

LEASE AGREEMENT BETWEEN THE  
TOWN OF GREENWICH  
AND GARDEN EDUCATION CENTER OF GREENWICH,INC.

This Lease Agreement, made this 1st day of October 2017 between the TOWN OF GREENWICH (hereinafter referred to as the "Town"), a municipal corporation of the State of Connecticut, acting herein by Peter J. Tesei, its First Selectman. hereunto duly authorized, and the GARDEN EDUCATION CENTER OF GREENWICH, INC. (hereinafter referred to as the "Corporation"), acting herein by Karen Sadik-Khan, its President, hereunto duly authorized:

WITNESSETH:

1. PREMISES

In consideration of the covenants on the part of the Corporation hereinafter contained, the Town hereby leases to the Corporation the following premises (hereinafter referred to as the "Premises"):

All that certain part of the buildings known as the New North Greenhouse a/k/a Horticultural Building and West Wing of the former mansion owned by the Town and located within the Montgomery Pinetum Park in the Town of Greenwich, the location of said buildings constituting the premises being more particularly designated on the map attached hereto and incorporated herein as Exhibit A.

2. TERM

A. The term of this lease shall be for a period often (10) years from October 1, 2017 to September 30, 2027.

B. The Corporation shall have an option to renew this Lease for one additional term of ten (10) years each on the terms and conditions hereafter set forth; provided, however, that written notice of the exercise of such option shall be given by the Corporation to the Town at least one (1) year prior to the expiration of the lease term. Upon receipt of such notice by the Town, this Lease shall be continued and shall remain in full force and effect for such additional ten (10) year term in accordance with the other terms and conditions provided herein.

3. RENT

The Corporation shall pay the Town the sum of One (\$1.00) Dollar per year, the entire amount of Ten (\$10.00) Dollars to be paid upon the execution of this lease.

4. CONDITION OF PREMISES

It is understood and agreed by and between the Town and the Corporation that the Corporation has examined the premises and accepts them in their present condition, and the premises are rented from the Town "as is" and as they stand at the time this lease is executed, and that the Town has made no representations whatsoever as to the present or future condition of the premises including defects.

5. USE OF PREMISES

It is expressly agreed that said leased premises shall be used for such purposes as are consistent Clause Seventh A of the First Codicil to the Last Will and Testament of Robert H. Montgomery, said Codicil found in Book 357 at page 405 of the Probate Records of the Town of Greenwich, a copy of which is attached hereto and incorporated herein as Exhibit B. The Corporation expressly agrees not to use or permit the premises to be used for any other purpose without the prior written approval of the Board of

Selectman. The Corporation further agrees that the use of said leased premises by the Corporation, its officers, agents, employees, and by its business and social guests shall not interfere or conflict with the use of the portions of the park not leased herein, or grounds adjacent to the premises or buildings by others. Said Corporation shall use its best efforts to schedule field trips and other activities of organized groups using the leased premises so that such conflict or interference will not occur. The use of the leased premises shall be limited to such times as the Montgomery Pinetum is open under applicable ordinances and regulations of the Town unless otherwise approved by the Director of Parks and Recreation. Any extensions of the hours of use shall be in accordance with such ordinances and regulations. This lease does not waive compliance by the Corporation, its officers, agents, employees and guests with all applicable ordinances and regulations affecting the general public in its use of the Montgomery Pinetum. When holding special events that attract large crowds, the Corporation will hire necessary Greenwich Police and Greenwich Fire Department Personnel to ensure (1) safety within all buildings used, and (2) proper use of all roadways and parking areas in the park and the adjacent neighborhood to ensure swift and safe passage for emergency public safety vehicles. The Corporation shall observe and comply with all Federal and State laws, rules and regulations as far as the use of the premises hereby leased are or may be concerned and save the Town harmless from all fines, penalties and costs for violations or noncompliance. No permits for the use of the premises or any part thereof shall be issued except by the Corporation. The Corporation shall furnish the Department of Parks and Recreation of the Town with a copy of each proposed permit at least three (3) days before the permit's effective date, otherwise waived by the Director of Parks and

Recreation. The Department of Parks and Recreation retains the right of final approval over the issuance of all permits and hours of operation. It is understood by and between the parties that nothing contained in this lease is intended to establish or create, or shall be construed as establishing or creating, the relationship of co-partners or joint venturers hereto, or as constituting the Corporation as the agent or representative of the Town for any purpose or in any manner whatsoever. Any failure to use the Premises as set forth in this section shall render the lease null and void at the option of the Town.

6. MAINTENANCE OF PREMISES

The Corporation, at its sole cost and expense, shall maintain the Premises in good repair and surrender it on the expiration or termination of the Lease in as good order and condition as it is now in, or as it may be placed by reason of any alteration made hereunder; subject to reasonable use and wear; and the Corporation agrees to commit no waste or injury to the Premises nor make any use of it except as provided in this Lease.

It is understood and agreed that the Corporation shall maintain the exterior and interior of the building in good condition and repair; however, any structural repair or replacement which may become necessary in the judgment of the Board of Selectmen during the term of this Lease, and which has not been caused by any act, omission, or negligence of the Corporation, shall be undertaken and repaired by the Town. The Corporation shall give the Town prompt notice of any such repairs and replacements. .

The Corporation will be solely responsible for and pay all charges for all utilities used or consumed on the Premises, including, but not limited to, telephone, heating, gas, water, and electricity.

The Corporation shall maintain the Premises and agrees to keep the same and all parts thereof in a clean and sanitary condition and free from any accumulation or inflammable materials and shall store any such matter in proper receptacles, and shall provide for the collection and disposal thereof. The Corporation shall keep all walkways free of snow and ice and in compliance with all applicable laws and regulations of the Town, State and Federal governments.

## 7. IMPROVEMENTS AND ALTERATIONS

The Corporation, during the term of this Lease, shall have the privilege of making alterations and improvements to the Premises, provided that no improvements or alterations of the Premises shall be made without the prior written approval of the Commissioner of Public Works of the Town.

The Corporation agrees that all materials used by it in any construction undertaken to the interior and exterior of the Premises shall be of high quality. To assure that such quality and consistency shall be obtained, the Corporation shall submit all drawings and specifications of all alterations, improvements, additions or changes proposed to be made by the Corporation in or to the Premises to the Commissioner of Public Works of the Town, or his designee, for his determination as to the quality of the materials intended to be used.

Any such improvements or alterations shall be the property of the Town and shall remain upon and be surrendered with the Premises on the expiration or termination of the Lease without compensation to the Corporation.

All improvements or alterations shall be made by the Corporation at its own cost and expense and shall be made in accordance with and conform to all applicable laws, ordinances, and regulations.

The Corporation shall obtain for any improvement or alteration such building permits and other regulatory or administrative approvals, including review and approval by the Planning and Zoning Commission, if necessary, as are normally incidental to the progress and satisfactory conclusion of the same.

All improvements or alterations shall be independently contracted. The Corporation shall promptly pay all contractors and material suppliers for work performed and materials supplied to the Premises and shall indemnify and save harmless the Town from any and all claims made against it by any such contractor, subcontractor or material supplier arising out of the above described work.

The Corporation shall comply with the bonding requirements and other provisions of Connecticut General Statutes seq. where applicable.

## 8. INSURANCE AND PROPERTY LOSS

A. The Corporation shall procure and maintain at its own expense at all times during the term of this Lease insurance of the types and amounts specified below insuring and protecting the Corporation and the Town from any and all claims for bodily injury, including accidental death, and for property damage arising out of the use of the Premises by the Corporation or its officers, agents, employees, members, licensees and invitees. All policies shall name the Town as an additional insured and shall contain appropriate "loss payee" provisions in favor of the Town. The insurance required shall be as follows:

(1) All risk commercial property insurance, including extended coverage, vandalism, malicious mischief, boiler and machinery, and flood, insuring for an amount not less than the current replacement cost for the value of the Premises including improvements, alterations, and additions made to the Premises by the Corporation and insuring the Corporation's own personal property. The Town will not carry insurance on the Corporation's property or improvements to the Premises by the Corporation.

(2) Commercial general liability insurance, including bodily injury and property damage liability and "personal and advertising liability injury" on an occurrence basis with respect to the Corporation's business and occupancy of the Premises for any occurrence of not less than One Million (\$1,000,000) Dollars combined single limit for bodily injury and property damage, One Million (\$1,000,000) Dollars "personal injury and advertising injury," One Million (\$1,000,000) Dollars aggregate for products and completed operations and Two Million (\$2,000,000) Dollars general aggregate or such greater amount as the Town may require from time to time. Such insurance shall contain a provision including coverage for all liabilities assumed by the Corporation under this Lease and shall name the Town and its employees, officers and agents, as an additional insured. Such insurance shall also waive subrogation against the Town.

(3) Fire insurance for the benefit of the Town against damage to the Premises by fire and other casualty, with extended coverage endorsement, the amount of such policy to be reasonably sufficient and not less than Five Hundred Thousand (\$500,000) Dollars.

(4) Umbrella liability, on an occurrence basis, in the amount of Five Million (\$5,000,000) Dollars each occurrence, Five Million (\$5,000,000) Dollars aggregate supplementing all coverages set forth in Subparagraphs (2) and (3) in this Paragraph SA. Such umbrella insurance shall be no more restrictive than the terms provided in Subparagraphs (2) and (3) of this Paragraph SA, and shall not contain a cross liability, employer's liability, or similar exclusion. The policy shall be endorsed to recognize aggregate for coverages set forth in Subparagraphs (2) and (3) of this Paragraph SA.

The Town shall have the right to require the Corporation to increase the above-mentioned insurance coverages from time to time as and to the extent that the Town Comptroller may require, but no such increase shall be arbitrary or unreasonable.

The Corporation shall furnish three (3) certificates to the Town of each insurance policy or policies upon the commencement of this Lease and thereafter within thirty (30) days prior to the expiration of each such policy. All insurance shall be carried by a company or companies authorized to do business in the State of Connecticut and having a rating of no less than A-/X1 as graded by Best's Rating Service. The Town shall receive at least sixty (60) days written notice of termination, non-renewal, or any material alteration of each insurance policy referred to in the Lease. All such policies shall be written as primary policies which do not to and are not to be merely excess coverage over that which the Town may carry. If the Corporation maintains a policy that is in excess of a self-insured retention, the self-insured retention must be disclosed prior to the execution of this Lease.

The Corporation shall not do or permit any act or thing to be done in or to the Premises which is contrary to law or which will invalidate or be in conflict with public



liability, fire or other policies of insurance at any time carried by or for the benefit of the Town with respect to the Premises, or which might subject the Town to any liability or responsibility to any person for property damage, nor shall the Corporation keep anything in the Premises except as now or hereafter permitted by the Greenwich Fire Department, the Connecticut Board of Fire Underwriters and any other authority having jurisdiction over the Premises, and then only in such manner and such quantity so as not to increase the rate of fire insurance applicable to the . Premises, nor use the Premises in a manner which shall increase the fire insurance rates for the Building or any property located therein because of any special risk over those in effect on the commencement date.

B. The Town and its employees, agents, and officers shall not be liable for: (i) any damage to or loss of property of the Corporation, the Corporation's employees, agents, tenants, lessees, licensees or invitees, by theft or otherwise; or (ii) any injury or damage to property or persons including without limitation the Corporation's employees, agents, tenants, lessees, licensees or invitees, resulting from any cause whatsoever in connection with the use of the Premises, unless caused by or due to an affirmative or willful act of the Town, its employees, agents or officers.

Any damage to the Premises by reason of the moving of equipment or furnishings, or the installation thereof by or on the Corporation's behalf, shall be promptly repaired by the Corporation to the reasonable satisfaction of the Town and at the Corporation's sole cost and expense.

## 9. INDEMNIFICATION

The Corporation shall indemnify, defend and save the Town harmless from and against all liabilities, obligations, damages, penalties, claims, losses, costs and

expenses, including reasonable attorneys' fees, paid suffered or incurred as a result of (i) any breach by the Corporation, its officers, agents, contractors, employees, tenants, lessees, licensees or invitees, of any covenant or condition of this Lease; or (ii) any negligence or willful act of the Corporation, its officers, agents, contractors, employees, tenants, lessees, licensees or invitees; or (iii) the use and occupancy of the Premises by the Corporation, its officers, agents, employees, tenants, lessees, licensees or invitees.

The Corporation shall keep fully informed and comply with all existing and future federal, state and local laws, ordinances, rules and regulations affecting, controlling and governing the use of the Premises and shall indemnify and hold harmless the Town, its officers, employees and agents, from and against any and all claims, demands, suits, proceedings, liabilities, judgments, penalties, losses, damages, costs and expenses, including reasonable attorneys' fees, arising from or based upon my violation or claimed violation of any such laws, ordinances, rules and regulations, whether committed by the Corporation or any of its officers, agents, employees, tenants, residents, lessees, licensees or invitees.

#### 10. SUBLETIING AND ASSIGNMENT

The Corporation may sublet the Premises only with the express permission of the Board of Selectmen and with whatever terms or conditions the Board of Selectmen sets on the proposed sublet agreement. These terms may require Municipal Improvement approval. Any sublease agreement must be approved by the Board of Selectmen. Violation of the terms or conditions set by the Board of Selectmen constitutes reason for termination of this Lease.

11. INSPECTION AND EMERGENCY REPAIRS

The First Selectman of the Town, the Director of Parks and Recreation, the Commissioner of Public Works and their authorized agents shall have the right to enter and inspect the premises at all reasonable times. The Corporation hereby agrees that the Town may direct, during emergency, any repairman or company to make any immediate repairs in the premises for code and public safety defects, and that such repairman or company shall be the agent of and be paid by the Corporation.

12. TERMINATION

The Town may terminate this Lease prior to the expiration of the Lease term, as provided in this paragraph

A. The Town's Right to Terminate

The Town shall have the right to terminate this Lease upon the following terms and conditions:

- (1) Upon 90-days written notice
  - a. The First Selectman of the Town, with the prior approval of the Representative Town Meeting, shall have the right to terminate this Lease at any time by giving the Corporation ninety (90) days advance written notice.
  - b. The Corporation shall have the right to terminate this Lease at any time by giving the Town ninety (90) days advance written notice.

(2) Upon Default by the Corporation

- a. If the Corporation does not procure and maintain insurance as required by this lease;
- b. If the Premises are abandoned or deserted;
- c. If any lien, attachment or other encumbrance is lodged against the Premises by a party claiming loss, through or under the Corporation and is not discharged within thirty (30) days or otherwise provided for to the Town's reasonable satisfaction within such time, or;
- d. If the Corporation fails to comply with any provision of this Lease and does not cure such default within the thirty (3) days of receipt of the notice thereof from the Town.

In any of the foregoing events, this Lease and the term thereof may terminate and expire at the option of the Town and the Corporation shall quit and surrender the Premises as provided herein.

In the event of a default under Subparagraph 12A(2)d, if the Town shall serve upon the Corporation a written notice specifying the nature of the default and upon the expiration of thirty (30) days thereafter the Corporation shall have failed to remedy such default, or if such default or omission complained of is of a nature that the same cannot be completely cured or remedied within such thirty (30) day period, and the Town determines the Corporation has not diligently commenced curing such default within such thirty (30) day period and shall not thereafter with diligence and in good faith proceed to remedy or cure such default, that this Lease and the terms thereof shall at the Town's

option and upon notice to the Corporation terminate and expire, and the Corporation shall quit and surrender the Premises to the Town, but the Corporation shall remain liable to the Town as hereafter provided.

In the event of a default by the Corporation under this Lease, the Town shall have the right of injunction and the right to invoke remedy allowed at law or in equity if re-entry summary process and other remedies were not herein provided for. The recitation in this Lease of any particular right or remedy shall not preclude the Town from any other remedy available at law or in equity. The Corporation acknowledges that this Lease constitutes a commercial transaction within the meaning of §52-278a of the Connecticut General Statutes. Pursuant to of the Connecticut General Statutes, the Corporation hereby and relinquishes all rights to notice and hearing as provided in §52-278a through §52-278g of the Connecticut General Statutes prior to the Town obtaining any prejudgment remedy against the Corporation in connection with the enforcement by the Town of any of its rights or remedies under this Lease. The Corporation expressly waives notice to quit possession or occupancy of the Premises upon termination of this Lease pursuant to of the Connecticut Statutes.

Upon termination as provided above, the Town may without further notice re-enter the Premises dispossess the Corporation by statutory process or otherwise and remove the Corporation's effects and hold the Premises as if this Lease had not been made, and the Corporation hereby waives the service of any notice to quit or notice of intention to re-enter or any other notice for condition broken as at common law.

B. Effect of Termination or Expiration on Lease Obligations

If this Lease is terminated prior to the full Lease term, neither party shall thereafter have any obligations whatsoever to the other except as provided in this Lease, and except that the Corporation shall pay for any obligations or liabilities under this Lease which have accrued prior to the date of such termination or expiration.

C. Effect of Termination Expiration on Return of the Building

Upon termination of the Lease, the Town may require the Corporation at its sole cost and expense to return the Building in a structurally sound condition consistent with its prior use.

D. Town's Performance Upon Default by the Corporation

If the Corporation under this Lease, the Town may at its option but without obligation to do so immediately, or at any time thereafter and without notice, remedy the same at the sole cost and expense of the Corporation in lieu of enforcing its other rights hereunder.

If the Town makes any expenditures or incurs any obligations for the payment of money in connection therewith including but not limited to costs, fines, penalties, interest, damages and reasonable attorneys' fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred shall be paid immediately by the Corporation to the Town upon the rendition of any bill or statement to the Corporation therefor, together with interest thereon at a rate equal to twelve (12%) percent per annum.

Nothing herein contained shall be construed as to require the Town to incur any expenses or obligations on behalf of the Corporation.

E. No Waiver

The failure of the Town to seek redress for any violation of or to insist upon the strict performance of any of the terms of this Lease or of any of the rules and regulations set forth herein or hereafter adopted by the Town, shall not waive the effect of or excuse such violation or performance or any subsequent violation or performance.

No act or thing done by the Town or its agents during the Lease term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid, except in writing by the Town.

Except as provided in Paragraph 11 above, no employee or agent of the Town shall have any power to accept the keys to the Premises prior to the termination of this Lease, and the delivery of the keys to any such agent or employee shall not operate as a termination of this Lease or a surrender of the Premises.

13. DAMAGE BY FIRE OR OTHERWISE

If the Premises are destroyed or damaged by fire or other cause to the extent which in the opinion of the First Selectman of the Town renders the repair and reconstruction thereof imprudent or impractical, taking into consideration the aforesaid fire insurance and after consultation with the Corporation, then and in such case the term hereby created shall, at the option of the First Selectman, cease and become null and void, and the Corporation shall immediately surrender the Premises and all the Corporation's interest therein to the Town, and the Town may re-enter and possess the Premises thus discharged from this Lease. The Corporation agrees that prior to surrender of possession under this section, the Corporation shall, at no expense to the

Town, remove from the Premises all ruins and debris resulting from such damage by fire or other cause.

If it is determined by the First Selectman of the Town that the Premises should be repaired or reconstructed and the proceeds of the policy not adequate to repair or replace the in accordance with the requirements of the Board of Selectmen, the Corporation shall be obligated to contribute such additional sum as may be required to repair or reconstruct the Premises in conform with such requirements.

The Corporation agrees that any insurance proceeds paid or payable to the Corporation or to the Town shall inure to the Town and the Corporation hereby assigns such proceeds to the Town.

A location between the parties of any insurance proceeds paid or payable to the Town and the Corporation, in the event of any damage by fire or other cause, shall be decided by the Representative Town Meeting, which shall take into account in making its determination improvements made by the Corporation at its cost.

#### 14. NOTICES

Any written notice required to be sent under the provisions of this Lease shall be sent as follows:

Notices from the Corporation to the Town shall be sent by registered or certified mail to or delivered to the Town at the First Selectman's Office, Town Hall, 101 Field Point Road, Greenwich, CT 06836-2540.

Notices from the Town to the Corporation shall be sent by registered or certified mail to or delivered to the Garden Education Center of Greenwich, Inc., Montgomery Pinetum, Bible street, Cos Cob, CT 06807.



15. ANNUAL REPORT

Within sixty (60) days after each anniversary year of this lease, the Corporation shall file with the First Selectman a financial report and report of program activity for the year.

16. HOLDING OVER

In the event that the Corporation shall remain in the demised premises after the expiration of the term of this lease without having executed a new written lease with the Town, such holding over shall not constitute a renewal or extension of this lease. The Town may, at its option, elect to treat the Corporation as one who has not removed at the end of its term, and thereupon be entitled to all the remedies against the Corporation provided by law in that situation, or the Town may elect, at its option, to construe such holding over as a tenancy from month to month, subject to all the terms and conditions of this lease, except as to duration thereof, and in that event the Corporation shall pay rent in advance at the rate provided herein as effective during the last period of the demised term.

17. MODIFICATIONS

No modification or waiver of any of the terms of this Lease shall be valid unless in writing and duly executed by the parties hereto with the same formality as this Lease.

18. ENJOYMENT

The Corporation shall peaceably and quietly have, hold and enjoy the leased Premises for the term aforesaid, subject to the performance of the covenants of this Lease in all respects on the part of the Corporation.

19. ENTIRE AGREEMENT

This Lease is entire and complete and embodies all understanding and agreements between the parties. No representation, warranty, or undertaking of any kind or nature has been made to either party to induce the making of this Lease, except as is expressly set forth herein. The parties acknowledge that there is no other agreement, oral or written, existing between them. No oral statement or prior written matter outside of this Lease shall have any force or effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Signed, Sealed and Delivered

In the Presence of:

TOWN OF GREENWICH

\_\_\_\_\_

By: \_\_\_\_\_

Peter J. Tesei  
First Selectman

GREENWICH GARDEN EDUCATION  
CENTER, INC.

\_\_\_\_\_

By: :--- =-----

Karen Sadik-Khan  
President  
Herein Duly Authorized

STATE OF CONNECTICUT)

) ss: Greenwich

COUNTY OF FAIRFIELD )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2017, personally appeared Peter J. Tesei, First Selectman of the TOWN OF GREENWICH, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, and the free act and deed of said TOWN OF GREENWICH, before me.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF CONNECTICUT)

) ss: Greenwich

COUNTY OF FAIRFIELD )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2017, personally appeared Karen Sadik-Khan in her capacity as President of GREENWICH GARDEN EDUCATION CENTER, INC., signer and sealer of the foregoing instrument, and acknowledged the same to be her free act and deed, and the free act and deed of GREENWICH GARDEN EDUCATION CENTER, INC., before me.

\_\_\_\_\_  
Notary Public

My Commission Expires:

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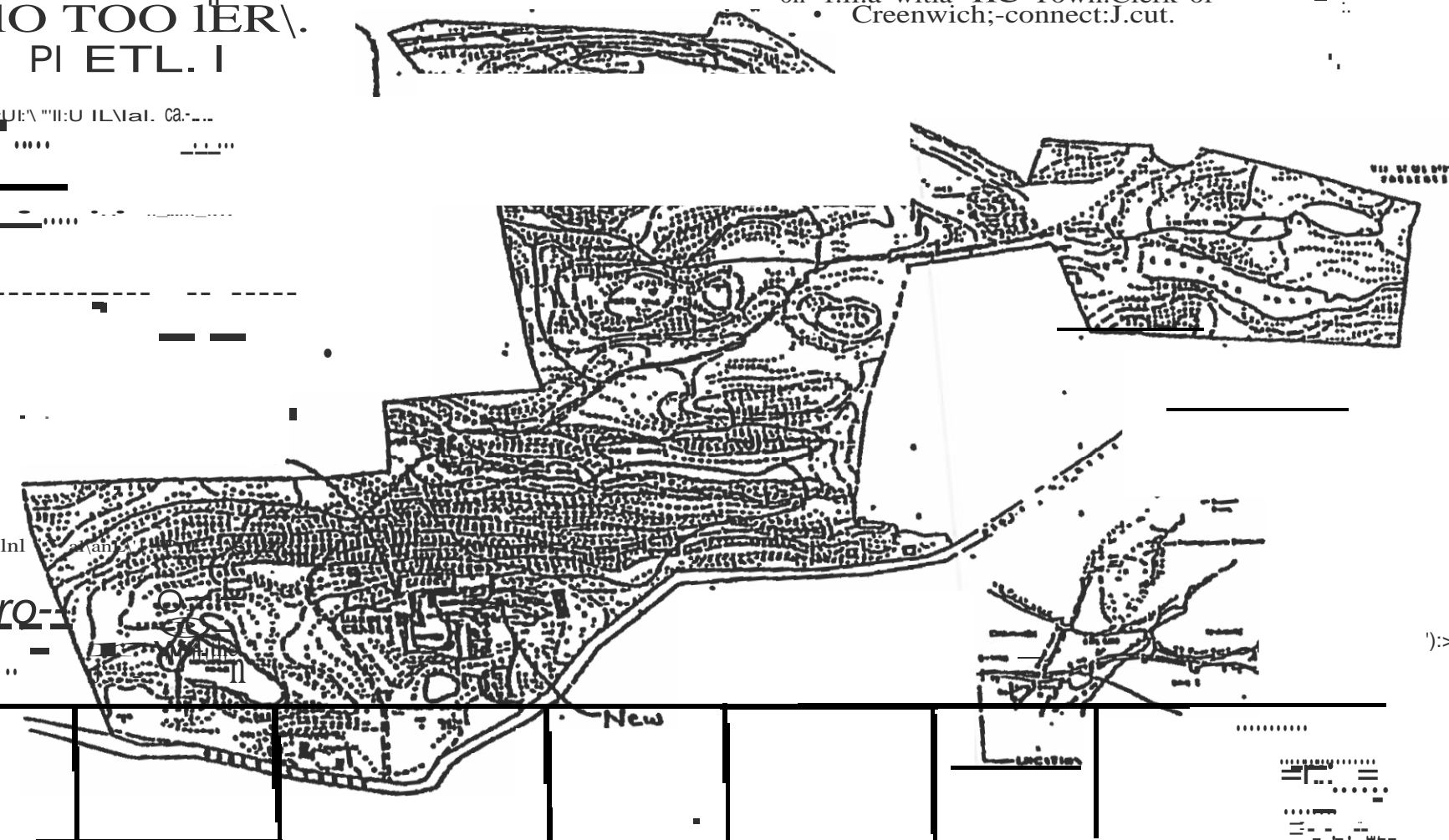
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Location

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a/k/a Hortlultur•l Building

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Clause SEVENTH A reading as follows: P.P. 357 r.ctt 4US

SEVENTH A

In paragraph number V of Clause SIXTH, I referred to the liquidation of the property owned by me at Greenwich, Connecticut, either during my lifetime or thereafter. I have now concluded that this property known as "Wild Acres" should not be disposed of in any way which would destroy its unique beauty. This property contains one of the very few primeval hemlock forests still remaining in the State of Connecticut. It has three lakes, brooks, a deep ravine, steep hills and a pinetum containing a magnificent collection of conifers, many now of great size, including at least one hundred different varieties and species. It is my wish that that portion of this property containing features of beauty and uniqueness be preserved as a public park or garden for the pleasure and education of the public at large. I, therefore, give and devise the entire aforesaid real property, including the buildings and improvements thereon owned by me, and located in the Town of Greenwich, Connecticut, to the TOWN OF GREENWICH, CONNECTICUT, on the condition that the TOWN OF GREENWICH shall agree that that portion of the property comprising the hemlock forest, waterways, lakes, the pinetum and such other land as may be necessary to form a logical park and such as a landscape architect would consider necessary to form a harmonious whole shall be used and maintained as a public park or garden. Since some name for the park or garden is necessary, I suggest "MONTGOMERY PINETUM" as most suitable. In order to reduce or eliminate the burden of the upkeep, I direct that all of the remaining acreage not required for the park or garden and all unnecessary buildings may be sold or torn down from time to time, provided however, that the proceeds thereof shall be used exclusively for the care, maintenance and further beautification of the park or garden. The proceeds of any such sales shall be placed in a special fund, and any amounts not required for the current care, maintenance and beautification of the park or garden shall be preserved so that the funds and any income thereon may be available for use in subsequent years.

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