

DrummondWoodsum

MEMO

TO: Nathan Poore

FROM: William L. Plouffe

DATE: May 4, 2011

SUBJECT: Overview of the Hat Trick Drive Project and Agreements

This Memorandum summarizes for the Town Council and you the key elements of the Hat Trick Drive project and the Agreements/Easements which the Council is being asked to authorize in order to move the project to completion.

The Hat Trick Drive project has been in the negotiation and planning stages for several years. It began when the Town approached Wal*Mart about possible violations of the outdoor display provisions of the Zoning Ordinance, especially near the garden center area of the store. This led to a discussion of establishing a roadway behind Wal*Mart in conjunction with Wal*Mart's plans to reconfigure and expand its garden center and loading area. Wal*Mart eventually decided not to pursue its new garden center plans and the Hat Trick Drive project was put "on hold" for an extended period.. However, Wal*Mart recently decided to enter a new lease with the owner of Falmouth Plaza and to greatly expand the Wal*Mart store (taking over the movie theatre space).

The project is designed to establish a travel way for use by the public from Depot Road; past property owned by J.E.P., LLC (location of Black Cherry Provisions); onto property owned by Falmouth Plaza, LLC; past the Town's parking area for the outdoor basketball courts and Twombly ice rink; behind Regal Cinemas (to become part of the expanded Wal*Mart) and Wal*Mart; past Family Ice; onto property owned by the Town; and ending at Clearwater Drive. The vast majority of the way is an easement for travel by the public over privately owned land (J.E.P and Falmouth Plaza). The remainder of the way is over land that is owned by the Town. (A plan by Sewall showing the location of the way is attached as Exhibit A.) It is possible to travel this route today but is not built to appropriate standards for a public way and it is not intended for through travel. Hat Trick Drive will not be a Town street in the usual sense of that term. It will be a way or road over which the public may travel by virtue of easement agreements that have certain terms built into them.

The Hat Trick Drive project is a joint financial undertaking of Wal*Mart, Falmouth Plaza, LLC, owner of the shopping center, and the Town of Falmouth. Other parties involved by way of consents but not financially, are Family Ice and J.E.P., LLC.

Wal*Mart has funded the design, engineering and permitting of the road and will undertake the road construction in connection with its build out of the "new" Wal*Mart store. The road construction project will be under the direction and control of Wal*Mart. The cost of the project will be borne by Wal*Mart except for a fixed contribution of \$275,000 to be made by Falmouth Plaza, LLC and the Town. The Town's portion of the \$275,000 has yet to be determined but Falmouth Plaza, LLC

understands that the Town will contribute not more than \$100,000 and that Falmouth Plaza, LLC will be responsible for the balance of the \$275,000.

The documents which form the heart of the “deal” are attached to this Memorandum. I shall briefly explain each of these.

1. Public-Private Limited Development Agreement. (Exhibit B.)

This is the central document for the deal. It establishes that Wal*Mart will oversee the project and pay the project cost, less the \$275,000 contribution by Falmouth Plaza, LLC and the Town. Each party agrees to convey the necessary easements for the re-located/re-constructed Hat Trick Drive to be open to public travel. The Limited Development Agreement also makes clear that the entire project is contingent upon Wal*Mart obtaining the necessary approvals for the store expansion and the Hat Trick Drive project in a form acceptable to Wal*Mart and upon the consent of Falmouth Plaza’s lender. This document is not intended for recording at the Registry of Deeds.

2. Easement over Falmouth Plaza, LLC and JEP, LLC properties. (Town Easement - Exhibit C.)

This Easement Agreement gives the Town, i.e., the public, the right to travel over the extent of Hat Trick Drive on Falmouth Plaza and JEP land. See Exhibit A. JEP is a party to the Agreement because they are the underlying fee owner of a portion of the property and they are confirming the Town’s easement rights over JEP property. (JEP’s joinder in the Easement is done out of caution since Falmouth Plaza already has the right to convey this easement to the Town.) This Easement Agreement also contains the following provisions of note:

- The Town may post speed limits;
- As long as Family Ice is a tenant of the Town, Falmouth Plaza will plow all of Hat Trick Drive. The Town has the right to do so at its option;
- The Town is obligated to maintain the Twombly parking area and keep it open to the public;
- The Town has the right to use Twombly parking area as a Park & Ride;
- Each party has the obligation to maintain (paving, drainage, etc.) its own section of Hat Trick Drive;
- Certain types of businesses, e.g., pawn shops, night clubs and “adult” businesses, may not be tenants at Falmouth Plaza.

This document will be recorded at the Registry of Deeds.

3. Easement over Town of Falmouth property. (Falmouth Plaza Easement - Exhibit D.)

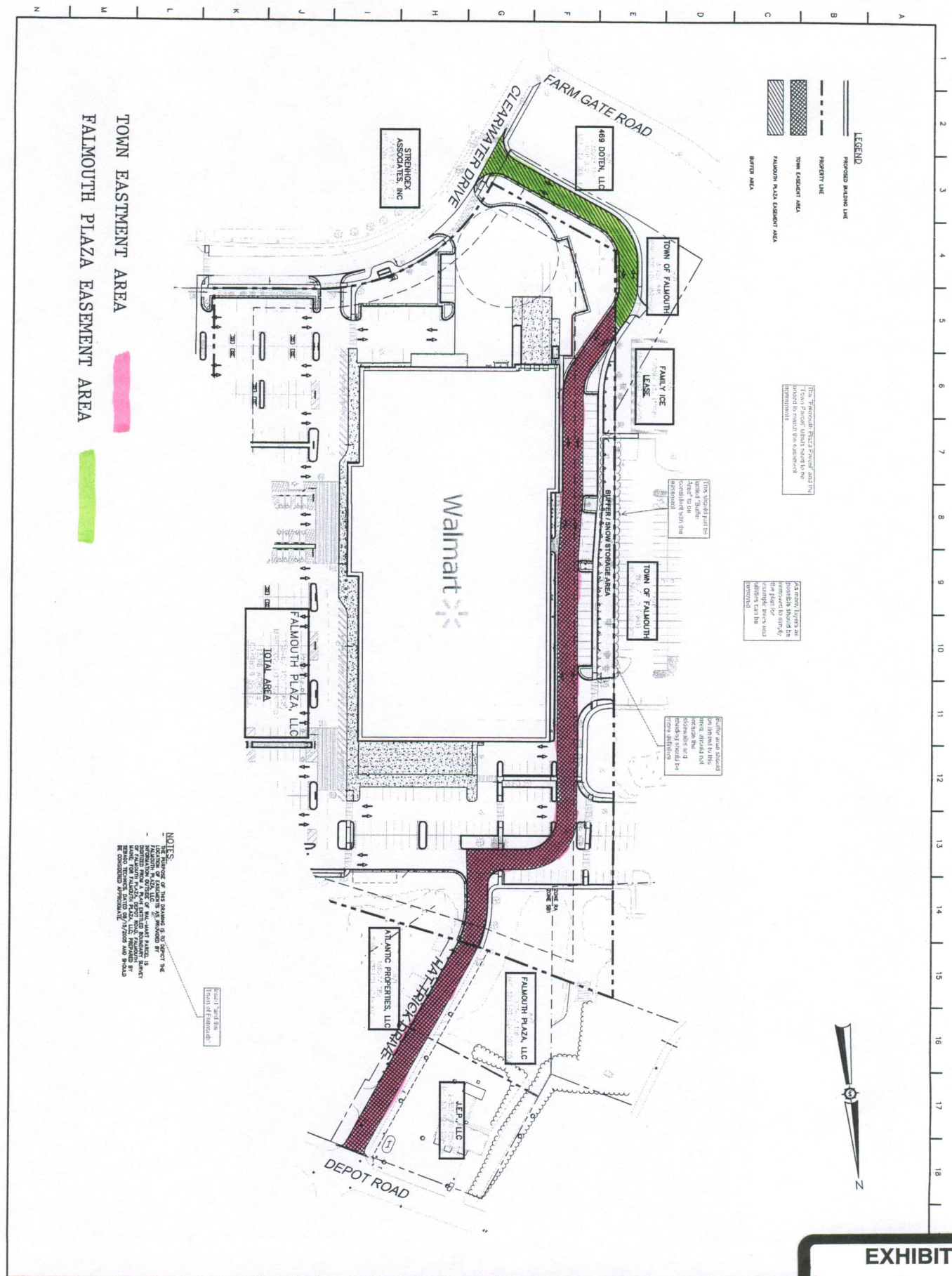
This Easement Agreement gives Falmouth Plaza an easement over the portion of Hat Trick Drive that crosses Town land, i.e., from Clearwater Drive to about Family Ice. This document will be recorded.

4. Mortgage Subordination Agreement by and between the Guardian Life Insurance Company of America, Falmouth Plaza, LLC and the Town of Falmouth. (Exhibit E.)

Guardian is the mortgagee of the Falmouth Plaza property. The parties to the Town Easement Agreement (item 2, above) want Guardian to subordinate its mortgage to the Town Easement Agreement so that, if Guardian forecloses, the Easement Agreement remains in force. As of the date of this memorandum, Falmouth Plaza is still negotiating the subordination agreement with Guardian. I have attached the current draft of the Subordination Agreement as Exhibit E. You will see that the Town is a party to the Agreement because the Agreement provides that the 2011 Town Easement Agreement *may not* survive a foreclosure by Guardian if at the time of the foreclosure the Family Ice Lease with the Town has expired or early terminated, i.e., if Family Ice is no longer the lessee of the current ice arena area. The note which is secured by the Guardian mortgage is due July 29, 2013. The Lease between Family Ice and the Town extends to approximately 2029. It is highly unlikely that Guardian will ever be in a situation where it forecloses at a time when Family Ice is not the lessee of the ice arena area.

5. Agreement by and between the Town of Falmouth and Family Ice. (Exhibit F.)

In 2007, when the parties were close to closing the Hat Trick Drive “deal,” Family Ice asked for this Agreement. It confirms that the Hat Trick Drive “deal” does not affect the terms of the Lease between family Ice and the Town. We are not sure whether Family Ice still wants such an agreement.



LEGEND

	PROPOSED BUILDING LINE
	PROPERTY LINE
	TOWN EASEMENT AREA
	FALMOUTH PLAZA EASEMENT AREA
	SETBACK AREA

The Falmouth Plaza Easement and the Town of Falmouth Easement are subject to the easement shown on the plan.

For more details, see the separate sheets of the plan. The easement shown on the plan is for the purpose of the easement shown on the plan.

Further area shown on the plan is not intended to be used for the purpose of the easement shown on the plan.

TOWN EASTMENT AREA
 FALMOUTH PLAZA EASEMENT AREA

NOTES:
 THE TOWN OF FALMOUTH IS TO BE THE BOUNDARY OF THE EASEMENT AND THE FALMOUTH PLAZA, LLC IS TO BE THE BOUNDARY OF THE EASEMENT. THE EASEMENT IS TO BE THE BOUNDARY OF THE EASEMENT AND THE FALMOUTH PLAZA, LLC IS TO BE THE BOUNDARY OF THE EASEMENT. THE EASEMENT IS TO BE THE BOUNDARY OF THE EASEMENT AND THE FALMOUTH PLAZA, LLC IS TO BE THE BOUNDARY OF THE EASEMENT.

Sheet 1 of the Town of Falmouth.

<p>SEWALL AN INTEGRATED TEAM OF GEOSPATIAL, ENGINEERING, SURVEYING, AND NATURAL RESOURCE CONSULTANTS JAMES W. SEWALL COMPANY, INC. 875-448-4200</p>	<p>62210E</p>	<p>WALMART REAL ESTATE BUSINESS TRUST BENTONVILLE, ARKANSAS</p>	<p>Prepared by: AJS Checked by: JCH Date: 03/02/11 Scale: 1"=50'</p>	<p>Project No.: 72716-0200</p>
	<p>PERMIT</p>	<p>Project Name: EASEMENT PLAN</p>	<p>Project Location: FALMOUTH, MAINE</p>	<p>Sheet No.: 1</p>

EXHIBIT
A

**PUBLIC-PRIVATE
LIMITED DEVELOPMENT AGREEMENT**

AGREEMENT made as of the ____ day of _____, 2011 by and among **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”), **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, (hereinafter, “Falmouth Plaza”), **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, and **WAL-MART STORES EAST, LP**, a Delaware limited partnership, with an address of 2001 S.E. 10th Street, Bentonville, Arkansas 72716-0550 (hereinafter, “Wal-Mart”).

RECITALS

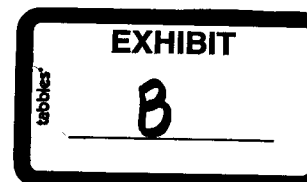
WHEREAS, Hat Trick Drive is a private road located on the westerly side of U.S. Route 1 within the Town that connects Depot Road to, among other things, certain public amenities including an ice skating facility operated by Family Ice on property leased from the Town and known as the Family Ice Center;

WHEREAS, it has been proposed to reconfigure the location of Hat Trick Drive and extend Hat Trick Drive to connect to Clearwater Drive, and make other changes and improvements to the general vicinity, including parking and landscaping, in general accordance with certain plans prepared by Sewall Company, as the same may be approved by the Town of Falmouth Planning Board;

WHEREAS, the proposed reconfiguration would benefit Family Ice by providing Family Ice with an area to store plowed snow, and ease the flow of traffic to and from Family Ice generally;

WHEREAS, the proposed reconfiguration of Hat Trick Drive would be consistent with and would further the purposes of the Town’s so-called Village Master Plan by, among other things, reducing traffic pressure on US Route 1 by providing an improved thoroughfare between Depot Road and Clearwater Drive, enhancing aesthetics by placing utilities underground and providing for additional landscaping, and providing additional parking;

WHEREAS, Falmouth Plaza is the owner of a certain parcel of real property known as the Falmouth Plaza which has been improved for use as a shopping center and which includes significant portions of Hat Trick Drive;



WHEREAS, the proposed reconfiguration would benefit Falmouth Plaza by, among other things, creating a better-defined secondary artery for traffic access to the Falmouth Plaza shopping center and by adding parking spaces along the Hat Trick Drive side of the shopping center;

WHEREAS, Wal-Mart is a lessee of a portion of the Falmouth Plaza shopping center property pursuant to a lease dated June 18, 1997, which lease has been amended from time to time (the “Original Lease”), and Wal-Mart has entered into a new lease with Falmouth Plaza dated November 9, 2010 (the “New Lease”) which, upon certain conditions, will supersede the Original Lease and result in the expansion of the building occupied by Wal-Mart;

WHEREAS, the proposed reconfiguration would benefit Wal-Mart by allowing it to redefine vehicular and pedestrian traffic patterns for the greater convenience and safety of its patrons, and provide for additional parking spaces;

WHEREAS, the parties have worked cooperatively to develop plans and specifications for completion of the desired improvements and intend to put them out for bid;

WHEREAS, if the conditions of the New Lease are satisfied, Wal-Mart shall oversee the construction of the reconfiguration of Hat Trick Drive as part of other improvements contemplated by the New Lease; and

WHEREAS, in recognition of the aforementioned and other benefits the parties now desire to confirm, subject to certain conditions, their desire to work cooperatively for the purpose of reconfiguring the existing Hat Trick Drive, and to perform such other work as more particularly described herein, including the removal and relocation of those utilities, drainage and other elements affected by such a reconfiguration and to memorialize the terms upon which such work shall be conducted.

NOW, THEREFORE, the parties mutually agree as follows:

1. Recitals. The above Recitals form a material part of this Agreement.

2. Hat Trick Drive Plan. Subject to Wal-Mart obtaining all necessary permits and approvals for the expansion of its existing store, as contemplated and set forth in the New Lease, each of the parties agrees to the reconfiguration of Hat Trick Drive, and the removal and relocation of all appurtenant utilities, drainage facilities and other elements, specifically including the removal of existing parking spaces and the creation of new parking spaces, and all of those other changes and improvements, in accordance with certain plans prepared by Sewall Company (“Sewall”), titled _____ (attached hereto as Exhibit A and referred to as the “Relocation Plans”), which plans still require Town and State approvals, as may only be

amended further by agreement of all of the parties hereto (and subject to appropriate municipal and other governmental approvals), which shall set forth all elements of the work (hereinafter referred to as the “Work”).

3. Cost Sharing. The cost of the Work shall be allocated as follows: The Town shall contribute \$_____; Falmouth Plaza shall contribute \$[275,000-Town Contribution]; and Wal-Mart shall be responsible for the remainder of the cost of the Work. The Town, Wal-Mart and Falmouth Plaza acknowledge and agree that their respective contributions set forth above exclude the costs of all plan preparation, permitting, licensing and other administrative and oversight costs associated with the Work as specified in Section 6 of this Agreement, to be performed by Wal-Mart or its agents, which costs have been or will be absorbed by Wal-Mart. Upon Sewall’s certification to Wal-Mart that the Work is complete, Wal-Mart shall send a notice of such completion to the Town and Falmouth Plaza. Within thirty (30) days of receipt of such notice, the Town and Falmouth Plaza shall each pay their share of the cost to Wal-Mart.

4. Conditions. The obligations under this Agreement are contingent upon the satisfaction of the following “Conditions”:

- (i) The satisfaction of all contingencies set forth in the New Lease, including, without limitation, Wal-Mart’s permitting and approvals contingency and the contingency for the approval of the New Lease by Falmouth Plaza’s mortgagee, The Guardian Life Insurance Company of America (the “Mortgagee); and
- (ii) Wal-Mart has obtained all necessary governmental approvals and permits for the construction of the Work, in final and un-appealable form and without any conditions of approval that are unacceptable to Wal-Mart in its sole discretion, and such permits are satisfactory to Wal-Mart, the Town and Falmouth Plaza; and
- (iii) Falmouth Plaza has obtained the approval of the Mortgagee to this Agreement and the Easement Agreements described in Section 5 below.

The parties shall use good faith efforts to keep the other parties apprised as to the satisfaction, or status of, the Conditions and upon the satisfaction of all of the Conditions, any party may request that all the parties execute an acknowledgment that the Conditions have been satisfied and the parties are prepared to proceed with the Work. If all the Conditions have not been satisfied by the date that is twenty four (24) months after the date of this Agreement, any party may terminate this Agreement by giving written notice to all other parties, and upon such notice this Agreement shall terminate and the parties shall have no further obligations hereunder, except to the extent of any obligations that expressly survive the expiration or termination of this Agreement.

5. Easements.

a. Upon the satisfaction of the Conditions, the Town and Falmouth Plaza shall exchange and deliver the Easement Agreements attached as Exhibit B and Exhibit C.

b. The Town, Family Ice, and Falmouth Plaza hereby grant to the Wal-Mart, its agents and assigns, a license to enter onto their respective properties or leaseholds only to the extent reasonably necessary to conduct the Work (the "License") including those portions of the Work to be performed prior to the satisfaction of the Conditions, including, without limitations, Work related to the permitting and approvals process. The Work shall be executed so as to reduce interference with the current use of Hat Trick Drive. The License shall terminate upon the earlier of the following: (i) the completion date of the Work; and (ii) the second anniversary of the date of this Agreement. The contract entered into with the general contractor selected to perform the Work shall require the general contractor to procure and maintain a policy for casualty and indemnity insurance in an amount to be determined by Wal-Mart as customary for a project of this scope, and naming the Town, Family Ice, Wal-Mart and Falmouth Plaza as additional named insureds under such policy.

6. Permitting and Construction.

The Town, Wal-Mart and Falmouth Plaza agree that Wal-Mart, or its agents and assigns, shall be responsible for all phases and/or portions of permitting and construction of the Work in the name of the parties hereto, including, but not limited to: (i) pursuing and coordinating compliance with all local, state and/or federal permitting requirements as required under the conditions set forth in the Relocation Plans; (ii) supervising on-site construction activities performed by the general contractor; (iii) ensuring that all construction work is performed in substantial accordance with the Relocation Plans, based upon visual observations of surface features and in accordance with all other applicable federal, state and local laws, regulations, rules and ordinances in effect as of the date of this Agreement; and (iv) administering construction and payment of the contractor selected by Wal-Mart to perform the Work. Wal-Mart's contractor shall guaranty the Work for one (1) year from the date of completion, which guaranty shall run to the benefit of all of the parties hereto. Wal-Mart may select any contractor it chooses to complete the Work. Wal-Mart shall procure interim and final lien releases from all contractors, subcontractors and materialmen as a condition of Wal-Mart's payment to such contractors, subcontractors and materialmen for their completion of the Work.

7. Force Majeure. Wal-Mart shall not be liable or responsible to any party by reason of the failure or inability to take any action it is required to take or to comply with the requirements imposed hereby (or any injury to any party or by those claiming through any party) which failure, inability or injury is caused directly or indirectly by force

majeure as hereinafter set forth. The term “force majeure” as employed herein shall mean acts of god, strikes, lock-outs or other industrial disturbances, acts of public enemies, war blockages, riots, acts of armed forces, militia, or public authority, epidemics, landslides, earthquakes, fires, storms, floods, freezes or washouts, acts of terrorism, civil or military disturbances and/or explosions or any other event or instrumentality beyond Wal-Mart’s reasonable control.

8. No Liability. In no event shall the Town or Falmouth Plaza be required to contribute more than the amounts set forth above in Section 3 to complete the Work.

9. Term. This Agreement shall be deemed terminated and all obligations hereunder satisfied upon the completion of the Work, except for such provisions, if any, that expressly survive termination hereof.

10. Recordation. The parties agree that this Agreement shall not be recorded.

11. Incorporation of Laws, Rules, and Regulations. This Agreement shall be read in conjunction with and be subject to all existing and future federal, state, and local laws, rules and regulations applicable to the Work in any manner or form.

12. Disclaimers; Limitation of Liability. Except as specifically stated herein, this Agreement does not create any other obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or the federal government. Any correspondence, documents or other reference to “partners”, “joint venturers” or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities and obligations of the parties as to a new, specifically defined legal relationship.

13. Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

If to Town:

Mr. Nathan Poore, Town Manager
Town of Falmouth
271 Falmouth Road,
Falmouth, Maine 04105

With a copy to:

William L. Plouffe, Esq.
Drummond, Woodsum & MacMahon
84 Marginal Way, Suite 600

Portland, ME 04101-2480

If to Falmouth Plaza:

Falmouth Plaza, LLC
c/o Mr. George Rogers
P.O. Box 100,
York Harbor, Maine 03911

With a copy to:
Eben Adams, Esq.
Pierce Atwood LLP
One Monument Square
Portland, ME 04101

If to Family Ice:

Family Ice
P.O. Box 6127
20 Hat Trick Drive
Falmouth, ME 04105

With a copy to:
Jonathan T. Harris, Esq.
Lambert Coffin
P.O. Box 15215
477 Congress Street, 14th Floor
Portland, ME 04112-5215

If to Wal-Mart:

Wal-Mart Stores East, LP
ATTN: Real Estate Manager
2001 S.E. 10th Street
Bentonville, AR 72716-0550

With a copy to:
Hawley Strait, Esq.
Bernstein Shur
P.O. Box 9729
Portland, ME 04104-5029

Notice shall be deemed to have been given upon receipt. Refusal of delivery or undeliverable for any reason shall be deemed receipt.

14. Default. Each of the parties hereto shall give the other party written notice of any alleged default hereunder, which notice shall describe in detail the nature of such default, and shall allow the defaulting party fifteen (15) days from the date of its receipt

of such notice within which to cure any such default, plus such additional time as is reasonably required, provided the defaulting party is using commercially reasonable efforts to correct such default. Failure to cure any such default within the aforementioned period shall constitute a breach of this Agreement.

15. Severability. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced, and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared severable.

16. Authority to Execute Agreement. The signature by any person to this Agreement shall be deemed a personal warranty by that person that he has the full power and authority to bind any corporation, partnership, or any other business entity for which he purports to act hereunder.

17. Time is of the Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.

18. Entire Agreement. This Agreement contains the entire agreement of the parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement alone set forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretations or representations of the other party. Each party agrees that this Agreement is the result of good faith arms length negotiations.

19. Modifications/Amendments. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by all parties.

20. Construction. The parties hereto have read and fully understand the terms of this Agreement, and each has had the opportunity to have this Agreement reviewed by its own counsel.

21. Governing Law. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Maine.

22. Binding Effect. The parties agree that this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a party to this Agreement or an authorized successor or assignee thereof.

23. No Waiver. Wal-Mart acknowledges and agrees that this Agreement does not estop or otherwise prevent the Town from applying or enforcing the Falmouth Zoning and Site Plan Review Ordinance with respect to past, present or future activities of Wal-Mart at Falmouth Plaza.

IN WITNESS WHEREOF, the parties have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement the day and year first above written.

TOWN OF FALMOUTH

Witness:

Signed: _____
Name: Nathan Poore
Title: Town Manager

STATE OF MAINE
COUNTY OF CUMBERLAND, ss. _____, 2011

Then personally appeared the above-named Nathan 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

FALMOUTH PLAZA, LLC

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

Witness:

Signed: _____
Name: _____
Title: _____

STATE OF MAINE
COUNTY OF _____, ss. _____, 2011

Then personally appeared the above-named _____,
_____ of G. L. Rogers & Co., Inc., Manager of Falmouth Plaza LLC, and
acknowledged the foregoing instrument to be his/her free act and deed in his/her 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

FAMILY ICE

Witness:

Signed: _____
Name: _____
Title: _____

STATE OF MAINE
COUNTY OF CUMBERLAND, ss. _____, 2011

Then personally appeared the above-named _____,
_____ of said Family Ice, and acknowledged the forgoing to be his/her free
act and deed in his/her said capacity and the free act and deed of said Family Ice.

Before me,

Notary Public
Attorney at Law

Print name

WAL-MART STORES EAST, LP

Witness:

Signed: _____
Name: _____
Title: _____

STATE OF ARKANSAS
COUNTY OF BENTON

The foregoing was acknowledged before me this ____ day of _____, 2011 by _____ as _____ of **WAL-MART STORES EAST, LP**, a Delaware business trust, on behalf of the said trust. He/she is personally known to me or has produced _____ (type of identification, with ID number and expiration date) as identification.

Signed: _____

Print Name: _____

Notary Public, State of Arkansas

My Commission Number: _____

Commission Expires: _____

EASEMENT AGREEMENT

This AGREEMENT is made as of the ____ day of _____, 2011 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, (the "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"), J.E.P., LLC, a limited liability company formed and existing under the laws of the State of Maine with an address of _____, ("JEP"), joining in this Agreement for the sole and limited purpose hereinafter stated.

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 prepared by Sewall Company and recorded in the Cumberland County Registry of Deeds herewith (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 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 property formerly of WAHA and now of 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 by Falmouth Plaza to WAHA 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. This parcel (the "Town Parcel") includes a municipal parking lot, a public park known as Twombly Four Seasons Park and an indoor skating facility (the "Family Ice Center") operated by Family Ice, a Maine not-for-profit corporation ("Family Ice"). The Family Ice Center is leased to Family Ice by the Town pursuant to 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) a deed from Mildred M. Luce to the Town dated September 14, 1961 and recorded in the Cumberland County Registry of Deeds in Book 2631, Page 119,



and (b) a deed from Emery-Waterhouse Co. to the Town recorded in the Cumberland County Registry of Deeds in Book 3173, Page 446.

- C. In 1999, Falmouth Plaza granted an access easement to the Town over a portion of Hat Trick Drive as shown on the Plan that permits the Town to access a portion of the Town Parcel (the "Original Town Easement"). The Original Town Easement is dated March 24, 1999 and recorded in the Cumberland County Registry of Deeds in Book 14632, Page 348.
- D. The Town, Falmouth Plaza and others entered into a certain Public-Private Limited Development Agreement dated as of _____, 2011, to reconfigure and extend Hat Trick Drive, 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 land owned by the Town, and in part located within the Hat Trick Drive Easement Area on the land now owned by JEP.
- E. Following the reconfiguration of Hat Trick Drive, Falmouth Plaza and the Town desire to establish an additional easement in favor of the Town with respect to the common use of Hat Trick Drive under the terms and conditions set forth herein, which easement shall be in addition to and supplemental to the Original Town Easement.

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

Falmouth Plaza GRANTS to the Town, its successors and assigns, a perpetual non-exclusive right and easement with QUITCLAIM COVENANT for pedestrian and vehicular access by the Town, its employees, invitees, guests and members of the general public, for purposes of ingress and egress from Depot Road and Clearwater Drive to the Town Parcel and between Depot Road and Clearwater Drive over that portion of Hat Trick Drive located on the Falmouth Plaza Parcel and the land now owned by JEP as shown on the Plan (the "Town Easement Area"), together with the right, at the Town's option, to maintain the Town Easement Area in such a manner as shall permit the continued use of the Town Easement Area for the purposes set forth in this paragraph, said maintenance to include snowplowing and sanding.

Reserving to Falmouth Plaza, its successors and assigns, and its tenants and their respective employees, agents, tenants, invitees and guests, the use and enjoyment of the Town Easement Area for all purposes as are not inconsistent with and shall not materially interfere with the use thereof by the Town, its successors and assigns. Without limiting the foregoing, Falmouth Plaza agrees that it will undertake reasonable efforts, and will require that its tenants undertake reasonable efforts, to minimize disruption to traffic on Hat Trick Drive by vehicles making deliveries to the buildings abutting Hat Trick Drive including, but not limited to, reasonable efforts to limit parking by such vehicles within Hat Trick Drive in connection with such deliveries.

Falmouth Plaza acknowledges and agrees that the Town may erect appropriate speed limit signs within Hat Trick Drive and immediately adjacent thereto, to the extent such signs are not otherwise provided for in connection with municipal approvals relating to the construction of Hat Trick Drive, such additional signage being subject to the reasonable review and approval of Falmouth Plaza, and that the Town shall have the right but not the obligation to enforce applicable Falmouth ordinances relating to moving violations within Hat Trick Drive.

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 Falmouth Plaza and the Town, their respective successors and assigns and their tenants and their respective employees, agents, tenants, invitees and guests. The rights and easement conveyed herein shall be appurtenant to and shall run with the Town Parcel. The reservations herein shall be appurtenant to the Falmouth Plaza Parcel.

The easement granted to the Town herein is subject to (i) an Easement Deed and Agreement by and between Middle Deer Associates and David M. Banks and Donna L. Banks dated June 2, 1997 and recorded in said Registry of Deeds in Book 13112, Page 80, (ii) an Easement Agreement by and between Family Plaza and Family Ice, a Maine non-profit corporation, dated July 28, 1998 and recorded in said Registry of Deeds in Book 14019, Page 259, as amended (iii) the Original Town Easement, which shall remain in full force and effect, (iv) a Mortgage and Security Agreement with Assignment of Rents and Fixture Filing from Falmouth Plaza dated July 29, 1998 and recorded in said Registry of Deeds in Book 14022, Page 126 and an Assignment of Leases and rents from Falmouth Plaza dated July 29, 1998 and recorded in said Registry of Deeds in Book 14022, Page 174, both of which are held by The Guardian Life Insurance Company of America, (v) rights of JEP, its successors and assigns, in and to the use of the Hat Trick Drive Easement area as set forth in said deed from Falmouth Plaza to WAHA referred to above and incorporated by reference in said deed referred to above from WAHA to JEP, (vi) all utility easements of record, and (vii) rights of parties in possession under the leases at the Falmouth Plaza Parcel.

For Falmouth Plaza's source of title to the Falmouth Plaza Parcel, reference is made to said deed from Middle Deer Associates to Falmouth Plaza dated December 31, 1997 and recorded in said Registry of Deeds in Book 13546, Page 118, and said deed from Middle Deer Associates to the Falmouth Plaza dated December 31, 1997 and recorded in said Registry of Deeds in Book 13546, Page 121. For Falmouth Plaza's source of title to its rights and easements in and to the "Hat Trick Drive Easement Area, reference is made to said deed from Falmouth Plaza to WAHA dated January 31, 2006 and recorded in said Registry of Deeds in Book 23654, Page 70

Provided, however, that so long as Wal-Mart shall operate a retail store at the Falmouth Plaza Parcel, the Town, on behalf of itself, its successors and assigns, hereby agrees that no portion of the Town Parcel, or any other real property owned by the Town which abuts the Falmouth Plaza Parcel and which is accessed solely from Hat Trick Drive, shall be used as (i) an adult book store, adult entertainment establishment, or adult video store (an adult video store is a video store that sells or rents videos that are rated NC-17, X, XX, XXX, or of a rating assigned to works containing material more sexually explicit than XXX, by the film rating board of the Classification and Rating Administration), (ii) a pawn shop, (iii) a casino or other gaming or gambling establishment, or (iv) any bar, night club, billiard parlor, or any other business whose principal revenues are derived from the sale of alcoholic beverages; or (v) any business whose

major source of business is derived from the cashing of checks or making loans (excluding any bank or financial institution insured by the F.D.I.C. or the N.C.U.S.I.F.). The easement rights granted to the Town by Falmouth Plaza pursuant to this Agreement shall not, however, be conditioned upon the Town's compliance with the provisions of this paragraph. In the event of a breach by the Town of any covenant contained in this paragraph, Falmouth Plaza and/or Wal-Mart Stores East, LP, as intended third-party beneficiary, shall be entitled to maintain an action against the Town for all legally available remedies, whether at law or in equity, including specific performance and temporary and permanent injunctive relief.

Provided further that the Town hereby covenants to maintain the municipal parking lot currently located on the Town Parcel as open to the public without charge with substantially the same number of parking spaces as are currently located thereon. Falmouth Plaza acknowledges and agrees that the use of said municipal parking lot as a "park and ride" lot, together with associated improvements thereon, in connection with the use by the public of the Greater Portland Metro Bus System or similar public or private transportation systems, shall not be deemed a violation of this covenant, so long as the number of parking spaces on the Town Parcel remains substantially the same. Provided, however, that nothing herein shall constitute a consent or agreement of Falmouth Plaza for patrons of such a "park and ride" facility to park vehicles on the Falmouth Plaza Parcel. The easement rights granted to the Town by Falmouth Plaza pursuant to this Agreement shall not, however, be conditioned upon the Town's compliance with the provisions of this paragraph. In the event of a breach by the Town of any covenant contained in this paragraph, Falmouth Plaza shall be entitled to maintain an action against the Town for all legally available remedies, whether at law or in equity, including specific performance and temporary and permanent injunctive relief.

Provided further that the covenants, conditions, restrictions and limitations imposed upon the Town and the Town Parcel as set forth in the immediately preceding two paragraphs shall terminate and be of no further force and effect in the event the Town's rights and easements in Hat Trick Drive granted herein shall terminate for any reason including, but not limited to, the Town's voluntary release of such rights and easements.

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 and those parking spaces immediately accessed from Hat Trick Drive within the Town Easement Area, so as to keep them reasonably useable and (ii) sweep and stripe the Hat Trick Drive paved roadway and said parking spaces and sidewalks within the Town Easement Area as may be reasonably required and/or appropriate.

So long as Family Ice is a tenant of the Town at the Family Ice Center, Family Ice shall have the non-exclusive right to store snow plowed from its parking lot on that land owned by Falmouth Plaza that is bounded on its south-easterly side by the sidewalk along Hat Trick Drive, on the north-westerly side by the Family Ice parking area, on the north-easterly side by the entrance to the Family Ice parking area, and on the south-westerly side by the sidewalk and stairs, to be constructed, connecting Hat Trick Drive to the Family Ice Center, (this area shall be referred to hereafter as the "Buffer Area"), as shown on the Plan. Family Ice agrees that snow shall not be stored in a way that impedes access to any electrical transformer or fire hydrant in

the Buffer Area or the sidewalk. So long as Family Ice is a tenant of the Town at the Family Ice Center, Family Ice shall maintain the Buffer Area, the sidewalk and stairs adjacent to the Buffer Area, and the sidewalk leading from the stairs southwesterly to the boundary of the Falmouth Plaza Parcel at its sole cost. Provided, however, that so long as properly maintained, the plantings shall be covered by a warranty of one year from the date of planting. For the purpose of this paragraph, the term "maintain" shall include (i) the reasonable removal and/or treatment of any ice or snow on the sidewalks and stairs so as to keep them reasonably useable, sweeping, ensuring no obstruction to drainage, repairs and such other acts necessary to and required to keep the sidewalk and stairs in good repair for regular and safe usage for their intended purposes, and (ii) the all-season care of all plantings, trees and lawns located in the Buffer Area, including watering, fertilizing, trimming, pruning, and protecting from pests and disease, and also including reseeding, repairs and replacements as may relate to or arise from Family Ice's storage of snow in the Buffer Area.

So long as Family Ice is a tenant of the Town at the Family Ice Center, Falmouth Plaza agrees that the parking spaces adjacent to and northwesterly of Hat Trick Drive will remain open and available for general parking and not for limited or restricted use such as, for example, employee or tenant parking only, and further that it will not undertake any actions to prohibit or limit the use of such parking spaces by patrons of the Family Ice Center. Provided, however, that nothing herein shall prevent Falmouth Plaza from prohibiting commercial activities and/or overnight parking on these parking spaces. Provided further that if the terms of this paragraph in any way limit the ability of Falmouth Plaza to count these spaces as parking spaces for Falmouth Plaza Parcel as part of any permitting for the Falmouth Plaza Parcel as now developed or as may be re-developed in the future, then all parties acknowledge and agree that this paragraph shall be void.

Except as expressly stated herein, all other maintenance and repair of the Hat Trick Drive roadway, parking spaces, landscaping and all other features and improvements shown on the Plan, including providing for and maintaining proper drainage, shall be the obligation of and performed at the sole cost of the party on whose property the improvement or feature is located.

Family Ice hereby joins in this Agreement for the sole and limited purpose of confirming its obligations set forth herein to maintain the Buffer Area.

JEP hereby joins in this Agreement for the sole and limited purpose of confirming the rights and easements granted by Falmouth Plaza to the Town herein with respect to the Hat Trick Drive Easement Area and agreeing that such rights and easements are consistent with those rights and easements reserved by Falmouth Plaza in said deed to WAHA dated January 31, 2006 and recorded in said Registry of Deeds in Book 23654, Page 70 and incorporated by reference in said deed from WAHA to JEP dated November 9, 2006 and recorded in said Registry of Deeds in Book 24557, Page 270.

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, Falmouth Plaza, the Town, Family Ice and JEP have caused this instrument to be executed by their representatives, thereunto duly authorized, as of the date first set forth above.

WITNESS:

FALMOUTH PLAZA LLC
a Maine limited liability company

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

By: _____
Name:
Its:

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2011

Then personally appeared the above-named _____, _____ of G. L. Rogers & Co., Inc., Manager of Falmouth Plaza LLC, and acknowledged the foregoing instrument to be his/her free act and deed in his/her 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: _____

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.

_____, 2011

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:

J.E.P., LLC
a Maine limited liability company

By: _____

Its

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2011

Then personally appeared the above-named _____,
_____ of J.E.P., LLC, and acknowledged the foregoing instrument to be
his/her free act and deed in his/her said capacity and the free act and deed of said J.E.P., LLC.

Before me,

Notary Public/Attorney At Law
Print name: _____

FAMILY ICE

Witness:

Signed: _____
Name: _____
Title: _____

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2011

Then personally appeared the above-named _____,
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

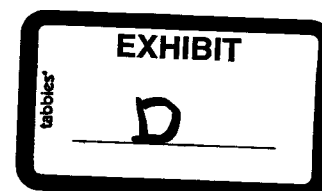
Print name

EASEMENT AGREEMENT

This AGREEMENT made as of the ____ day of _____, 2011 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 prepared by Sewall Company and recorded in the Cumberland County Registry of Deeds herewith (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 _____, 2011, 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 and its tenants and their respective employees, agents, tenants, invitees and guests.

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 and their tenants and their respective employees, agents, tenants, invitees and guests. 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.

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 herewith 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 herewith 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.

_____, 2011

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: _____
Name:
Its:

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2011

Then personally appeared the above-named _____, _____ of G. L. Rogers & Co., Inc., Manager of Falmouth Plaza LLC, and acknowledged the foregoing instrument to be his/her free act and deed in his/her 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: _____

MORTGAGE SUBORDINATION AGREEMENT

THIS MORTGAGE SUBORDINATION AGREEMENT, dated as of _____, 2011, is by and among THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, (“Guardian”) a New York corporation, FALMOUTH PLAZA, LLC, a Maine limited liability company (“Falmouth Plaza”) and THE TOWN OF FALMOUTH, a Maine municipal corporation (the “Town”).

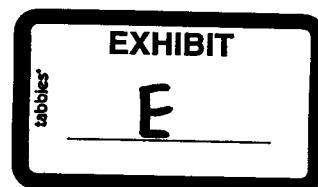
RECITALS

A. Guardian is the holder of that certain Mortgage and Security Agreement with Assignment of Rents and Fixture Filing given by Falmouth Plaza to Guardian dated July 29, 1998 and recorded in the Cumberland County Registry of Deeds in Book 14022, Page 126 (the “Guardian Mortgage”). Guardian is also the holder of that certain Assignment of Leases and Rents from Falmouth Plaza dated July 29, 1998 and recorded in said Registry of Deeds in Book 14022, Page 174 (the “Guardian Assignment” and together with the Guardian Mortgage, the “Guardian Security Documents”). The Guardian Security Documents encumber certain property owned by Falmouth Plaza located in Falmouth, Cumberland County, Maine, as more particularly described therein (the “Property”).

B. Falmouth Plaza has previously entered into an Easement Agreement with Family Ice, a Maine not-for-profit corporation, dated July 28, 1998 and recorded in the Cumberland County Registry of Deeds in Book 14019, Page 259 (the “Family Ice Easement”). The Family Ice Easement includes, among other things, the right of ingress and egress over Hat Trick Drive, so called, which Hat Trick Drive passes over the Property and connects Depot Road, so called, to Clearwater Drive, so called. The Family Ice Easement is for a term coterminus with the term of that certain Ground Lease dated May 28, 1998 between the Town as landlord and Family Ice as tenant (the “Family Ice Ground Lease”). Such Family Ice Ground Lease is memorialized by a Memorandum of Lease dated July 29, 1998, and recorded in said Registry of Deeds in Book 14059, Page 132.

C. Falmouth Plaza has granted certain rights and easements to the Town for ingress and egress over said Hat Trick Drive and related matters. Such rights and easements are set forth in that certain Easement Agreement between Falmouth Plaza and the Town dated as of _____, 2011 and recorded in the Cumberland County Registry of Deeds herewith (the “Town 2011 Hat Trick Drive Easement”).

D. Guardian has agreed to subordinate the Guardian Security Documents to the Town 2011 Hat Trick Drive Easement, subject, however, and reserving to Guardian, the right to terminate such Town 2011 Hat Trick Drive Easement under certain circumstances and at a future date, all as more fully set forth herein.



AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Guardian hereby subordinates the priority of the liens of the Guardian Security Documents to the provisions, rights, easements, covenants and restrictions set forth in the Town 2011 Hat Trick Drive Easement, with the same force and effect as if the Guardian Security Documents were granted and recorded subsequent to, and without knowledge of, the execution and recording of the Town 2011 Hat Trick Drive Easement; provided, however, that Guardian hereby reserves for itself and its successors and assigns of the Guardian Security Documents, the right to terminate the Town 2011 Hat Trick Drive Easement upon the expiration or earlier termination of the Family Ice Ground Lease. but only in the event Guardian, or its successor or assigns, forecloses the Guardian Security Documents.

2. This Subordination Agreement and the termination rights reserved by Guardian in Paragraph 1 above shall automatically terminate upon the payment in full of the debt secured by the Guardian Security Documents prior to foreclosure thereof. Such termination shall be conclusively established by the recording of a release or discharge of the Guardian Security Documents.

3. The undersigned represents that it is the sole owner of the Guardian Security Documents, that it has not transferred, assigned or pledged the Guardian Security Documents, that it has the full right and power to execute and deliver this Subordination Agreement and that the execution and delivery hereof has been duly authorized by all necessary action.

4. This Subordination Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and their tenants and their respective employees, agents, tenants, invitees and guests, and shall be governed by and interpreted in accordance with the laws of the State of Maine.

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:

THE GUARDIAN LIFE
INSURANCE COMPANY OF
AMERICA, a New York corporation

By: _____
Its
Print Name: _____

STATE OF NEW YORK
COUNTY OF _____, ss. _____, 2011

Then personally appeared the above-named _____,
of The Guardian Life Insurance Company of America, and acknowledged the foregoing
instrument to be his/her free act and deed in his/her said capacity and the free act and deed of
said The Guardian Life Insurance Company of America.

Before me,

Notary Public
Print name: _____

WITNESS:

FALMOUTH PLAZA LLC
a Maine limited liability company

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

By: _____
Name:
Its:

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2011

Then personally appeared the above-named _____, _____ of G. L. Rogers & Co., Inc., Manager of Falmouth Plaza LLC, and acknowledged the foregoing instrument to be his/her free act and deed in his/her 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: _____

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.

_____, 2011

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: _____

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