

EASEMENT AGREEMENT

This AGREEMENT is made as of the ____ day of _____, 2014 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 _____, 2012, 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 or adversely interfere with the use thereof by the Town, its successors and assigns, as provided in this Agreement. 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, subject to the terms and conditions of that certain Mortgage Subordination Agreement with respect to said Mortgage recorded herewith (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 and the sidewalk and stairs adjacent to the Buffer Area that run approximately 40 feet east from the northeast corner of Family Ice's building to the sidewalk on the Falmouth Plaza property that is adjacent to an parallel to the common boundary between Falmouth Plaza and Family Ice at its sole cost. 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 grass located in the Buffer Area, including watering, fertilizing, trimming, and protecting from pests and disease, and also including reseeded, repairs and replacements as may relate to or arise from Family Ice's storage of snow in the Buffer Area. Family Ice shall have no obligation to maintain trees, shrubs or other plantings (other than grass) 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.

_____, 2014

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.

_____, 2014

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.

_____, 2014

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. _____, 2012

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