

AGREEMENT

THIS AGREEMENT (“Agreement”) is made as of the _____ day of _____, 2018, by and between **TOWN OF FALMOUTH**, a Maine municipal corporation whose mailing address is 271 Falmouth Rd., Falmouth, Maine 04105 (the “Town”), and **W W W, INC.**, a Maine corporation whose mailing address is c/o _____, 144 Gray Road, Falmouth, Maine 04105 (the “Property Owner”).

RECITALS

WHEREAS, the Property Owner owns property at 144 Gray Road (also known as Route 100) in Falmouth, Maine described in a deed from Peter Wormell to the Property Owner dated January 20, 1998 and recorded in the Cumberland County Registry of Deeds in Book 13559, Page 344 (the “Property”); and

WHEREAS, the Property is improved with a building currently used for commercial purposes and a gravel parking lot for customers on the north side of the building and paved parking to the South side of the building (the “Parking Lot”), with direct vehicular access to and from Gray Road; and

WHEREAS, the Town is financing significant improvements to Gray Road and the surrounding areas (the “Road Project”) which include certain pedestrian safety improvements such as sidewalks, lighting, curbing and other improvements; and

WHEREAS, following completion of the Road Project the Property will no longer have direct vehicular access to and from Gray Road, and the Property Owner will no longer have the use of certain parking spaces currently located partially within the Gray Road right of way; and

WHEREAS, the Property Owner intends to expand the Parking Lot on the Property to replace the lost paved customer parking partially within the Gray Road right of way, and has arranged to obtain an access easement (the “New Access Easement”) over abutting property located at 4 Mountain Road, owned by Maurice C. Hothem, Patricia Y. Hothem and Scott Hothem, Trustee of the Maurice and Patricia Hothem Charitable Remainder Unitrust in order to provide vehicular access to and from the expanded Parking Lot and Gray Road; and

WHEREAS, the Town and the Property Owner wish to enter into this agreement regarding certain agreements, rights and obligations of the parties in connection with the foregoing.

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

1. Agreement. In consideration of the substantial public benefit resulting from the completion of the Road Project and, in particular, the pedestrian safety improvements to Gray Road at and near the Property, the Property Owner and the Town hereby agree as follows:

a. Changes to Gray Road. The Property Owner consents to the Town's Road Project including, without limitation, the changes to Gray Road near the Property, as generally shown on **Exhibit A**. The Road Project is anticipated to start in the fall of 2018 and to be completed by 2020, subject to modifications to the timeline and unforeseen delays.

b. New Access Easement. Within **twenty one (21) days** of the date this Agreement is signed by both parties, the Property Owner shall obtain and record in the Cumberland County Registry of Deeds the New Access Easement, providing the Property Owner with vehicular access to and from the Parking Lot and Gray Road over that portion of the abutting property generally shown as "New Access Easement" on the sketch attached to this Agreement as **Exhibit B**.

c. Parking Lot Expansion; Planning Board Approval. Promptly following the recording of the New Access Easement, the Town shall prepare, at its sole cost, including but not limited to the costs and management of all professional services required such as engineering, testing, surveying, reviews, an application on behalf of the Property Owner for approval from the Falmouth Planning Board and any other permits or approvals, including State and Federal permits, submittals and approvals, needed to expand the Parking Lot (collectively, the "Planning Board Approval"), as more particularly shown and described in **Exhibit C** (the "Parking Lot Work").

d. Minor and Material Modifications to Plans; Timing. In order to obtain the Planning Board Approval, the parties acknowledge that it may be necessary to make minor modifications to the Parking Lot Work which do not materially increase the cost thereof, and the parties agree to negotiate such minor modifications in good faith. The parties further agree that if the Planning Board Approval requires modifications that increase the cost of the Parking Lot Work above and beyond the Town Payment, as defined below, then the parties shall have the option, but not the obligation, to enter a written amendment to this Agreement setting forth such modifications, in which case the Town Payment shall be increased to cover the full cost thereof. For purposes of clarity and the avoidance of doubt, nothing in this Agreement shall require the Town or the Property Owner to agree to any modifications of the Parking Lot Work that would cause an increase in the Town Payment, nor the obligation of the Property Owner to commit to the increase in cost beyond the Town Payment. If, despite the parties' best efforts, the Planning Board Approval for the Parking Lot Work is not obtained within **one hundred twenty (120) days** of the date the New Access Easement is recorded, either party shall have the right to terminate this Agreement by written notice to the other and upon such termination neither party shall have further rights or obligations hereunder.

e. Completion of Parking Lot Work. If Planning Board Approval is received, the Town shall notify the Property Owner of such approval, and the Property Owner shall

complete all of the Parking Lot Work other than the paving no later than **May 31, 2019**, weather permitting and absent any outside forces beyond the control of the Property Owner, in which case such work shall be completed as soon as possible thereafter. Upon completion of the Parking Lot Work (exclusive of the paving), the Property Owner shall notify the Town in writing, and the Town shall have fourteen (14) days from the date it receives such notice to inspect the Parking Lot Work to confirm that it complies with the Planning Board Approval, and to pay to the Property Owner the sum of Twenty Five Thousand Dollars (\$25,000) (the "Town Payment") and any increase to the Town Payment due to the Property Owner per Paragraph 1(c), "Minor and Material Modifications to Plans; Timing" above. Property Owner agrees to accept the Town Payment in full and complete satisfaction of any damages owed to the Property Owner as a result of the Road Project.

2. Walkway Construction Easement. Promptly following the receipt of the Planning Board Approval, and the mutual agreement of the Town and the Property Owner to any increase in the Town Payment due to the Property Owner per Paragraph 1(c) "Minor and Material Modifications to Plans; Timing" above, the Property Owner shall execute and deliver to the Town the temporary construction easement attached to this Agreement as **Exhibit D**. During the course of the Road Project, the Town shall construct a paved walkway approximately five feet wide over a portion of the Property to provide pedestrian access to and from the Parking Lot and the public sidewalk, generally in the area shown as "New Walkway" on **Exhibit B** (the "New Walkway").

3. Completion of Walkway. Once the Property Owner has executed and delivered to the Town the Temporary Construction Easement per the terms of this Agreement, the Town shall complete the New Walkway no later than December 31, 2019, weather permitting and absent any outside forces beyond the control of the Town, in which case it shall be completed as soon as possible thereafter.

4. Authority. The individuals signing this Agreement on behalf of the parties hereto each represent and covenant that they have the full power, authority and legal right to execute, deliver this Agreement and to complete the transactions contemplated by this Agreement.

5. Notices. Any notice relating in any way to this Agreement shall be in writing and shall be sent by (i) registered or certified mail, return receipt requested, (ii) overnight delivery by a nationally recognized courier, or (iii) hand delivery obtaining a receipt therefor, addressed to the addresses set forth on page 1. Notices shall be effective as of the date delivered in the case of hand delivery, on the second day after mailing if sent by first class mail, and on the day after mailing if sent by overnight delivery.

6. Town Authority. The Town's obligations hereunder are expressly contingent upon the approval of the Falmouth Town Council, anticipated to occur on _____, 2018. If such approval is not obtained by _____, 2018, the Town may terminate this Agreement by notice thereof to the Property Owner.

7. Governing law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. If any term or provision of this Agreement shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

8. Miscellaneous. Time is of the essence with respect to this Agreement. References to “days” herein shall mean calendar days. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Paragraph headings are for convenience of reference only and are of no independent legal significance. This Agreement may not be modified or amended except in a writing signed by both parties. All prior and contemporaneous discussions, agreements and understandings of the parties are merged in this Agreement and the exhibits hereto, which alone fully and completely express their entire agreement with respect to the subject matter hereof. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement, and a signed copy delivered by email or fax shall be deemed to have the same legal effect as delivery of an original.

[Remainder of Page Intentionally Left Blank]

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

WITNESS:

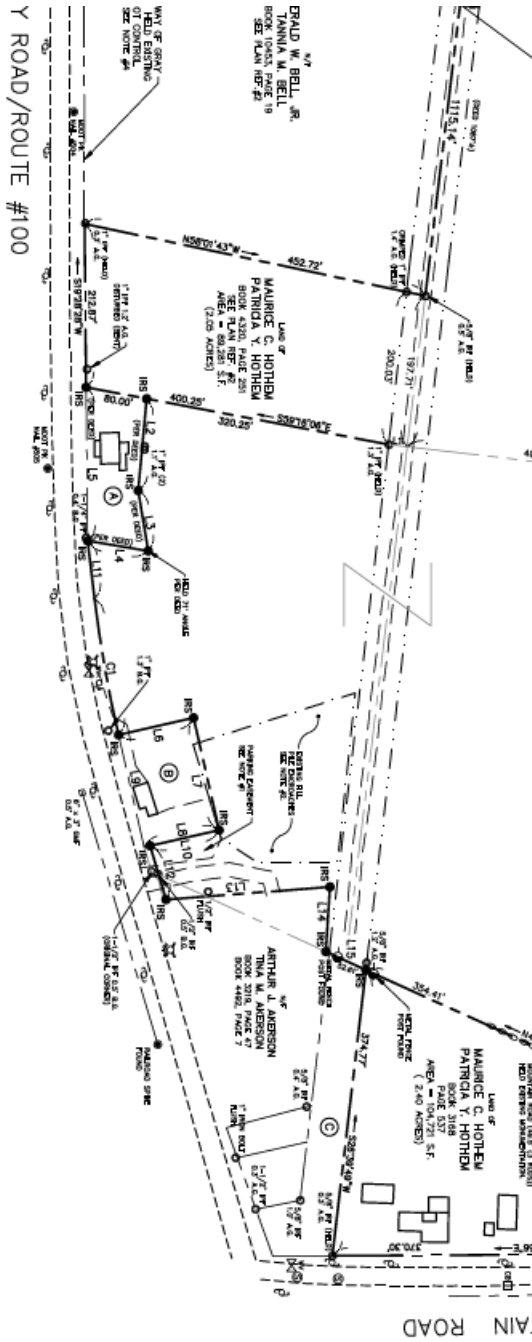
TOWN OF FALMOUTH

By: _____
Nathan A. Poore
Town Manager

W W W, INC.

By: _____
Printed name: _____
Title: _____

EXHIBIT A



F. MAINE DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP OF THE TOWN OF PALMOUTH, MAINE, DATED JANUARY 01, 1971, FILE NO. 3-508. (PRELIMINARY PLANS)
 PART OF THAYER FARM LOCATED IN PALMOUTH, MAINE DATED 1824 SURVEYED BY WILLIAM E. WINSLOW AND RECORDED IN THE AND COUNTY REGISTRY OF DEEDS PLAN BOOK 16, PAGE 34.

- LINE DATA**
- L1 - S 63°-21'-14" E 24.45'
 - L2 - N 29°-14'-34" E 120.00'
 - L3 - N 10°-35'-21" E 80.00'
 - L4 - S 60°-24'-30" E 80.00'
 - L5 - S 19°-28'-28" W 200.00'
 - L6 - N 82°-48'-14" W 100.00'
 - L7 - N 07°-11'-48" E 150.00'
 - L8 - S 82°-48'-14" E 100.00'

SUBJECT PARCEL
 LAND OF MAURICE C. HOTHEN
 AND PATRICIA Y. HOTHEN
 TOTAL AREA = 40.78 ACRES

ABUTTERS LIST

- (A) N/F PAULETTE T. COSEBUD
 MARY E. O'BRIEN
 BOOK 9219
 PAGE 248

I CERTIFY THAT THIS SURVEY CONFORMS WITH THE REQUIREMENTS AND STANDARDS FOR PROFESSIONAL AND SCIENTIFIC TECHNICAL STANDARDS OF PRACTICE FOR A STANDARD BOUNDARY SURVEY, WITH THE FOLLOWING EXCEPTIONS:

1. NO SURVEYORS REPORT
2. NO DEED DESCRIPTION

<p>DESIGNED R. Lohrey, Jr. M. Lohrey, Jr.</p>	<p>DATE June 2004</p>	<p>SCALE 1" = 100'</p>	<p>STANDARD BOUNDARY SURVEY PLAN</p> <p>LAND OF MAURICE & PATRICIA HOTHEN 4 MOUNTAIN ROAD PALMOUTH, MAINE</p>	<p>FOR Maurice C. Hothem, D.O., P.A. 4 Mountain Road Palmyra, Maine 04191</p>	<p>BI Berry & Huff ENGINEERS 20 State Street, 6th</p>
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EXHIBIT B



New Walkway connecting to public sidewalk. The New Access Easement shall be granted over the adjacent land of the Property Owner as necessary for the Town's initial construction of the New Walkway.

EXHIBIT C

Description of scope of work/materials for Parking Lot Work

1. The expanded Parking Lot shall have 21 parking spaces, including 2 handicapped parking spaces, with no lighting and no curb stops.
2. The newly expanded Parking Lot shall be approximately as shown in Exhibit B.

EXHIBIT D

TEMPORARY CONSTRUCTION EASEMENT

W W W, INC., a Maine corporation whose mailing address is _____ (the “Grantor”), for consideration paid, grants to the **TOWN OF FALMOUTH**, a body corporate and politic whose mailing address is 271 Falmouth Road, Falmouth, Maine 04105 (the “Grantee”), its successors and assigns, a temporary non-exclusive construction easement over that portion of the Grantor’s property located in the Town of Falmouth, County of Cumberland, and State of Maine approximately shown as “Temporary Construction Easement” (the “Easement Area”) on **Exhibit A** attached hereto, for the purposes set forth herein.

Grantee shall have the non-exclusive right to enter upon the Easement Area, with persons and equipment, for purposes of excavating, grading, paving and other work reasonably related to the construction of a new pedestrian walkway approximately five (5) feet wide (the “New Walkway”), together with the right of ingress and egress over the Grantor’s property as reasonably necessary to access the Easement Area and perform such work.

The Easement Area comprises a portion of the Grantor’s property described in a deed from Peter Wormell to the Grantor dated January 20, 1998 and recorded in the Cumberland County Registry of Deeds in Book 13559, Page 344, reference also being made to deeds to Peter Wormell recorded in said Registry of Deeds in Book 12958, Page 130 and in Book 12958, Page 132 (the “Grantor’s Property”).

The rights and easements conveyed herein and the terms and conditions thereof shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

This Temporary Construction Easement shall terminate automatically upon the completion of the New Walkway, which shall thereafter become the property of the Grantor, who shall be solely responsible for the maintenance, repair, and replacement of the same.

IN WITNESS WHEREOF, W W W, INC. has caused this instrument to be executed by _____, its _____, thereunto duly authorized, this ____ day of _____, 2018.

WITNESS:

W W W, INC.

By: _____

Print Name:

Title:

STATE OF MAINE

COUNTY OF CUMBERLAND, ss. _____, 2018

Personally appeared the above-named _____,
_____, of W W W, Inc. 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 W W W, Inc.

Before me,

Attorney-at-Law/Notary Public

Print name: _____

My commission expires: _____