

PUBLIC-PRIVATE LIMITED DEVELOPMENT AGREEMENT

AGREEMENT made this ____ day of _____, 2014 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 and Clearwater Drive and also provides access 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 make other changes and improvements to the general vicinity, including parking and landscaping, in general accordance with certain plans prepared by Sewall Associates;

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 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 November 9, 2010 (the “Lease”);

WHEREAS, the proposed reconfiguration would benefit Wal-Mart by allowing it to better define and improve its outdoor and seasonal sales areas, and redefine vehicular and pedestrian traffic patterns for the greater convenience and safety of its patrons; and,

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

WHEREAS, the Town shall oversee the construction of the reconfiguration of Hat Trick Drive; and

WHEREAS, in recognition of the aforementioned and other benefits the parties now desire to confirm 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. Each of the parties agree 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 those other changes and improvements, in accordance with certain plans prepared by Sewall Company (“Sewall”), attached as Exhibit A, which plans still require municipal and State approvals, as may only be amended further by agreement of all 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 Town, Wal-Mart and Falmouth Plaza each severally agrees to share in the demolition, reconfiguration and construction costs and expenses (the “Work Cost”) of the Work to be capped at an amount not to exceed one hundred seventy-five thousand dollars (\$175,000.00) each. 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 that Wal-Mart and Falmouth Plaza have incurred prior to the date of this Agreement. The Town, Wal-Mart and Falmouth Plaza further agree that such costs associated with the Work as specified in Section 6 that may be incurred by the Town after the date of this Agreement up to thirty thousand dollars (\$30,000) may be included in the total Work Cost. No party has warranted to any other party that the Work Cost will not exceed this amount, nor has any party agreed to assume any cost in excess of its agreed share of the estimated Work Cost. Within ninety (90) calendar days of signing this Agreement, the Town, Wal-Mart and Falmouth Plaza shall each contribute their share of the Work Cost and expenses set forth herein into an interest-bearing bank account established specifically for the Work, and such funds shall be disbursed as set forth in this Agreement. No funds shall be withdrawn from such account except in full compliance with the provisions of this Agreement.

If construction bids for the Work Cost exceed the projected amount of \$525,000, the Town will decide whether to proceed and the Town will be solely responsible for any additional costs above the projected cost of \$525,000. If the Town decides not to proceed, the Wal-Mart and Falmouth Plaza money will be returned to them. If the Work Cost exceeds the projected amount of \$525,000 after construction has begun, any overage will be solely the Town’s responsibility.

Any remaining funds after either completion of the Work, decision of the Town not to proceed, or termination of this Agreement pursuant to Section 4 of this Agreement will be returned to the Town, Falmouth Plaza and Wal-Mart, together with any interest, in accordance with their pro-rata contribution, within 30 days of a demand for return of funds. The parties will each be responsible for appropriate tax treatment of any interest earned on said funds, or any other aspect of the project. It is expressly understood that none of the Town, Falmouth Plaza or Wal-Mart shall be under any obligation to advance any additional funds for the Work.

4. Conditions. Release of the funds contributed pursuant to Section 3 of this Agreement to commence the Work are contingent upon the following conditions:

- (i) Wal-Mart has obtained all necessary municipal approvals and permits for the outdoor/seasonal sales area, so-called "Garden Center"; and
- (ii) The Town has obtained all necessary governmental approvals and permits for the construction of the Work, in final and un-appealable form, and such permits and conditions 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 the Conditions, any party may request that all the parties execute an acknowledgement that the conditions have been satisfied and the parties are prepared to proceed with the Work. If Condition (i) has not been satisfied within two (2) months after the date of this Agreement, or if Condition (ii) has not been satisfied within twenty-four (24) months of the date of this Agreement, or if Condition(iii) has not been satisfied within six (6) months of 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, including the obligation to return any unused funds as set forth in Section 3 of this Agreement.

5. Easements.

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

b. Family Ice and Falmouth Plaza hereby grant to the Town, 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 third 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 the Town 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 & Construction.

The Town, Wal-Mart and Falmouth Plaza agree that the Town, or its agents, shall be responsible for all phases and/or portions of permitting and construction of the Work in the name of the Town or 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 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 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 the Town to perform the Work. The Town'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. The Town may select any contractor it chooses to complete the Work. The Town shall procure interim and final lien releases from all contractors, subcontractors and materialmen as a condition of the Town's payment to such contractors, subcontractors and materialmen for their completion of the Work. The Town agrees that construction of the Work shall not take place from November 1 through January 31st of any year. This Agreement is terminated if the Town does not complete the Work within three (3) years after the date of this Agreement.

7. Force Majeure. The Town 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 the Town's reasonable control.

8. No Liability. In no event shall the Town, Falmouth Plaza or Wal-Mart 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 provision that expressly survive termination hereof, including the obligation to return any unused funds as set forth in Section 3 of this Agreement.

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. 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 Holly Malloy
P.O. Box 100,
York Harbor, Maine 03911

With a copy to:

Eben Adams, Esq.
Pierce Atwood LLP
254 Commercial Street
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: Realty Manager
2001 S.E. 10th Street
Bentonville, AR 72716-0550

With a copy to:
Joan Fortin, 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 forty-five (45) 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 or adversely 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. Notwithstanding anything contained in this Agreement, as between Wal-Mart and Falmouth Plaza, in the event of a conflict between the terms of this Agreement and the terms of the Lease or the New Lease, the terms of the Lease or the New Lease shall control.

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.

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. _____, 2014

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. _____, 2012

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.

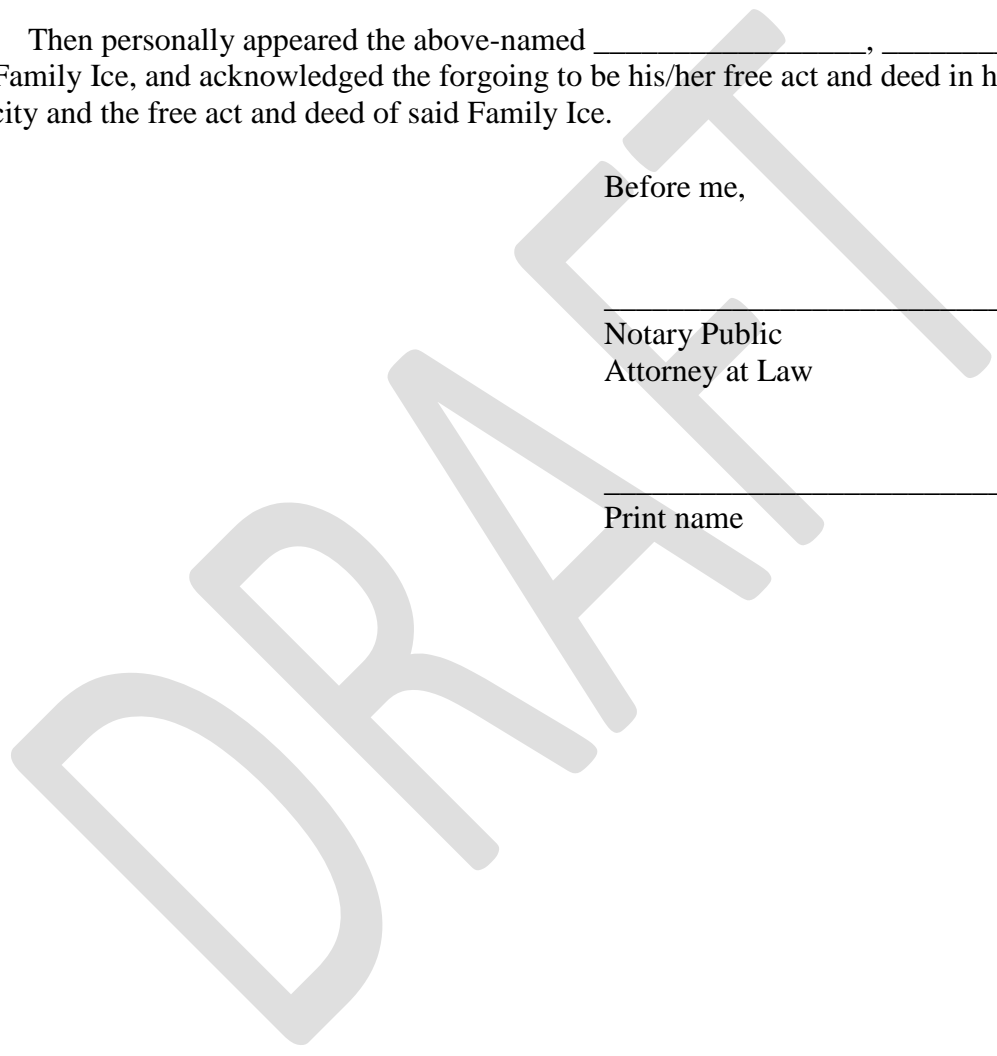
_____, 2012

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
a Delaware Limited Partnership

BY: WSE Management, LLC, a Delaware limited liability company, General Partner

Witness:

Signed: _____
Name: _____
Title: _____

STATE OF ARKANSAS
COUNTY OF BENTON

The foregoing was acknowledged before me this ____ day of _____, 2012 by _____ of WSE Management, LLC, a Delaware limited liability company, General Partner of **WAL-MART STORES EAST, LP**, a Delaware limited partnership., 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: _____

EXHIBIT A
Hat Trick Drive Plan

DRAFT

EXHIBIT B

Easement from Town to Falmouth Plaza

DRAFT

EXHIBIT C
Easement from Falmouth Plaza to Town

DRAFT