

y

## AGREEMENT CONCERNING DRAINAGE OUTFALL

WITNESSETH: This Agreement entered into this 4<sup>th</sup> day of February, 2009 by and between THOMAS WOODRUFF of 8 Kelley Road, Falmouth, Maine 04105 (hereinafter "Woodruff") and the TOWN OF FALMOUTH, MAINE, a municipal corporation with a mailing address of 271 Falmouth Road, Falmouth, Maine 04105 (hereinafter "Town").

WHEREAS, Woodruff is the owner of certain real estate located at 8 Kelley Road, Falmouth, Maine 04105, which real estate is shown on the Town's assessing records as parcel U01-211 (hereinafter "Woodruff Lot");

WHEREAS, there exists on the Woodruff Lot a drainage outfall pipe at a location approximately shown on Exhibit A hereto;

WHEREAS, Woodruff and the Town acknowledge that this outfall pipe has been located at this location for more than 20 years and that it discharges water runoff from a public road or roads, including Route One and Kelley Road; and

WHEREAS, an agreement concerning the same drainage outfall pipe was entered into on November 20, 1984 by and between Marjorie Peterson and the Town and, by its terms, was binding on the parties and their heirs, successors and assigns; and

WHEREAS, Woodruff and the Town wish to ensure that the drainage outfall is not blocked and that it is properly maintained.

NOW THEREFORE: In consideration of the mutual promises herein and other good and valuable consideration, the adequacy of which is hereby acknowledged, Woodruff and the Town agree as follows:

The Town may enter upon the Woodruff Lot at reasonable times and upon reasonable notice to the Lot owner to clean, maintain, repair and replace the drainage outfall pipe and associated drainage area and the drain pipe that crosses the Lot, provided that the Town shall restore the ground surface as nearly as reasonably possible to the condition it was in before such activities.

In the event that the drainage pipe must be relocated in order to accommodate Woodruff's use of the Lot, the Town shall undertake such work and move the pipe to a mutually agreeable location on the Lot, all at Woodruff's expense.

Woodruff may make not more than one connection to the drainage pipe to carry water runoff from the Woodruff Lot subject to the following conditions:

- a. Woodruff shall obtain the prior written approval of the Falmouth Parks and Public Works Director for the manner and location of the connection; and
- b. Woodruff agrees to defend, indemnify and hold harmless the Town against and from any suits, judgments, costs and expenses arising out of Woodruff's connection to the drainage pipe.

Woodruff agrees that neither he nor his agents will block the drainage outfall.

This Agreement shall run with the land and be binding upon the parties' heirs, successors and assigns.

This Agreement reaffirms and supplements the aforementioned Agreement of November 20, 1984 except that, where there are inconsistencies, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed at Falmouth, Maine on the date above written.

TOWN OF FALMOUTH

Witness: \_\_\_\_\_

By: Nathan Poore  
Its: Town Manager

Witness: Melissa Inyon

Thomas Woodruff  
Thomas Woodruff

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

\_\_\_\_\_, 2008

Personally appeared before me the above named Nathan Poore, Falmouth Town Manager, and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of the Town of Falmouth, Maine.

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