

MAR - 9 2011

AGREEMENT ON STRUCTURE IN RIGHT-OF-WAY

This Agreement is entered into this ____ day of March 2011 by and between the Town of Falmouth, Maine ("Town"), a municipality with a mailing address of 271 Falmouth Road, Falmouth, Maine 04105, and Paul F. Walsh and Janis S. Walsh, Trustees of the Walsh Family Trust ("Trustees"), with a mailing address of 7307 North Black Rock Road, Scottsdale, Arizona 85253-2887.

WHEREAS, the Trustees are owners of real property located at 229 Foreside Road, Falmouth, Maine as described more particularly in that certain deed to Trustees dated September 6, 2007 and recorded in the Cumberland County Registry of Deeds in Book 25629, Page 75, and as shown on the Town's tax maps as U16-087 (the "Property");

WHEREAS, the Town is the holder of an easement or right-of-way over a portion of the Property (the "Easement Area") for the purpose of constructing and maintaining a sewer pipe; a more particular description of such Easement Area appearing in an instrument recorded at the Cumberland County Registry of Deeds in Book 3121, Page 103, at Page 125;

WHEREAS, the Town's sewer pipe is above ground as it passes through the Easement Area and restricts access to the shoreline from the residence on the Property;

WHEREAS, the Trustees wish to construct a stairway over the Town's sewer pipe and have submitted plans to the Town for the proposed stairway dated December 6, 2010 and entitled "229 Foreside Road, Falmouth, Maine, Proposed Stair Framing Plan and Details" and drawn by Associated Design Partners, Inc. (the "Plan"); and

WHEREAS, the Town wishes to accommodate the proposed stairway provided that it does not interfere with the Town's ability to inspect, maintain, repair and replace the sewer pipe.

NOW THEREFORE, the Town and the Trustees agree as follows:

1. The Trustees, their successors and assigns may construct, maintain, repair and replace the proposed stairway over the sewer pipe at the location shown on the Plan and in substantial conformance with the schematic shown on the Plan, a copy of which is on file at the Town's Sewer Department, provided that the stairway shall be constructed and affixed to the ground in a manner which facilitates its removal if removal is required pursuant to Section 3 below.

2. The Trustees, their successors and assigns shall maintain the stairway in a good, and serviceable condition so that it does not present, in the opinion of the Town's Sewer Department, an unacceptable risk of damage to the sewer pipe. If the Town determines that the condition of the stairway presents an unacceptable risk of damage to the sewer pipe, the Town may remove the stairway if the Trustees, or then owner of the Property, fails to remove the stairway or to correct the condition after the Town affords thirty (30) days prior written notice to the Trustees or to the then owner of the Property of such risk.

3. The Town shall have the right to temporarily remove the stairway as needed when necessary or desirable to gain access to the sewer pipe for maintenance, repair or replacement and upon reasonable written notice to the Trustees or the then owner provided, however, that the Town may dispense with notice in cases of emergency.

4. The Town shall have no liability for any damage to the stairway or for personal injury resulting from damage to the stairway or for incidental damage to shrubs or vegetation resulting from the Town's removal of the stairway for any reason. The Town shall have no obligation to re-install the stairway after removal.

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

TOWN OF FALMOUTH

 Witness

Claudia A. Coleman

 Witness

Claudia A. Coleman

 Witness

 By: Nathan A. Poore
 Its: Town Manager

Paul F. Walsh

 Paul F. Walsh
 Trustee of the Walsh Family Trust

Janis S. Walsh

 Janis S. Walsh
 Trustee of the Walsh Family Trust

STATE OF MAINE
CUMBERLAND, ss.

March ____, 2011

Then personally appeared before me the above named Nathan A. Poore, Town Manager of the Town of Falmouth, Maine, 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.

Before me,

Notary Public
Print Name: