

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.

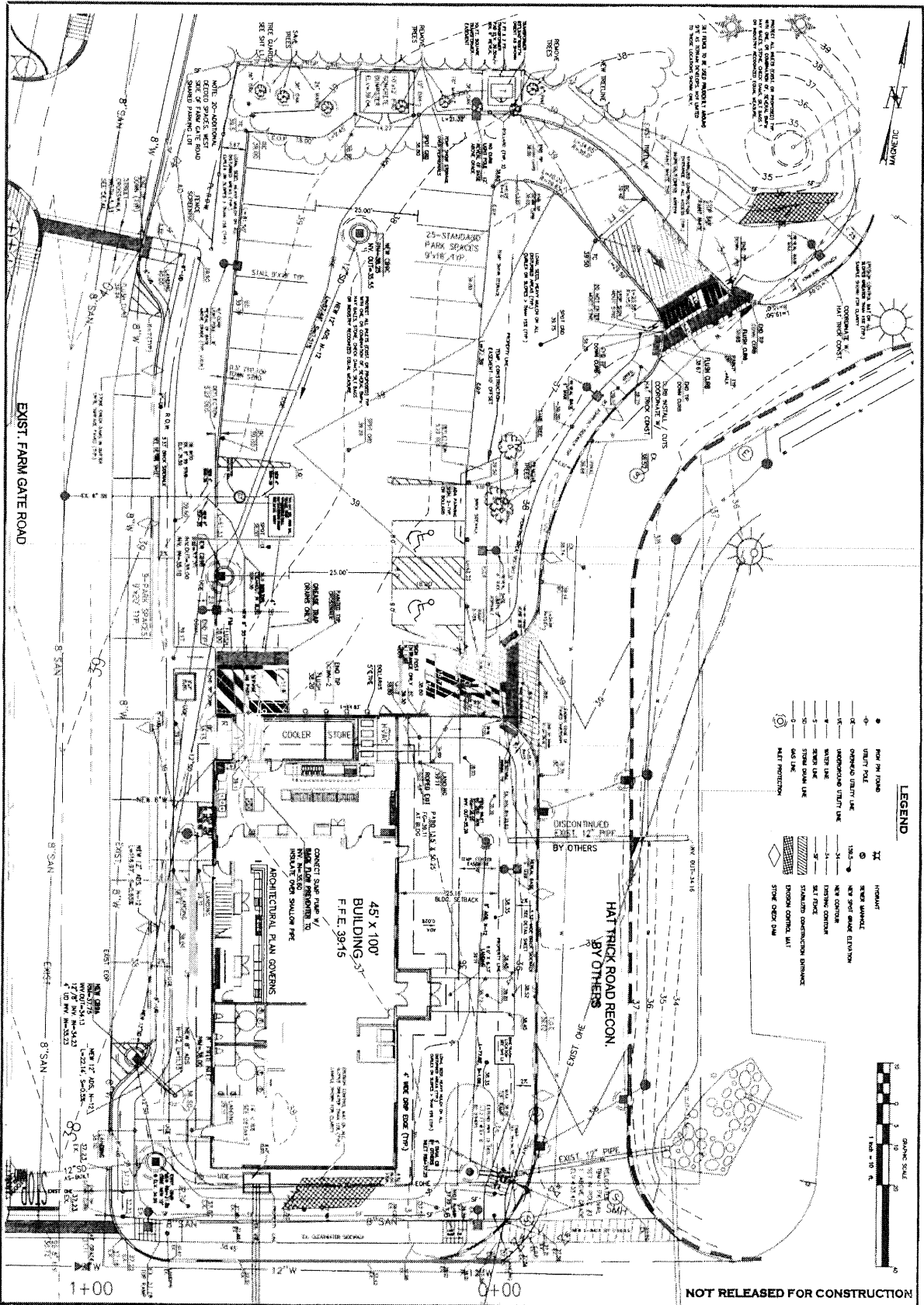
Before me,

Notary Public/Attorney at Law

Print Name

My commission expires:_____

Schedule A



1+00
0+00

DATE: 02-28-15
DRAWN BY: JAC
CHECKED BY: JAC
PROJECT NUMBER: 089 DOTEN, LLC
SHEET: 03

ENGINEERING ASSOCIATES & DESIGN, INC.
200 A. CROZZER PL. W. FALLS CHURCH, VA 22034
TEL: 703.771.1100 FAX: 703.771.1101
WWW.EAANDDESIGN.COM
REGISTERED PROFESSIONAL ENGINEERS
REGISTERED PROFESSIONAL ARCHITECTS

BUILDING: TRANE WATER HEATING AND COOLING UNIT
ARCHITECT: PO BOX 878, FALMOUTH, MAINE 04101

LANDSCAPE: CHARLOTTE WALDMAN LANDSCAPE ARCHITECTURE
ARCHITECT: 25 CONNOR STREET, PORTLAND, MAINE 04101

TRAFFIC: MR. HUNT, TRAFFIC SOLUTIONS
ENGINEER: 228 BARKPORT STREET, PORTLAND, ME 04102

DETAILS OF:
UTILITIES - DRAINAGE - EROSION CONTROL
10 SCALE PLAN

PROJECT: TIDEWATER VILLAGE PARCEL No. 4
469 DOTEN, LLC
FALMOUTH, MAINE

REV	DATE	DESCRIPTION
1	02-28-15	ISSUED FOR REVIEW
2	03-11-15	ISSUED FOR PERMITS
3	03-11-15	ISSUED FOR PERMITS
4	03-11-15	ISSUED FOR PERMITS
5	03-11-15	ISSUED FOR PERMITS
6	03-11-15	ISSUED FOR PERMITS
7	03-11-15	ISSUED FOR PERMITS
8	03-11-15	ISSUED FOR PERMITS
9	03-11-15	ISSUED FOR PERMITS
10	03-11-15	ISSUED FOR PERMITS



NOT RELEASED FOR CONSTRUCTION