

AGREEMENT

AGREEMENT made as of the ____ day of _____, 2007 by and between THE TOWN OF FALMOUTH, a political subdivision of the State of Maine with an office at 271 Falmouth Road, Falmouth, Maine 04105, (hereinafter, the "Town"), and FAMILY ICE, a not-for-profit corporation formed and existing under the laws of the State of Maine with an address of 20 Hat Trick Drive, Falmouth, Maine 04105.

RECITALS

WHEREAS, the Town and Family Ice are parties to a certain Ground Lease Agreement dated May 28, 1998, as amended to date (hereinafter, the "Lease"), a Memorandum of which is recorded in the Cumberland County Registry of Deeds in Book 14059, Page 132, relating to property of the Town located on Clearwater Drive in Falmouth, Maine commonly known as the Family Ice Center; and

WHEREAS, the Town, Family Ice, Falmouth Plaza, LLC, a Maine limited liability company, and Wal-Mart Real Estate Business Trust, a Delaware business trust, have entered into a certain Public-Private Limited Development Agreement dated as of _____, 2007 (hereinafter, the "LDA") relating to, among other matters, improvements to be made to Hat Trick Drive adjacent to the premises described in the Lease, which improvements will include that portion of Hat Trick Drive currently located on the leased premises and used by Family Ice as a service entrance to the leased premises; and

WHEREAS, the Town and Family Ice desire to enter into this Agreement to confirm the status of the Lease and to address maintenance and repair obligations as to that portion of Hat Trick Drive located on the leased premises.

NOW, THEREFORE, the parties mutually agree as follows:

1. Status of Lease. The Town and Family Ice acknowledge and agree that the LDA shall not be deemed to modify or amend the terms and provisions of the Lease in any manner.
2. Maintenance and Repair of Hat Trick Drive. Notwithstanding the terms and provisions of the Lease, the Town and Family Ice agree that any costs and expenses associated with maintenance and repair of that portion of Hat Trick Drive located on the leased premises, other than normal and customary maintenance such as snowplowing, removal of ice, sanding, sweeping and the like which will continue to be the responsibility of Family Ice under the terms and provisions of the Lease, shall be the responsibility of the Town. Notwithstanding the foregoing, if such shared costs and expenses are necessitated by the acts of Family Ice, its employees, contractors or agents, such as, by way of example, damage resulting from the use of construction equipment or machinery on the leased premises, the costs and expenses of such maintenance and repair shall be borne solely by Family Ice.
3. This Agreement relates solely to the obligations of Family Ice and the Town under the Lease and shall not be deemed to amend or modify the terms and provisions of the LDA.

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

WITNESS:

TOWN OF FALMOUTH

By: _____

Nathan A. Poore
Its Town Manager

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2007

Then personally appeared the above-named Nathan A. Poore, Town Manager of said Town of Falmouth, and acknowledged the forgoing to be his free act and deed in his said capacity and the free act and deed of said Town of Falmouth.

Before me,

Notary Public
Attorney at Law

Print name

WITNESS:

FAMILY ICE

By: _____

Peter J. Wellin
Its President

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2007

Then personally appeared the above-named Peter J. Wellin, President of said Family Ice, and acknowledged the forgoing to be his free act and deed in his said capacity and the free act and deed of said Family Ice.

Before me,

Notary Public
Attorney at Law

Print name