

EASEMENT AGREEMENT

This AGREEMENT made as of the ____ day of _____, 2007 is 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, (“Town”), and FALMOUTH PLAZA, LLC, a limited liability company formed and existing under the laws of the State of Maine with an address of P.O. Box 100, York Harbor, Maine 03911, (“Falmouth Plaza”).

RECITALS

- A. Falmouth Plaza owns two adjacent parcels of land and the buildings thereon in Falmouth, Maine (the “Falmouth Plaza Parcel”), a portion of which is shown on that certain Easement Plan of Falmouth Plaza recorded in the Cumberland County Registry of Deeds in Plan Book _____, Page _____ (the “Plan”) , together with certain rights and easements reserved by Falmouth Plaza over a portion of property conveyed by Falmouth Plaza to WAHA Properties, LLC (“WAHA”) by deed dated January 31, 2006 and recorded in the Cumberland County Registry of Deeds in Book 23654, Page 70, and subsequently conveyed by WAHA to J.E.P., LLC (“JEP”) by deed dated November 9, 2006 and recorded in the Cumberland County Registry of Deeds in Book 24557, Page 270, said portion of said WAHA property now owned by JEP being referred to in said deed to WAHA as the “Hat Trick Drive Easement Area” and being a portion of “Hat Trick Drive” as shown on the Plan. The Falmouth Plaza Parcel is adjacent to U.S. Route 1 and Clearwater Drive, and has access to and from Depot Road over said Hat Trick Drive Easement Area. For a description of the Falmouth Plaza Parcel, reference is made to a deed from Middle Deer Associates dated December 31, 1997 and recorded in the Cumberland County Registry of Deeds in Book 13546, Page 121 and a deed from Middle Deer Associates dated December 31, 1997 and recorded in the Cumberland County Registry of Deeds in Book 13546, Page 118, excluding, however, that portion conveyed to WAHA by Falmouth Plaza and subsequently conveyed by WAHA to JEP in said deeds referenced above.
- B. The Town owns a parcel that is adjacent to and westerly of the Falmouth Plaza Parcel. A portion of this parcel (the “Town Parcel”) is leased to Family Ice, a Maine not-for-profit corporation under a certain Ground Lease dated May 28, 1998, memorialized by a Memorandum of Lease dated July 29, 1998, and recorded in said Registry of Deeds in Book 14059, Page 132. A portion of the Town Parcel is shown on the Plan. For the Town’s source of title for the Town Parcel, reference is made to a deed from Emery-Waterhouse Co. to the Town recorded in the Cumberland County Registry of Deeds in Book 3173, Page 446.
- C. The Town, Falmouth Plaza and others entered into a certain Public-Private Limited Development Agreement dated as of _____, 2007, to reconfigure and extend “Hat Trick Drive” (as shown on the Plan), and to make other changes and improvements to the general vicinity of Hat Trick Drive. Following the reconfiguration: (i) Hat Trick Drive will be a private road located on the westerly side of U.S. Route 1 within the Town that connects Depot Road and Clearwater Drive; (ii) Hat Trick Drive will be located in

part on the Falmouth Plaza Parcel, in part on the Town Parcel, and in part located within the Hat Trick Drive Easement Area on the land formerly owned by WAHA and now owned by JEP.

- E. Following the reconfiguration of Hat Trick Drive the parties desire to establish an additional easement in favor of Falmouth Plaza with respect to the common use of Hat Trick Drive under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereby grant, reserve, and agree as follows:

The Town GRANTS to Falmouth Plaza, its successors and assigns, with QUITCLAIM COVENANT a perpetual non-exclusive right and easement for pedestrian and vehicular access by the Falmouth Plaza and its tenants and their respective employees, agents, tenants, invitees and guests, for purposes of ingress and egress between Clearwater Drive and the Falmouth Plaza Parcel over that portion of Hat Trick Drive located on the Town Parcel as shown on the Plan (the "Falmouth Plaza Easement Area"), together with the right to access and place snow on areas on the Town Parcel immediately adjacent to the Falmouth Plaza Easement Area consistent with Falmouth Plaza's maintenance obligations set forth herein.

Reserving to the Town, its successors and assigns, the use and enjoyment of the Falmouth Plaza Easement Area for all purposes that are not inconsistent with and that do not materially interfere with the use thereof by Falmouth Plaza, its successors and assigns.

The right and easement conveyed and reserved herein and the terms and conditions hereof shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns. The rights and easement conveyed herein shall be appurtenant to and shall run with the Falmouth Plaza Parcel. The reservations herein shall be appurtenant to the Town Parcel.

So long as Family Ice is a tenant of the Town at the Family Ice Center, Falmouth Plaza, at its sole cost, will (i) plow and sand all of the Hat Trick Drive paved roadway within the Falmouth Plaza Easement Area and (ii) sweep and stripe the Hat Trick Drive paved roadway within the Falmouth Plaza Easement Area as may be reasonably required and/or appropriate.

Provided, however, that in the event that certain Easement Agreement by and between Falmouth Plaza, LLC and the Town of even date herewith and recorded in said Registry of Deeds in Book _____, Page _____, is terminated pursuant to the terms and provisions of that certain Mortgage Subordination Agreement by and among The Guardian Life Insurance Company of America, Falmouth Plaza and the Town of even date herewith and recorded in said Registry of Deeds in Book _____, Page _____, this Easement Agreement shall also simultaneously terminate and be of no further force and effect.

Nothing herein shall be deemed to amend or otherwise modify the terms and conditions of the above-referenced Public-Private Limited Development Agreement.

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed by their representatives, thereunto duly authorized, as of the date first set forth above.

WITNESS:

TOWN OF FALMOUTH
a political subdivision of the State of
Maine

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 the Town of Falmouth, Maine, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity the free act and deed of said Town of Falmouth.

Before me,

Notary Public/Attorney At Law
Print name: _____

WITNESS:

FALMOUTH PLAZA LLC
a Maine limited liability company

By: G.L. Rogers & Co., Inc.,
Its Manager

By: _____
George L. Rogers
Its President

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2007

Then personally appeared the above-named George L. Rogers, President of G. L. Rogers & Co., Inc., Manager of Falmouth Plaza LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said G. L. Rogers & Co., Inc. in its capacity as Manager of said Falmouth Plaza LLC, and the free act and deed of said Falmouth Plaza LLC.

Before me,

Notary Public/Attorney At Law
Print name: _____