

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“Agreement”) is by and between **CUMMINGS PROPERTIES LLC**, a Maine limited liability company having a mailing address of \_\_\_\_\_ (“Owner”) and **TOWN OF FALMOUTH**, a Maine municipality having a mailing address of 271 Falmouth Road, Falmouth, Maine 04105 (the “Town”).

### RECITALS

WHEREAS, the Owner intends to develop a condominium (the “Project”) on its property located at or near Blackstrap Road in Falmouth, Cumberland County, Maine being described in the warranty deed to the Owner dated March 16, 2017 and recorded in the Cumberland County Registry of Deeds in Book 33887, Page 62 (the “Owner’s Property”); and

WHEREAS, the Town owns certain property adjacent to the Owner’s Property, being described in the deed from Fred W. Chase to the Town dated February 1, 2016 and recorded in said Registry of Deeds in Book 32945, Page 317 (the “Town’s Property”); and

WHEREAS, in connection with the development of the Project, and subject to the necessary review and approvals of the Project by the Falmouth Planning Board, the Owner intends to grant to the Town a trail easement over a portion of the Owner’s Property, and the Town intends to grant to the Owner an easement over the Town’s Property for purposes of constructing, using and maintaining a new road connecting the Owner’s Property with Brookfield Road, a town way; and

WHEREAS, the parties wish to set forth their agreement regarding such easements.

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

1. Timing. The parties agree that within one hundred eighty (180) days of the Owner’s receipt of final approval of its Project from the Falmouth Planning Board (the “Approvals”), and in any event prior to the Owner recording a condominium Declaration affecting the Owner’s Property, the following shall occur:
  - a. Trail Easement. The Owner shall execute and deliver to the Town a full sized plan depicting the location of the trails together with a trail easement (the “Trail Easement”) substantially in the form attached hereto as **Exhibit A**, to be recorded by the Town in the Cumberland County Registry of Deeds, including a mortgagee joinder from any mortgagees, lienholders, or third parties having rights in and to the Owner’s Property acquired through or under the Owner.
  - b. Easement and Road Maintenance Agreement. The Town and the Owner shall execute and deliver an Easement and Road Maintenance Agreement (the “Easement and Road Maintenance Agreement”) substantially in the form attached hereto as **Exhibit B**,

which shall be recorded in the Cumberland County Registry of Deeds simultaneously with the Trail Easement.

2. Approvals; Termination. The rights and obligations of the parties hereunder are expressly subject to the final approval of the Project by the Falmouth Planning Board. If the Owner has not received the Approvals within one (1) year of the date this Agreement is fully executed and delivered by both parties hereto, either party may terminate this Agreement by written notice to the other, and the parties shall have no further rights or obligations hereunder. If the Approvals are inconsistent with any of the terms of this Agreement, or if material changes are needed to the Trail Easement, or to the Easement and Road Maintenance Agreement in order to effectuate the intent of the parties, the parties shall endeavor to negotiate a written Amendment to this Agreement, subject to the approval of the Falmouth Town Council, in order to resolve any such inconsistencies.

3. Condominium Declaration. The Owner's condominium Declaration for the Project shall make express reference to the recorded Trail Easement and to the recorded Easement and Road Maintenance Agreement.

4. Further Assurances. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions described herein.

5. 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.

6. Default. In the event of a default hereunder by either party, the non-defaulting party may pursue all legal and equitable remedies, including without limitation, pursuing an action for specific performance and recovery of reasonable attorneys' fees and costs.

7. Governing law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of Maine and any judicial proceeding to enforce any provision or rights under this Agreement shall be brought and maintained solely in the courts of Cumberland County, 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. 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.

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

**CUMMINGS PROPERITES LLC**

**TOWN OF FALMOUTH**

By: \_\_\_\_\_  
Printed name:  
Title:

By: \_\_\_\_\_  
Nathan Poore  
Its Town Manager

**EXHIBIT A**

**TRAIL EASEMENT**

THIS TRAIL EASEMENT is granted by **CUMMINGS PROPERTIES LLC**, a Maine limited liability company having a mailing address of \_\_\_\_\_ (the "Owner") to **TOWN OF FALMOUTH**, a Maine municipality having a mailing address of 271 Falmouth Road, Falmouth, Maine 04105 (the "Town").

**RECITALS**

**WHEREAS**, the Owner is developing a condominium (the "Project") on its property located at or near Blackstrap Road in Falmouth, Cumberland County, Maine, being more particularly described in the warranty deed dated March 16, 2017 and recorded in the Cumberland County Registry of Deeds in Book 33887, Page 62 (the "Owner's Property"); and

**WHEREAS**, the Owner wishes to grant to the Town a non-exclusive easement over a portion of the Owner's Property, upon which the Owner shall construct and maintain trails approximately \_\_\_\_\_ (\_\_\_\_\_) feet in width for recreational use by the public, in accordance with the Falmouth Planning Board approvals of the Project (collectively, the "Trails").

1. Grant of Trail Easement. The Owner hereby grants to the Town, its successors and assigns, a perpetual, non-exclusive trail easement for pedestrian and bicycle passage by the public over that portion of the Owner's Property shown as \_\_\_\_\_ on the plan entitled \_\_\_\_\_ made for \_\_\_\_\_ dated \_\_\_\_\_ and last revised as of \_\_\_\_\_ (the "Plan"), over which the Owner shall construct the Trails. A reduced copy of the Plan is attached hereto as **Exhibit A** and a full sized copy of the Plan is on file with the Town. The Owner, its successors and assigns, shall remain responsible for all construction, repair and maintenance of the Trails in perpetuity, in a safe and clean manner consistent with the uses described herein. Reserving to the Owner the use and enjoyment of the Owner's Property for all purposes as are not inconsistent with and which shall not materially interfere with the uses thereof by the Town and by the public for the purposes described herein.

2. Use. The Trails shall be used solely for pedestrian and non-motorized bicycle passage by the public, and shall exclude motorized equipment (other than wheelchairs and the like) and vehicles of any kind, other than the Owner's equipment necessary for the repair and maintenance of the Trails. The Owner shall be entitled to establish other reasonable rules and regulations governing manner and timing of the use of the Trails by the public provided that: (a) such rules and regulations are communicated through visible signage and/or barriers installed at trailheads; and (b) no action is taken that is designed to prohibit, discourage, or exact a fee for the use thereof by the public as permitted hereunder.

3. Condominium Declaration. The Owner shall include a reference in its recorded condominium Declaration to this Trail Easement.

4. Successors and Assigns; Running with the Land. The rights, easements and obligations herein shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns and shall run with the land.

IN WITNESS WHEREOF, Cummings Properties LLC has caused this Trail Easement to be executed by its representative, thereunto duly authorized, as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**CUMMINGS PROPERTIES LLC**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

\_\_\_\_\_, 2017

Personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Cummings Properties 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 Cummings Properties LLC.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

\_\_\_\_\_  
Printed name  
My commission expires: \_\_\_\_\_

**MORTGAGEE JOINDER<sup>1</sup>**

\_\_\_\_\_, holder of a certain \_\_\_\_\_  
from \_\_\_\_\_ dated \_\_\_\_\_ and recorded in the Cumberland  
County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_ (the “Mortgage”), hereby joins in this  
Trail Easement for the sole and limited purpose of releasing the rights and easements described  
herein, and no other, from the Mortgage, and agreeing that in the exercise of its rights under the  
Mortgage it will recognize and agree to be bound by the terms and provisions hereof. This  
Joinder shall in no way affect or impair the right of said \_\_\_\_\_  
to hold under the Mortgage, as security for the sums remaining due thereon, all the remainder of  
the mortgaged premises therein conveyed or described and not hereby released.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF MAINE

COUNTY OF \_\_\_\_\_, ss. \_\_\_\_\_, 2017

Personally appeared the above-named \_\_\_\_\_,  
\_\_\_\_\_ of \_\_\_\_\_, 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 \_\_\_\_\_.

Before me,

\_\_\_\_\_  
Notary Public / Attorney at Law  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

<sup>1</sup> Complete for any mortgagees holding mortgages on the property at the time of execution (currently the property is subject to a mortgage held by Ben Pride, recorded in Book 33887, Page 65).

**EXHIBIT A**

**Reduced copy of the final plan showing the location of the trails**

## **EXHIBIT B**

### **EASEMENT AND ROAD MAINTENANCE AGREEMENT**

THIS EASEMENT AND ROAD MAINTENANCE AGREEMENT is by and between **CUMMINGS PROPERTIES LLC**, a Maine limited liability company having a mailing address of \_\_\_\_\_ (“Owner”) and **TOWN OF FALMOUTH**, a Maine municipality having a mailing address of 271 Falmouth Road, Falmouth, Maine 04105 (the “Town”).

#### **RECITALS**

**WHEREAS**, the Owner is the owner of certain property located at or near Blackstrap Road in Falmouth, Cumberland County, Maine, being described in the warranty deed to the Owner dated March 16, 2017 and recorded in the Cumberland County Registry of Deeds in Book 33887, Page 62 (the “Owner’s Property”); and

**WHEREAS**, the Town is the owner of certain property adjacent to the Owner’s Property, being described in the deed from Fred W. Chase to the Town dated February 1, 2016 and recorded in said Registry of Deeds in Book 32945, Page 317, shown as “Proposed Future Right-of-Way to N/F Pride Property” on the plan entitled “Brookside Field Extension, Brookfield Road, Subdivision Plat Plan” recorded in said Registry of Deeds in Plan Book 216, Page 40 (the “Town’s Property”), which property was acquired by the Town for the purpose of having future road connectivity in the event that the Owner’s Property were to be developed; and

**WHEREAS**, as part of the Owner’s development of a condominium on the Owner’s Property, the Owner will also construct a new road over the Town’s Property to provide for pedestrian and vehicular connectivity between Blackstrap Road and Brookfield Road, both town ways, in accordance with the applications and approvals submitted to and approved by the Planning Board for the Town of Falmouth; and

**WHEREAS**, the Town wishes to grant to the Owner certain temporary and permanent rights and easements over the Town’s Property as described herein, subject to the terms hereof, and the Owner wishes to accept the same and to agree to certain obligations with respect to the ongoing maintenance of the road.

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

1. Grant of Temporary Easement. The Town hereby grants to the Owner, its successors and assigns, for the benefit of the Owner’s Property, a temporary, non-exclusive easement to enter upon the Town’s Property with persons and equipment for purposes of surveying, clearing, grading, paving, and other work performed by the Owner or by third parties on behalf of Owner as necessary for the Owner to construct a new road thereon, together with



any drainage systems, sidewalk, signage, lighting or other appurtenances to the road required by the Approvals (collectively, the “New Road”), which will provide connectivity between the Owner’s Property and Brookfield Road, a town way, as shown on the plan entitled \_\_\_\_\_ prepared by \_\_\_\_\_ for Cummings Properties LLC dated \_\_\_\_\_, 2017, together with the right to cut down and/or trim trees or other vegetation therein to the extent necessary in connection with such work. The above-described easement shall be subject to the following terms and conditions:

- a. The Owner shall perform all work in connection with the construction of the New Road in accordance with all applicable federal, state and local laws, ordinances and rules, and with all drawings, specifications, applications submitted to the Town and the Approvals, as the same may be amended from time to time, and all applicable ordinances and design standards of the Town for town ways, and shall keep the Town’s Property free of mechanic’s liens. At the Town’s request, the Owner shall provide a final waiver of lien in a form reasonably acceptable to the Town from all of Owner’s contractors following completion of the New Road.
- b. Prior to the start of any work on the Town’s Property, the Owner and its contractors shall procure, and shall maintain for so long as the Owner has rights or obligations hereunder, policies for worker’s compensation insurance as required by law, business automobile liability insurance, and commercial general liability insurance in amounts and from such insurance providers reasonably satisfactory to the Town and its insurers, all such policies to list the Town as an additional insured.
- c. The Owner shall undertake all work permitted hereunder on the Town’s Property at its sole cost and expense, shall minimize any disruption to nearby property owners and, following the completion of its work, shall restore any portion of the surrounding land, including without limitation, Brookfield Road, disturbed by such work as nearly as practical to its condition prior to the undertaking of such work.
- d. The temporary rights and easements granted in this Section 1 shall terminate without further action by the parties hereto upon completion of construction of the New Road and a satisfactory final inspection thereof by the Town.

2. Grant of Permanent Access Easement. The Town further grants to the Owner, its successors and assigns, a permanent non-exclusive easement in common with the public over the Town’s Property, for vehicular and pedestrian ingress and egress to and from the Owner’s Property and Brookfield Road. Such access easement shall terminate and be of no further force and effect at such time, if ever, as the Town accepts the New Road as a town way. For the avoidance of doubt, nothing contained herein shall be construed as obligating the Town to accept the New Road.

3. Maintenance of the New Road. The Town shall have no obligations with respect to the New Road, and until such time, if ever, as the New Road is accepted by the Town as a town way, the Owner shall remain solely responsible for repairing, maintaining, repaving, replacing and providing drainage from, the New Road, and for keeping the New Road passable

during winter months by plowing, salting and sanding from time to time as needed in order to allow for safe passage of motor vehicles over the road, and for safe passage of pedestrians over the sidewalk.

4. Default. In the event of a default of its obligations hereunder by the Owner, the Town may pursue all legal and equitable remedies and recovery of reasonable attorney's fees, costs and expenses, including without limitation, performing the duties of the Owner hereunder, the cost and expense of which shall be reimbursed in full to the Town by the Owner immediately upon written demand.

5. Indemnification. The Owner, its officers, agents and employees and their respective heirs, successors and assigns hereby release the Town, its agents and employees from, and agree to indemnify, defend, and hold the Town, its agents and employees harmless from and against any and all losses, costs, claims, expenses and liabilities suffered by the Town, its successors or assigns, on account of (a) any lien or encumbrance placed on the Town's Property in connection with the exercise of the Owner's rights granted herein, or (b) any injury to persons (including death) or damage to property (i) in connection with the exercise of Owner's rights hereunder; or (ii) caused by the Owner, or any agents, employees, invitees or contractors of the Owner while the Owner, or any agents, employees, invitees or contractors of Owner, are on the Town's Property pursuant to, or are exercising the rights granted by, this instrument. The obligations set forth in this Section shall survive the termination of this Agreement for any reason.

6. Town's Reserved Rights. Reserving to the Town, its successors and assigns, the use and enjoyment of the Town's Property for all purposes as are not inconsistent with and which shall not materially interfere with the uses thereof by the Owner, its successors and assigns for the purposes described herein.

7. Condominium Declaration. The Owner shall include a reference in its recorded condominium Declaration to this Easement and Road Maintenance Agreement.

8. Successors and Assigns; Running with the Land. The rights, easements and obligations herein shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns and shall run with the land.

9. Miscellaneous. This Agreement shall be governed and construed in accordance with the laws of the State of Maine and any judicial proceeding to enforce any provision or rights under this Agreement shall be brought and maintained solely in the courts of Cumberland County, Maine. Paragraph headings are for convenience of reference only and are of no independent legal significance. This Agreement may not be modified, waived or amended except in a writing signed by the parties hereto. Any and 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 expresses their entire agreement with respect to the subject matter hereof. Any provision or part of this Agreement held to be void or unenforceable by a court shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the parties.

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

WITNESS:

**CUMMINGS PROPERTIES LLC**

\_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MAINE

COUNTY OF CUMBERLAND, ss. \_\_\_\_\_, 2017

Personally appeared the above-named \_\_\_\_\_,  
\_\_\_\_\_, of Cummings Properties 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  
Cummings Properties LLC.

Before me,

\_\_\_\_\_  
Attorney-at-Law/Notary Public

\_\_\_\_\_  
Print Name

My commission expires: \_\_\_\_\_

WITNESS:

**TOWN OF FALMOUTH**

\_\_\_\_\_

By: \_\_\_\_\_

Nathan Poore  
Its Town Manager

STATE OF MAINE

COUNTY OF CUMBERLAND, ss. \_\_\_\_\_, 2017

Personally appeared the above-named Nathan Poore, Town Manager of the Town of Falmouth, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Town of Falmouth.

Before me,

\_\_\_\_\_  
Attorney-at-Law/Notary Public

\_\_\_\_\_  
Print Name

My commission expires: \_\_\_\_\_