000,000
 Pollution Liability	
Each Claim or Each Occurrence	\$1,000,000
Aggregate	\$1,000,000
 Umbrella (Excess Liability)	
Each Occurrence	\$1,000,000
Aggregate	\$1,000,000

(During Construction of and/or any maintenance, repair, relocation and/or removal of any part of the System, the excess liability coverage shall be increased to \$3,000,000.)

Workers Compensation and Employer's Liability

WC Statutory Limits EL	
Each Accident EL Disease	\$500,000
Each Employee EL Disease	\$500,000
Policy Limit	\$500,000

- i. Additionally, Grantees shall maintain all casualty, fire and/or all peril insurance with coverage and in amounts satisfactory to Grantor covering the System all of Grantees' property in the Easement Areas for their full replacement value.
- a. The Grantees shall maintain the following additional insurance at all times during (1) construction of the System and (2) after all initial construction is completed, when work of any kind that exceeds \$100,000.00 in estimated cost is being done to the System:
  - b. Builder's Risk Insurance, on an "All Risk" basis, in the amount of not less than one hundred percent (100 %) of the full insurable value of the portion of the System and related improvements which are to be constructed or are under construction, written on a completed value (non-reporting) basis, including (i) any so-called "soft cost" value sums, (ii) water damage, and (iii) collapse (subject to standard exclusions, e.g., defective materials, poor construction and improper maintenance), as well as flood insurance. If reasonably available with the payment of additional premium, the policy or policies shall be endorsed with coverage for (x) increased construction costs due to changes in Law, and (y) so-called "soft costs".
    - i. Commercial General Liability Insurance insuring all architects, engineers, contractors, subcontractors and construction managers, as applicable, in amounts acceptable to Grantor, and naming Grantor and Grantees as additional insureds (any contractor or subcontractor undertaking foundation, excavation or demolition work shall secure an endorsement on its policy to the effect that such operations are covered and that the "XCU Exclusions" have



- been deleted), including, but not limited to, Umbrella/Excess liability coverage of \$3,000,000.
- ii. Statutory Workers' Compensation Insurance in statutory amounts covering all architects, engineers, contractors, subcontractors and construction managers, as applicable, with respect to all of their employees.
  - iii. Professional liability coverage covering the architect/engineer's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than \$2,000,000 per claim and in the aggregate.
  - iv. Pollution Liability coverage with policy limits of not less than \$1,000,000 for each claim or occurrence and \$1,000,000 in the aggregate.
  - v. Grantees shall provide the Town certificates of such policies before any work subject to this section is begun.
- c. All insurance policies provided under any part of this Agreement shall (i) contain a provision requiring the insurer to give the Grantor thirty (30) days (ten (10) days in the event of non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, (iii) be maintained with companies either rated no less than A-VIII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party; (iv) shall name the **District of Chapman Beach** as an additional insured thereunder on CGL coverage required hereunder; and (5) shall expressly hold the Grantor harmless from all insured risks . In the event the insurance limits or coverages required by this Agreement require future adjustment to account for inflation or otherwise become commercially unreasonable such that additional coverages and/or increases to insurance limits become reasonably warranted and/or advisable, Grantor is authorized hereby to require Grantees to increase such coverages and/or limits. Grantees' insurance policies shall waive

rights of subrogation against the Grantor and its insureds. Coverage is to be provided on a primary, noncontributory basis.

- d. Grantees shall deliver to Grantor certificates of insurance evidencing the above required coverage before commencing any activity for which insurance is required by this Agreement. Grantor's receipt, review or acceptance of such certificate shall in no way limit or relieve the Grantees of the duties and responsibilities to maintain insurance as set forth in this Agreement. Grantees shall be responsible for the payment of their own deductibles.
  
- e. Grantees shall contractually require signed lien waivers for any work they perform or cause to be performed pursuant to this Agreement. Grantees shall also cause each of its contractor(s) and each of their subcontractors to provide to Grantor a payment and performance bond with a surety company acceptable to Grantor, which acceptance shall not be unreasonably withheld by Grantor, in an amount equal to the estimated cost of such work, thereby guaranteeing the completion of such work free and clear of all liens, encumbrances, security agreements, chattel mortgages, and conditional bills of sale, according to the plans and specifications therefore. The cost of all work performed pursuant to this Agreement shall be paid by Grantees so that Town property including the Easement Areas shall at all times be free of liens for labor and materials supplied or claimed to have been supplied in connection with such work. Grantees shall not suffer or permit any mechanics' liens to be filed against Town property including the Easement Areas by reason of work, labor, services or material supplied or claimed to have been performed and/or supplied to Grantees. If any mechanic's lien is filed against be filed against any Town property including the Easement Areas Grantees shall within thirty (30) days thereafter cause the same to be discharged and record a release thereof on the land records. If Grantees fail to cause such lien to be discharged within the thirty-day period, Grantees may (without being obliged to) discharge the same. Any costs and expenses incurred by Grantor to obtain the discharge and release of a lien with interest at the rates of ten (10%) percent per annum from the date the lien was recorded shall be paid by Grantees to Grantor immediately upon written demand.



## **G. NO WARRANTY OF TITLE OR SUITABILITY FOR PERMITTED USES**

1. Grantor makes no representation or warranty that it has fee title or any other legal interest in the Easement Area or that it has any right or authority to grant the Grantee any rights therein, or that the Easement Area is not subject to existing or contingent encumbrances and/or rights in conflict with this Agreement.

2. The Grantee acknowledges and agrees that Grantor is delivering and Grantee is accepting the Easement Area in "AS IS" condition and state of repair on the date this Agreement is executed by all Parties, without any representation or warranty by Grantor as to the physical condition, state of repair, quality, value or character or any other matter relating to or affecting the Easement Area, including their suitability for the Grantee's proposed use, and that Grantee shall rely solely on its own due diligence as to these matters.

3. Notwithstanding any provision of this Agreement, the District shall not have any monetary or financial obligation to the Grantee or any of them for any costs or expenses incurred for and/or claims for damage/injury resulting from the design, construction, maintenance, repair, remove, permitting, operation or use of the Utility.

## **H. MISCELLANEOUS**

1. **Amendment/Waiver.** Except as otherwise provided herein, this Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of each Party. No provision may be waived except in writing signed by all Parties.

2. **Bind and Benefit.** The terms and conditions of this Agreement bind and inure to the benefit of the Parties, and their respective heirs, executors, administrators, successors and assigns, including without limitation the Grantee's successors and assigns to the Property, provided that the Grantee may not assign its rights or obligations hereunder until the Utility Connections and the repaving of Hogan Road have been completed and approved by the District and all relevant government and utilities authorities. Each Party represents to the others that the person signing this Agreement on its behalf has been duly authorized to do so and to bind that Party to its terms.

3. **Entire Agreement.** This Agreement, including its Recitals, Exhibits, and any supplement or modification thereto pursuant to this Agreement, shall constitute the entire agreement of the Parties and will supersede all prior offers, negotiations and agreements, except for such portions of the Agreement as by their terms were intended to continue after the execution of this Easement.

4. **Governing Law/Jurisdiction and Venue.** Connecticut law without regard to choice or conflict of law principles will govern this Agreement. The Parties will make reasonable efforts to resolve any dispute that arises between them concerning the Agreement through good faith negotiation. If, however, legal action is taken, the exclusive jurisdiction for judicial actions arising from or involving this Agreement shall be in the superior court of the state of Connecticut and the exclusive venue shall be in the Judicial District for the District of Middlesex in Middletown. Jury trials and any right to remove an action to federal court are waived.

5. **No Electronic Signatures.** This Agreement will become effective only upon the handwritten legal execution, acknowledgment and delivery hereof by each Party, provided that a photocopy, faxed and/or scanned copy of each Party's handwritten legal execution and acknowledgement of this Agreement shall be enforceable as an original.

6. **Attorney's Fees.** The prevailing Party in any arbitration or litigation under this Agreement shall be entitled to recover its reasonable attorney's fees, costs and expenses of litigation and/or arbitration from the non-prevailing Party.

7. **Notices.** All notices, requests, demands and communications hereunder will be given by certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered, at the then current electronic mail address of the President of the District and of any member of the Grantee and/or of person representing each Party at any point in time. Any Party may change the place for the giving of notice to it or its electronic mail address by fifteen (15) days written notice to the others as provided in this section.

8. **Severability.** If any provision, term or condition of this Agreement is found invalid or unenforceable by any authority of competent jurisdiction, the remaining terms and

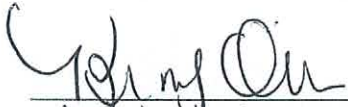


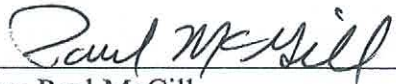
conditions will remain binding upon the Parties as though said unenforceable or invalid provision were not contained herein.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed and effective as of the date the last party executed this Agreement below.

**GRANTOR**

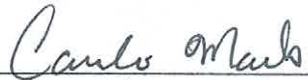
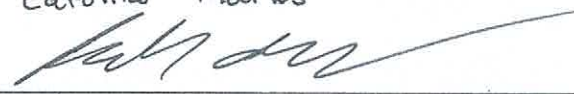
THE DISTRICT OF CHAPMAN  
BEACH


  
\_\_\_\_\_  
Kimberly Dwe

By:   
\_\_\_\_\_  
Name: Paul McGill  
Its Duly Authorized President  
Date:

**GRANTEE**

7 HOGAN ROAD, LLC

  
\_\_\_\_\_  
Caroline Marks  
  
\_\_\_\_\_  
Nick O'Leary

By:   
\_\_\_\_\_  
Name: William H. Coover  
Its' Duly Authorized Member  
Date: Jun 7 2023

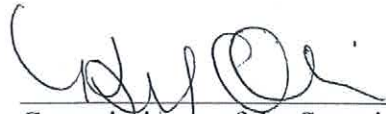
STATE OF CONNECTICUT            )  
  ) ss.  
COUNTY OF New London        )

On this the 5 day of JUNE, ~~2022~~ <sup>2023</sup>, personally appeared Paul McGill, known to me (or satisfactorily proven) to be the person duly authorized as President of the DISTRICT OF CHAPMAN BEACH, whose name is subscribed to the within instrument, and acknowledged the same to be his free act and deed and of the TAXING DISTRICT OF CHAPMAN BEACH, before me.

STATE OF CONNECTICUT )  
 )  
COUNTY OF New London ) ss.  
 )  
 ) 2023

On this the 5 day of JUNE 2022, personally appeared Paul McGill, known to me (or satisfactorily proven) to be the person duly authorized as President of the DISTRICT OF CHAPMAN BEACH, whose name is subscribed to the within instrument, and acknowledged the same to be his free act and deed and of the TAXING DISTRICT OF CHAPMAN BEACH, before me.

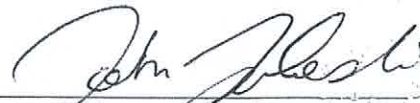
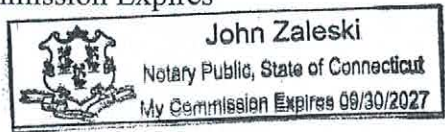
In witness whereof I hereunto set my hand.

  
\_\_\_\_\_  
Commissioner of the Superior Court  
Notary Public  
My Commission Expires  
**KIMBERLY A. OWEN**  
NOTARY PUBLIC  
MY COMMISSION EXPIRES SEPT. 30, 2025

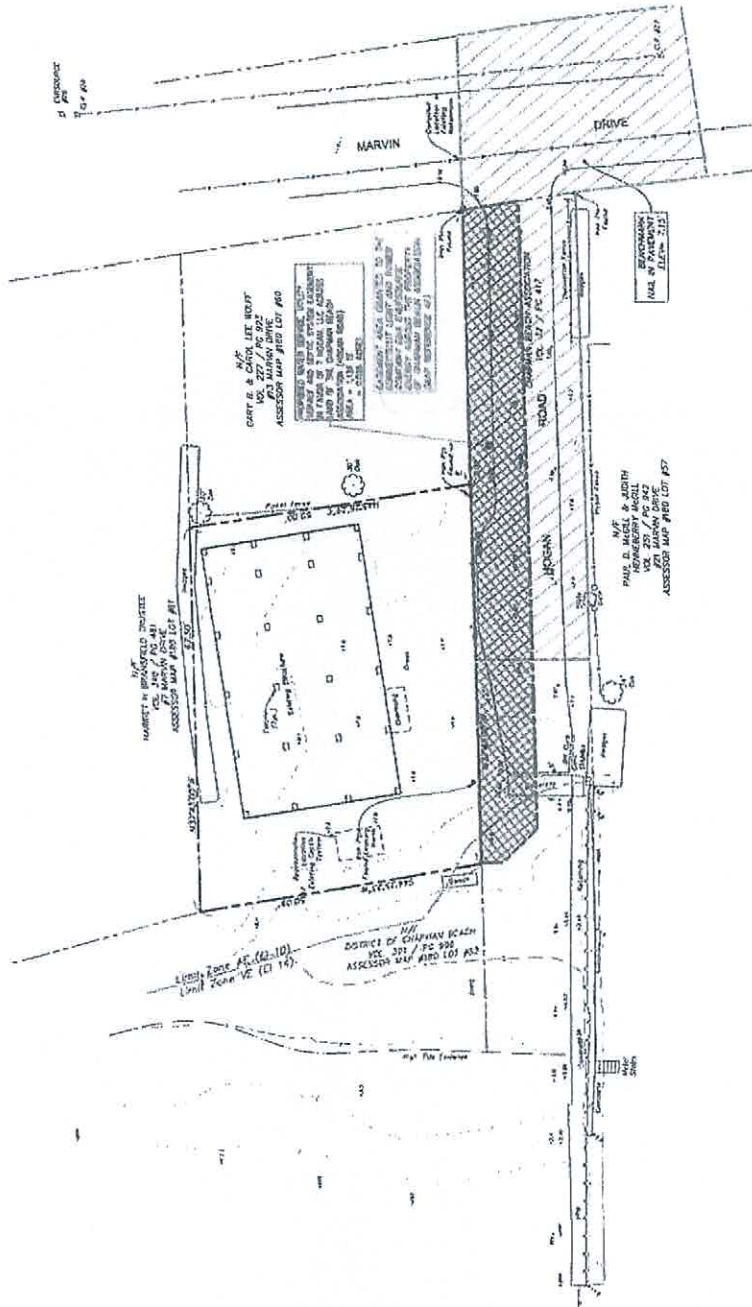
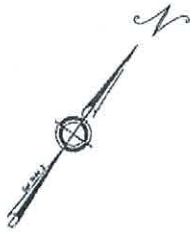
STATE OF CONNECTICUT )  
 )  
COUNTY OF ) ss.  
 )  
 )

On this the 6 day of June, 2022, personally appeared William Cours, known to me (or satisfactorily proven) to be the person duly authorized as Owner of 7 HOGAN ROAD, LLC, whose name is subscribed to the within instrument, and acknowledged the same to be her free act and deed and of 7 HOGAN ROAD, LLC, before me.

In witness whereof I hereunto set my hand.

  
\_\_\_\_\_  
Commissioner of the Superior Court  
Notary Public  
My Commission Expires  






**PRESENTATION PLAN**

**LAND OF**  
**HOGAN, LLC**  
 7 HOGAN ROAD  
 TOWN OF WESTBROOK  
 MIDDLESEX COUNTY, CONNECTICUT

Project No.	100
Scale	AS SHOWN
Date	02/22/23
Drawn by	[Signature]
Checked by	[Signature]
Approved by	[Signature]

**PP-1**

**Deed References**  
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Vicinity Map

**EXHIBIT A**

Received for record at Westbrook, CT  
 6/7/2023 01:31:26 PM

*Joseph Angelino*