

AGREEMENT

THIS AGREEMENT is made as of the ____ day of December ____, 2015, by and between 469 DOTEN, LLC, a Maine limited liability company, whose mailing address is P.O. Box 215, Portland, Maine 04112-0215 (“Doten”), and the TOWN OF FALMOUTH, a Maine municipal corporation, whose mailing address is 271 Falmouth Road, Falmouth, Maine 04105 (the “Town”).

RECITALS

WHEREAS, Doten has received approvals from the Falmouth Planning Board for the development of Doten’s property (the “Project”) adjacent, in part, to Hat Trick Drive, so-called, a private road owned by the Town; and

WHEREAS, certain work (the “Work”) required to be completed by Doten with respect to the Project located in part on the Project site and in part within Hat Trick Drive has been completed by the Town in connection with the Town’s construction of Hat Trick Drive resulting in a significant financial savings to Doten; and

WHEREAS, Doten has agreed to reimburse the Town for a portion of the costs incurred by the Town in connection with the completion of the Work (the “Reimbursement”); and

WHEREAS, the Town has incurred and will continue to incur attorneys fees and expenses with respect to the work of Drummond Woodsum, its counsel, in drafting various documents relating to the Project and attending to other related matters (the “DW Fees”); and

WHEREAS, Doten has agreed to reimburse the Town for the DW Fees; and

WHEREAS, the Town has agreed that, following the Reimbursement and the reimbursement of the DW Fees by Doten, the Town will grant the hereinafter described Easement to Doten with respect to Hat Trick Drive; and

WHEREAS, Doten has agreed that, following the Reimbursement and the reimbursement of the DW Fees by Doten, Doten will grant the hereinafter described Sidewalk Easement to the Town with respect to the sidewalk to be constructed by Doten adjacent to Farm Gate Road as part of the Project.

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

1. Reimbursement. Doten shall pay to the Town the amount of \$14,375.44 as set forth in the summary entitled “Rivalries – TV4 Site Work Estimate” attached hereto as Schedule A within forty-five (45) days following the approval by the Falmouth Town Council of this Agreement anticipated to occur at the Council’s December 14, 2015 meeting; and

2. DW Fees. Doten shall reimburse the Town for the DW Fees within forty-five (45) days following said approval by the Falmouth Town Council of this Agreement; and

3. Easements. Upon receipt of the Reimbursement and the reimbursement of the DW Fees, (a) the Town will execute and deliver the Easement substantially in the form attached hereto as Schedule B to Doten, which Easement shall be executed and acknowledged by Doten, and (b) Doten will execute and deliver the Sidewalk Easement substantially in the form attached hereto as Schedule C to the Town; and

4. Commencement of Project. Doten shall not commence work on the Project until the terms and provisions of this Agreement have been satisfied.

IN WITNESS WHEREOF, 469 DOTEN, LLC and the TOWN OF FALMOUTH have caused this instrument to be executed by their respective representatives, thereunto duly authorized, as of the date first set forth above.

WITNESS:

469 DOTEN, LLC

By: _____
Steve Doten
Its Manager

TOWN OF FALMOUTH

By: _____
Nathan A. Poore
Its Town Manager

Schedule A

Rivalries - TV4 Site Work Estimate

Item #	Description	Unit Price	Quantity	Unit	Total Value	Doten Portion	Actual Value
2	3" HMA (1.25"+1.75")+18" Gravel (Entrance)	\$ 29.00	44.44	SY	\$ 1,288.89	100%	\$ 1,288.89
5	Common Borrow	\$ 15.00	184.44	CY	\$ 2,766.67	100%	\$ 2,766.67
7	5' Wide Asphalt Sidewalk (3"+10")	\$ 35.00	142.22	SY	\$ 4,977.78	50%	\$ 2,488.89
13	12" HDPE Storm Drain	\$ 40.00	15.00	LF	\$ 600.00	50%	\$ 300.00
20	4' Dia Pre-Cast CCB/DMH	\$ 2,750.00	1.00	EA	\$ 2,750.00	50%	\$ 1,375.00
32	12' Tall Pedestrian LED Lighting	\$ 4,104.00	3.00	EA	\$ 12,312.00	50%	\$ 6,156.00
Total Value					\$ 24,695.33	Doten Value	\$ 14,375.44

TV 4 Site Savings: \$ 10,319.89
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DRAFT - VERSION 2 - 12/09/15

EASEMENT

The **TOWN OF FALMOUTH**, a Maine municipal corporation, whose mailing address is 271 Falmouth Road, Falmouth, Maine 04105 (the “Grantor”), for valuable consideration, the receipt of which is hereby acknowledged, hereby grants to **469 DOTEN, LLC**, a Maine limited liability company, whose mailing address is P.O. Box 215, Portland, Maine 04112-0215 (the “Grantee”), the following described rights and easements with respect to that portion of Hat Trick Drive, so-called, a private road owned by the Grantor, situated adjacent to the easterly side of the land of the Grantee, being the land described in a Deed from The Emery-Waterhouse Company to the Grantee dated March 13, 2006, and recorded in Book 23808, Page 168 of the Cumberland County Registry of Deeds (the “Doten Property”), which portion of Hat Trick Drive is shown on a plan entitled “Utilities – Drainage – Erosion Control 10 Scale Plan, Tidewater Village Parcel No. 4, 469 Doten, LLC, Falmouth, Maine” dated April 28, 2015, as most recently revised October 5, 2015, a reduced copy of which is attached hereto as Schedule A (the “Plan”), said portion of Hat Trick Drive being hereinafter referred to as the “Easement Area”:

The right and easement over the Easement Area, in common with the Grantor, the public, and other parties having rights therein, for vehicular and pedestrian access to and from the Doten Property and Clearwater Drive, with vehicular ingress and egress to the Easement Area being limited to the two (2) curb cuts shown on the Plan as approved by the Town of Falmouth Planning Board (the “Board”) in connection the Board’s review and approval of the development of the Doten Property as a restaurant facility by the Grantee (the “Grantee’s Project”) in accordance with the approvals thereof granted by the Board.

Also the right and easement to enter upon the Easement Area for the purpose of installing, maintaining, repairing and replacing landscaping and other improvements shown on the Plan and approved by the Board in connection the Board’s review and approval of the Grantee’s Project in accordance with the approvals thereof granted by the Board.

All landscaping and other improvements installed by the Grantee within the Easement Area shall become the property of the Grantor and shall remain in place unless otherwise agreed by the Grantor and the Grantee.

The foregoing rights and easements are granted subject to the following terms and conditions:

1. The Grantee shall undertake all activities within the Easement Area permitted pursuant to the rights and easements granted herein in an environmentally sound manner so as to

prevent erosion and to avoid any unnecessary damage to the Easement Area and otherwise in full compliance with all applicable laws, rules, and regulations and, in particular, in accordance with the approvals for the Grantee's Project granted by the Board, as said approvals may be amended from time to time;

2. The Grantee shall, following the undertaking of any activities within the Easement Area, promptly repair and restore the surface of the ground and any surrounding areas to substantially the same or better condition than existed prior to the undertaking of any such activities except to the extent the change is necessitated by the nature of the activities permitted pursuant to the rights and easements granted herein;

3. The Grantee shall maintain and repair all landscaping and other improvements installed by the Grantee within the Easement Area as required by and in accordance with the approvals for the Grantee's Project granted by the Board; and

4. The Grantee agrees, for itself and its successors and assigns, to indemnify and hold harmless the Grantor, its successors and assigns, and others doing business on the Grantor's property, from and against any and all damages, liabilities, losses, expenses, claims, demands and suits (including reasonable attorneys' fees and other costs and expenses incurred in defending the same), incurred or suffered in consequence of either bodily injury to any person (including death) or damage to any property, and also any liens or encumbrances against the Grantor's property, arising out of, or in connection with, the exercise of the rights and easements granted herein.

In addition to the above terms and conditions, the foregoing rights and easements are granted subject to the following additional term and condition:

Commencing on the date hereof, and continuing on each annual anniversary date hereof, the Grantee shall pay to the Grantor an annual fee (the "Annual Fee"), which Annual Fee shall be used to pay for annual costs and expenses relating to the maintenance and repair of the Easement Area, which maintenance and repair shall include, but not be limited to, paving, striping, snowplowing, sanding and removal of ice and other obstructions that prevent or limit the use of the Easement Area for pedestrian and vehicular travel. The Annual Fee shall initially be One Thousand Five Hundred Dollars (\$1,500.00) and shall be increased by three percent (3%) on the third (3rd) annual anniversary date hereof and further increased by three percent (3%) each annual anniversary date thereafter. The Grantee acknowledges that the Grantor and Falmouth Plaza, LLC, the owner of the Falmouth Plaza Shopping Center adjacent to Hat Trick Drive, have entered into an arrangement pursuant to which Falmouth Plaza, LLC is primarily responsible for the maintenance and repair of Hat Trick Drive, and agrees that, at its option, the Grantor may pay all or a portion of the Annual Fee to Falmouth Plaza, LLC in connection with the latter's obligations under said arrangement with the Grantor.

In the event the Grantee fails to pay such Annual Fee to the Grantor within fifteen (15) days following the due date thereof, the Grantor shall have the right to charge interest at the rate of eighteen percent (18%) per annum on such overdue amount and, at its option, to suspend or terminate the Grantee's rights and easements hereunder by written notice to the Grantee, which

notice shall be recorded in the Cumberland County Registry of Deeds and be conclusive evidence of the suspension or termination of the Grantee's rights and easements hereunder.

The Grantee's obligation to pay the Annual Fee to the Grantor shall terminate at such time, if ever, that (a) the Grantor's arrangement with Falmouth Plaza, LLC terminates, and (b) Hat Trick Drive is accepted by the Falmouth Town Council as a public road.

In the event of a default by the Grantee with respect to its obligations hereunder, and in addition to such rights of the Grantor as hereinabove set forth, the Grantor shall have all rights and remedies available to it at law or in equity under Maine law, together with the right to collect reasonable attorney's fees and expenses relating to the enforcement of the terms and conditions hereof.

The rights and easements hereunder have been granted by the Grantor to the Grantee in connection with the Grantee's Project. At the Grantor's option, the rights and easements hereunder may be terminated by the Grantor in the event the Grantee's Project ceases to operate in the manner approved by the Board unless the rights and easements hereunder are extended by mutual agreement of the Grantor and the Grantee. In the event of such termination, a written notice shall be recorded by the Grantor in the Cumberland County Registry of Deeds, which notice shall be conclusive evidence of the termination of the rights and easements hereunder.

469 DOTEN, LLC, by its acceptance of this Easement as evidenced by its execution and acknowledgement hereof, hereby agrees to the terms and conditions hereof.

This Easement shall be binding upon and inure to the benefit of the Grantor and the Grantee, and their respective successors and assigns, in accordance with and subject to the terms and conditions thereof. This Easement is, and shall be, governed in all respects (including validity, construction, interpretation and effect) by the laws of the State of Maine. Should any provision of this Easement for any reason be declared invalid or unenforceable, such decision shall not affect the validity or enforceability of any of the other provisions hereof, which remaining provisions shall remain in full force and effect, and the application of such invalid or unenforceable provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the TOWN OF FALMOUTH and 469 DOTEN, LLC have caused this instrument to be executed by their respective representatives, thereunto duly authorized, this ____ day of _____, 201__.

WITNESS:

TOWN OF FALMOUTH

By: _____
Nathan A. Poore
Its Town Manager

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 201__

Then personally appeared the above-named Nathan A. Poore, Town Manager of the Town of Falmouth, 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

My commission expires:_____

WITNESS:

469 DOTEN, LLC

By: _____

Steve Doten
Its Manager

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 201__

Then personally appeared the above-named Steve Doten, Manager of 469 Doten, LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity the free act and deed of said 469 Doten, LLC.

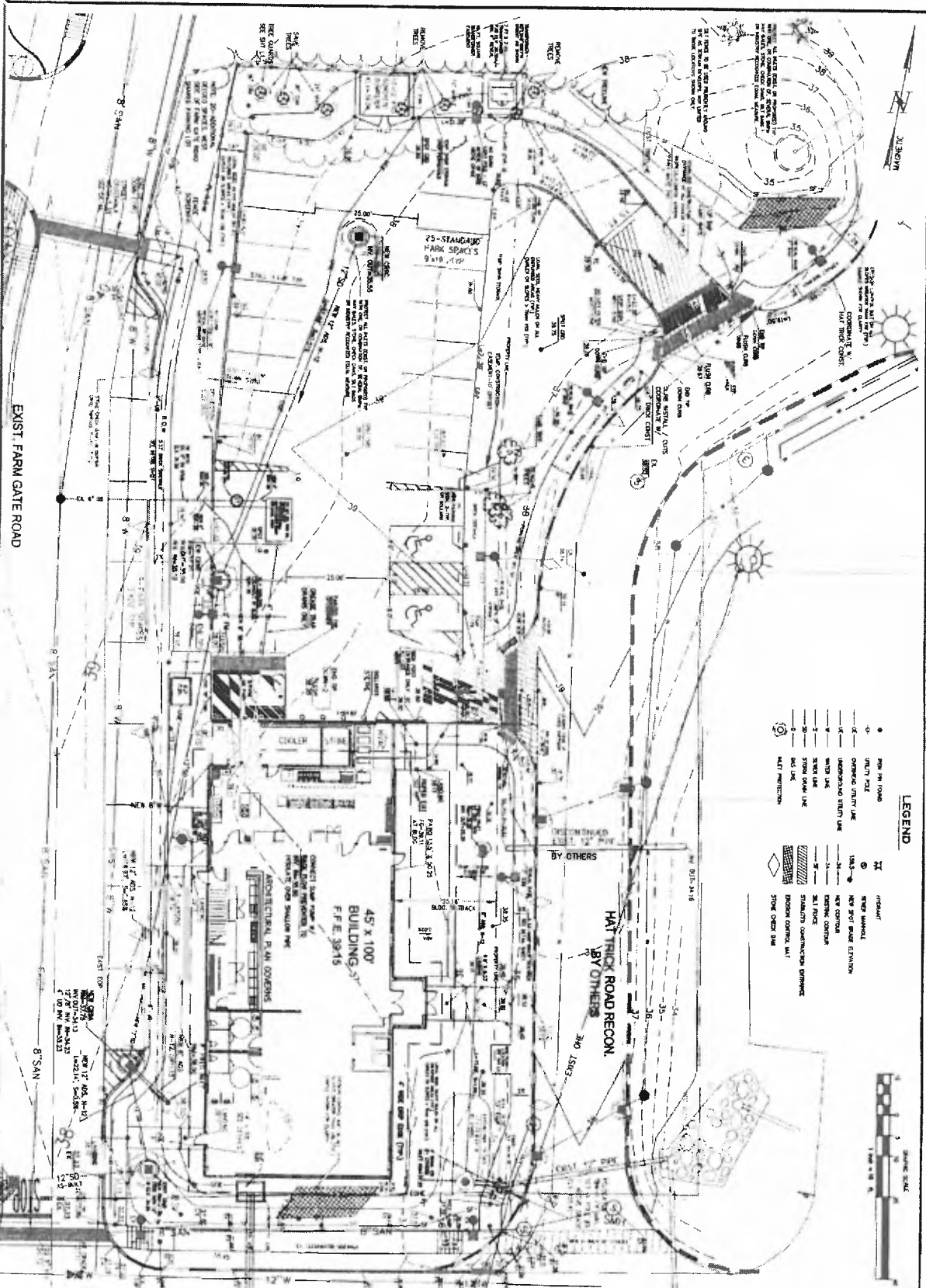
Before me,

Notary Public/Attorney at Law

Print Name

My commission expires: _____

Schedule A



1+00

0+00

NOT RELEASED FOR CONSTRUCTION

DATE:	06-28-13
SCALE:	AS SHOWN
DRAWN BY:	MAZ
CHECKED BY:	MAZ
PROJECT NUMBER:	008 DOTEN, LLC
SHEET:	CS

Engineering Associates & Design, Inc. 1005 S. DODD ST., SUITE 100 PORTLAND, ME 04106 TEL: 603-876-1234 FAX: 603-876-1235 WWW: www.eadinc.com	PROJECT: 469 DOTEN, LLC 28 BANGOR STREET, PORTLAND, ME 04106
DRAWN BY: MAZ CHECKED BY: MAZ PROJECT: 469 DOTEN, LLC ARCHITECT: CHARLOTTE BALCH, LANDSCAPE ARCHITECTURE 27 BRUCE STREET, PORTLAND, ME 04106	PROJECT: TIDEWATER VILLAGE PARCEL No. 4 469 DOTEN, LLC FALMOUTH, MAINE

UTILITIES - DRAINAGE - EROSION CONTROL 10 SCALE PLAN PROJECT: TIDEWATER VILLAGE PARCEL No. 4 469 DOTEN, LLC FALMOUTH, MAINE	REVISIONS 1. REVISED FOR PERMITS 2. REVISED FOR PERMITS 3. REVISED FOR PERMITS 4. REVISED FOR PERMITS 5. REVISED FOR PERMITS
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PROJECT: TIDEWATER VILLAGE PARCEL No. 4 469 DOTEN, LLC FALMOUTH, MAINE	REVISIONS 1. REVISED FOR PERMITS 2. REVISED FOR PERMITS 3. REVISED FOR PERMITS 4. REVISED FOR PERMITS 5. REVISED FOR PERMITS
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Schedule C

DRAFT 12/08/15

SIDEWALK EASEMENT

469 DOTEN, LLC, a Maine limited liability company, whose mailing address is P.O. Box 215, Portland, Maine 04112-0215 (the “Grantor”), for valuable consideration, the receipt of which is hereby acknowledged, hereby grants to the **TOWN OF FALMOUTH**, a Maine municipal corporation, whose mailing address is 271 Falmouth Road, Falmouth, Maine 04105 (the “Grantee”), the following described right and easement, for the benefit of the Grantee and members of the public generally, over land of the Grantor located along the easterly side of Farm Gate Road in Falmouth, Cumberland County, Maine, as shown on a plan entitled “Grading & Dimensions 10 Scale Plan, Tidewater Village Parcels No. 4, 469 Doten, LLC, Falmouth, Maine,” dated April 28, 2015, as most recently revised October 5, 2015, a reduced copy of which is attached hereto as Schedule A (the “Plan”):

The right and easement to utilize that portion of the sidewalk approximately situated and designated as “Farm Gate Road Sidewalk” on the Plan that is located on the Grantor’s property adjacent to the easterly side of Farm Gate Road (the “Easement Area”) for pedestrian traffic and non-motorized conveyances such as, by way of example and not be way of limitation, tricycles, bicycles, baby carriages and the like, provided that motorized equipment meant to transport one person on equipment similar to a scooter used for people with a physical handicap or equipment such as a Segway meant to transport one person with limited speeds shall also be permitted, and such other similar uses commonly made of sidewalks in the Town of Falmouth, following the completion of the construction of the sidewalk by the Grantor in connection with the Grantor’s development of the Grantor’s property as a restaurant facility in accordance with the approvals thereof granted by the Town of Falmouth Planning Board. The Grantor shall maintain the sidewalk, together with that portion located within the legal right of way of Farm Gate Road, which maintenance shall include clearing of snow and ice and other obstructions, and the repairing thereof as necessary. The Grantee shall not be responsible for maintaining the Easement Area but may do so, at its option, in connection with the maintenance of any portion of the sidewalk located within the legal right of way of Farm Gate Road. In the event the Grantee chooses to undertake any maintenance or to make any improvements to the Easement Area, the Grantor shall reimburse the Grantee for the reasonable costs thereof provided that prior to undertaking any such work, the Grantee shall consult with the Grantor regarding the costs thereof.

The premises of the Grantor to which this Sidewalk Easement relates comprise a portion of the premises conveyed to the Grantor by Deed of The Emery-Waterhouse Company dated March 13, 2006, and recorded in Book 23808, Page 168 of the Cumberland County Registry of Deeds.

The right and easement conveyed herein and the terms and conditions hereof shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

BATH SAVINGS INSTITUTION, holder of (a) a Mortgage from the Grantor dated August 1, 2013, and recorded in the Cumberland County Registry of Deeds in Book 30902, Page 38, and (b) an Assignment of Leases and Rents from the Grantor dated August 1, 2013, and recorded in said Registry of Deeds in Book 30902, Page 45 (collectively, the "Security Documents"), hereby joins in this Sidewalk Easement for the sole and limited purpose of releasing the right and easement granted herein, and no other, from the Security Documents, and agreeing that in the exercise of its rights under the Security Documents it will recognize and agree to be bound by the terms and provisions hereof. The execution and delivery of this Sidewalk Easement by BATH SAVINGS INSTITUTION shall in no way affect or impair the right of BATH SAVINGS INSTITUTION to hold under the Security Documents, as security for the sums remaining due thereon, all the remainder of the mortgaged premises therein conveyed or described and not hereby released.

IN WITNESS WHEREOF, 469 DOTEN, LLC and BATH SAVINGS INSTITUTION have caused this instrument to be executed by their authorized representatives as of the _____ day of _____, 201__.

469 DOTEN, LLC

Witness

By: _____
Steve Doten
Its Manager

STATE OF MAINE
CUMBERLAND, ss.

_____, 201__

Then personally appeared before me the above-named Steve Doten, Manager of 469 Doten, LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said 469 Doten, LLC.

Notary Public/Attorney At Law

Print Name

My commission expires: _____

BATH SAVINGS INSTITUTION

Witness

By: _____

Its _____

Print Name: _____

STATE OF MAINE
CUMBERLAND, ss.

_____, 201__

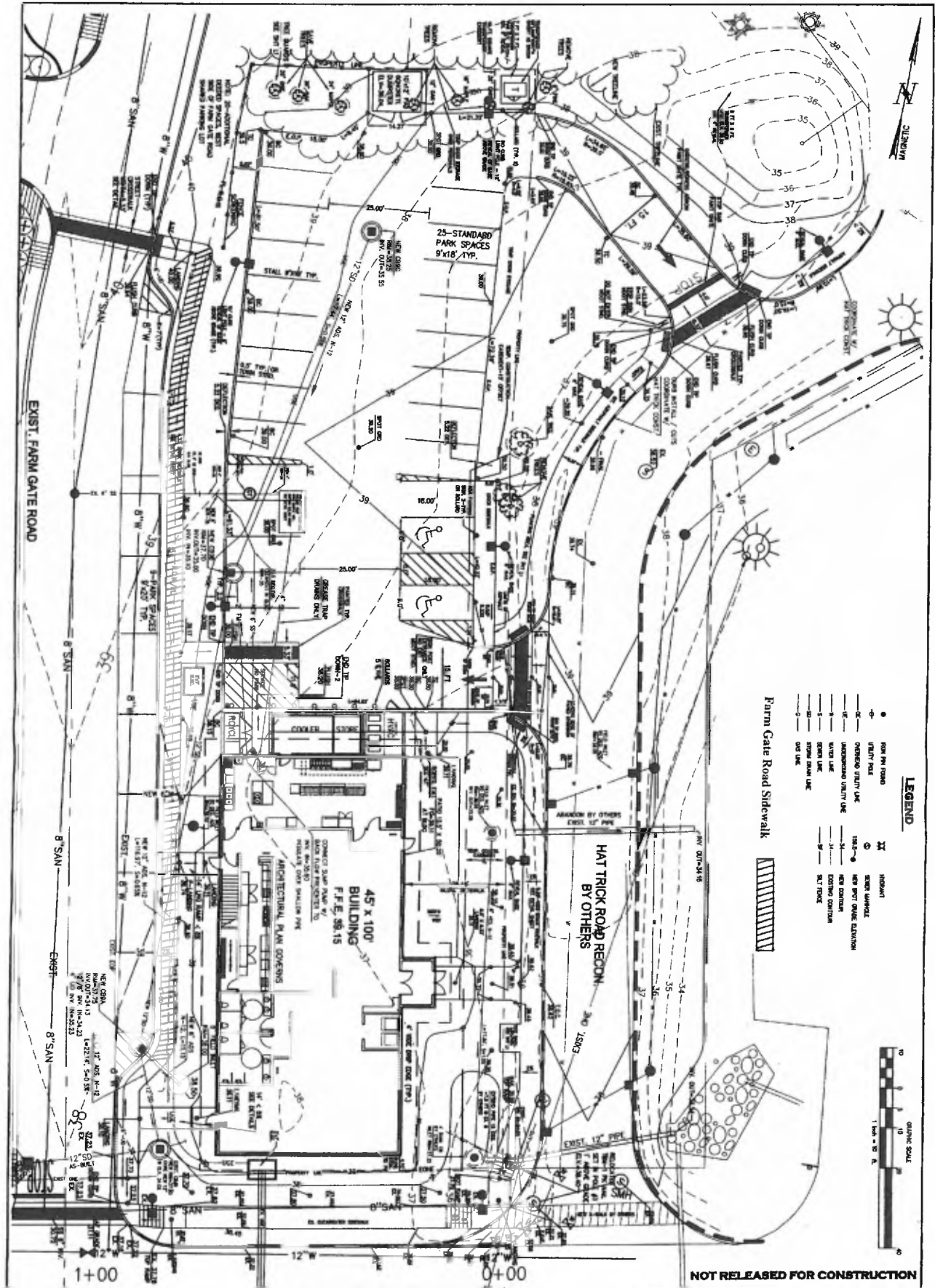
Then personally appeared before me the above-named _____,
_____ of Bath Savings Institution, and acknowledged the foregoing
instrument to be his/her free act and deed in his/her said capacity and the free act and deed of
said Bath Savings Institution.

Notary Public/Attorney At Law

Print Name

My commission expires: _____

Schedule A



NOT RELEASED FOR CONSTRUCTION

DATE: 02-28-18	PROJECT: TIDEWATER VILLAGE PARCEL No. 4
SCALE: AS SHOWN	CLIENT: TIDEWATER VILLAGE PARCEL No. 4
DRAWN BY: JAC	DESIGNED BY: JAC
CHECKED BY: JAC	APPROVED BY: JAC
DATE: 02-28-18	PROJECT: TIDEWATER VILLAGE PARCEL No. 4
SCALE: AS SHOWN	CLIENT: TIDEWATER VILLAGE PARCEL No. 4
DRAWN BY: JAC	DESIGNED BY: JAC
CHECKED BY: JAC	APPROVED BY: JAC

<p>ENGINEERING ASSISTANTS & DESIGN, INC. 1000 W. 10TH AVE., SUITE 100 PORTLAND, ME 04108 TEL: 603-875-1111 FAX: 603-875-1112 WWW: WWW.EADINC.COM</p>	<p>PROFESSIONAL REGISTERED CIVIL ENGINEER LICENSE NO. 10000 STATE OF MAINE</p>
<p>BLUESHED ASSOCIATES, INC. 1000 W. 10TH AVE., SUITE 100 PORTLAND, ME 04108 TEL: 603-875-1111 FAX: 603-875-1112 WWW: WWW.BLUESHED.COM</p>	<p>PROFESSIONAL REGISTERED LANDSCAPE ARCHITECT LICENSE NO. 10000 STATE OF MAINE</p>
<p>LANDSCAPE ARCHITECT 1000 W. 10TH AVE., SUITE 100 PORTLAND, ME 04108 TEL: 603-875-1111 FAX: 603-875-1112 WWW: WWW.BLUESHED.COM</p>	<p>PROFESSIONAL REGISTERED LANDSCAPE ARCHITECT LICENSE NO. 10000 STATE OF MAINE</p>

<p>DETAILS OF: GRADING & DIMENSIONS 10 SCALE PLAN</p>	<p>PROJECT: TIDEWATER VILLAGE PARCEL No. 4 469 DOTEN, LLC FALMOUTH, MAINE</p>
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<p>REVISIONS:</p> <table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td>1</td> <td>02-28-18</td> <td>ISSUED FOR REVIEW</td> </tr> <tr> <td>2</td> <td>03-08-18</td> <td>FOR REVISION</td> </tr> <tr> <td>3</td> <td>03-08-18</td> <td>FOR REVISION & SUBMITTAL</td> </tr> <tr> <td>4</td> <td>03-08-18</td> <td>FOR REVISION & SUBMITTAL</td> </tr> </table>	NO.	DATE	DESCRIPTION	1	02-28-18	ISSUED FOR REVIEW	2	03-08-18	FOR REVISION	3	03-08-18	FOR REVISION & SUBMITTAL	4	03-08-18	FOR REVISION & SUBMITTAL	
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