

## EASEMENT AND ROAD MAINTENANCE AGREEMENT

This EASEMENT AND ROAD MAINTENANCE AGREEMENT (the "Agreement") is effective as of this \_\_\_ day of April, 2017, by and between CLAIRE LANGLOIS, Personal Representative of the ESTATE of PATRICIA ANN MCDERMOTT, having a mailing address of 85 Mast Road, Falmouth, Maine 04105 (the "Estate"), J. COLBY WALLACE, as Trustee of the ARTHUR P. MCDERMOTT REVOCABLE LIVING TRUST, having a mailing address of 100 Middle Street, Portland, Maine 04101 (the "Trust"), SARAH A. MCDERMOTT, having a mailing address of 59 McDermott Way, Falmouth, Maine 04105 ("Sarah"), SETH BLANCHARD, having a mailing address of 38 McDermott Way, Falmouth, ME 04105 ("Blanchard"), and the TOWN OF FALMOUTH, a Maine municipal corporation, having a mailing address of 271 Falmouth Road, Falmouth, Maine 04105, Attn: Town Manager (the "Town"). The Estate, the Trust, Sarah, Blanchard, and the Town are sometimes collectively referred to hereinafter as the "Parties".

### RECITALS:

The Estate and Trust acquired certain lots or parcels of land, located westerly of Mast Road in the Town of Falmouth, County of Cumberland, and State of Maine, shown on a plan entitled "Plan of Land On Mast Road & Huston Road & McDermott Way in Falmouth, Maine" dated March 2017, prepared by Wayne Wood & Co., and recorded in Cumberland County Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_ (the "Plan"), and which are described in Warranty Deeds dated September 27, 1974 and recorded in said Registry in Book 3604, Page 225 and dated May 13, 2010 and recorded in said Registry in Book 27774, Page 103 (the "Estate & Trust Land").

A portion of the Estate & Trust Land sometimes referred to as Eagle's Nest is shown on the Plan as "Lot Area 46,732 Sq. Ft." (the "Eagle's Nest Lot"). A portion of the Estate & Trust Land sometimes referred to as the Leighton Lot and sometimes referred to as the Liscomb Lot is shown on the Plan as "Leighton Lot 19,259 Sq. Ft." and includes the area shown on the Plan as "Addition to 'Leighton Lot' 12,056 Sq. Ft." (the "Leighton Lot"). The Eagle's Nest Lot and the Leighton Lot are situated on or off of McDermott Way. Only a seasonal, non-winterized structure is currently situated on the Leighton Lot.

~~Sarah is the fee owner of a certain lot or parcel of land, located westerly of Mast Road in the Town of Falmouth, County of Cumberland, and State of Maine, identified as 59 McDermott Way, Falmouth, Maine 04105, and shown as two areas on the Plan identified as "N/F Sarah A. McDermott" and as "Proposed Conveyance to Sarah A. McDermott 3.00 Acres", being described in the following deeds: (i) Warranty Deed from Arthur P. McDermott and Patricia A. McDermott dated August 24, 2006 and recorded in said Registry in Book 24300, Page 154, (ii) Warranty Deed from Arthur P. McDermott and Patricia A. McDermott dated January 27, 2009 and recorded in said Registry in Book 26585, Page 144, and (iii) Personal Representative's and Trustee's Deed of Sale dated \_\_\_\_\_ and recorded in said Registry in \_\_\_\_\_ ("Sarah's Land").~~

Blanchard is the fee owner of a certain lot or parcel of land, located westerly of Mast Road in the

Town of Falmouth, County of Cumberland, and State of Maine, identified as 38 McDermott Way, being shown on the Plan as “N/F Seth Blanchard” and described in the following deeds: (i) Personal Representative’s Deed of Sale dated February 19, 2016 and recorded in said Registry in Book 32929, Page 322, (ii) Trustee’s Deed dated February 18, 2016 and recorded in said Registry in Book 32929, Page 319, (iii) Personal Representative’s Deed of Sale dated November 3, 2016 and recorded in said Registry in Book 33673, Page 213, and (iv) Trustee’s Deed dated December 1, 2016 and recorded in said Registry in Book 33673, Page 211 (“**Blanchard’s Land**”).

The Town is purchasing a portion of the Estate & Trust Land which will include title to McDermott Way, a gravel road being an approved private way subject to a public easement and being shown on the Plan, and also on the plan entitled “Plan of Private Way Proposed on McDermott Land at Highland Lake” (the “1991 Plan”) recorded on October 8, 1991 in said Registry in Plan Book 191, Page 134 (“**McDermott Way**”), which road is also subject to a certain Road Maintenance Agreement dated October 10, 1991 and recorded in said Registry in Book 9760, Page 240 (the “1991 Road Maintenance Agreement”).

~~Sarah’s Land is benefitted by an easement in, under and over McDermott Way as set forth in the deed recorded in said Registry of Deeds in Book 26585, Page 144, and the Estate and the Trust, in their deed(s) to the Town of near or even date herewith, will reserve for the benefit of the Eagle’s Nest Lot and Leighton Lot~~ a perpetual, non-exclusive appurtenant easement in, under, and over McDermott Way for access and utilities.

The Parties desire to enter into this Agreement for purposes of: (a) granting to Blanchard a certain perpetual, non-exclusive appurtenant easement for pedestrian and vehicular ingress and egress and rights for installation, maintenance, repair and replacement of customary utilities, in, under, upon, and over McDermott Way on the terms and conditions contained herein, (b) terminating and releasing the 1991 Road Maintenance Agreement, and (c) establishing the Parties’ rights and responsibilities regarding plowing, maintenance and repairs to McDermott Way.

#### **AGREEMENT:**

**NOW, THEREFORE**, for good and valuable consideration and the mutual covenants, terms and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Termination of 1991 Road Maintenance Agreement. The Estate and the Trust, with the consent of the other Parties, hereby terminate and release the Road Maintenance Agreement dated October 10, 1991 and recorded in the Cumberland County Registry of Deeds in Book 9760, Page 240 effective as of the date of recording of this Agreement.
2. Easement. The Estate and the Trust grant to Blanchard a perpetual, non-exclusive appurtenant easement in, under, and over McDermott Way, running from Mast Road to the southerly boundary of the Leighton Lot, for ingress and egress by vehicles and pedestrians, as well as for installation, maintenance, repair and replacement of customary utilities for the benefit of Blanchard’s Land.

3. Maintenance and Repair. The Parties shall each be responsible for a portion of the cost of repair, maintenance and snowplowing of McDermott Way in accordance with this Section 3.

(i) *Snowplowing (snow and ice removal)*: The ~~owner~~owners of ~~Sarah's~~the Eagle's Nest Lot, the Leighton Lot, and Blanchard's Land shall ~~each~~ be responsible for snowplowing ~~the portion of McDermott Way running from Mast Road to the westerly edge of the driveway providing access to Sarah's Land.~~ The owner of the Leighton Lot shall be responsible for one-fifth (1/5th) and the owners of the Eagle's Nest Lot and Blanchard's Land shall each be responsible for two-fifths (2/5ths) of the costs and expenses associated therewith. ~~The~~with snowplowing. ~~If the structure on the Leighton Lot is winterized, then the owners of the Eagle's Nest Lot, the Leighton Lot, and the Blanchard's Land shall each be responsible for snowplowing the portion of McDermott Way running from the westerly edge of the driveway providing access to Sarah's Land to the southerly boundary of the Leighton Lot and shall each pay one-third (1/3) of the costs and expenses associated therewith.~~ with snowplowing.

(ii) *Maintenance, and repair, ~~and~~ improvement*: Notwithstanding the conveyance to the Town of the fee ownership of McDermott Way, the owners of the Eagle's Nest Lot, the Leighton Lot, and Blanchard's Land shall be responsible for ordinary repair and maintenance of McDermott Way, including, but not limited to, filling of pot holes and any other maintenance or repairs necessary to maintain such road in good repair and safe and passable for vehicle passage~~vehicles~~ and surface water drainage, ~~and each.~~ The owner of the Leighton Lot shall be responsible for one-fifth (1/5th) and the owners of the Eagle's Nest Lot and Blanchard's Land shall each be responsible for two-fifths (2/5ths) of the costs and expenses associated with maintenance and repair. ~~If the structure on the Leighton Lot is winterized, then the owners of the Eagle's Nest Lot, the Leighton Lot, and the Blanchard's Land shall each be responsible for one-third (1/3) of the costs associated therewith; provided, however, that~~ and expenses associated with maintenance and repair. ~~Notwithstanding the foregoing,~~ commencing in 2018, the Town shall be responsible for spending up to four (4) hours on site, once per calendar year, grading ~~at~~ the portion of McDermott Way from Mast Road to the easterly boundary of the Eagle's Nest Lot (the "Grading Work"). ~~The Town shall use its equipment and shall arrange for delivery of the sand and/or gravel (not to exceed 15 cubic yards) and, following completion of the Grading Work, the Town shall submit an invoice to the owners of the Eagle's Nest Lot, the Leighton Lot, and Blanchard's Land for each property owner's one-third (1/3) share of the cost of the sand or gravel used, payable within thirty (30) days of the date of the invoice. The Town's obligation to perform the Grading Work in subsequent years shall be contingent upon the Town's receipt in full of all amounts invoiced to such owners for prior years' Grading Work.~~

) using its own equipment and providing sand/gravel not to exceed 9 cubic yards per year. All work performed hereunder shall be completed in a reasonable manner and in compliance with all applicable laws, codes, ordinances, and regulations. The Town, as the owner of the fee underlying McDermott Way, reserves the right, but shall have no obligation, to perform any other work, to include without limitation plowing, maintenance, and repairs, ~~or improvements~~, to McDermott Way at the Town's expense, in such manner as it deems appropriate in its sole discretion.

If additional lots are created that have a right to use McDermott Way for access, such lot shall be responsible for participating in the cost of snowplowing and repairing, maintaining, and improving McDermott Way from Mast Road to the southerly boundary of the Leighton Lot. The allocation of cost shall be a percentage by which the numerator is one (1) and the denominator is the total number of lots that have an obligation under this Agreement to maintain and repair McDermott Way. By way of example, if one new lot is created on McDermott Way, then the owner of the new lot shall be responsible for one fourth (1/4) of the cost of repair, maintenance and snowplowing of McDermott Way. If more than one person owns a Lot, then the allocated share for that Lot shall be the joint and several obligation of all owners of that Lot.

Any repairs resulting from damage caused by ~~the~~(a) the Town, or (b) one of the other Parties or their respective agents, contractors, guests or invitees, shall be performed and paid solely by the responsible party.

4. Meetings. The owners of the Eagle's Nest Lot, the Leighton Lot, and Blanchard's Land shall meet at such times as may be mutually convenient to discuss the needs for plowing, maintenance, repair and/or eventual replacement of road. At such meeting, said owners shall select contractors and determine a budget for the plowing, maintenance, and repair of McDermott Way. If there is not unanimous consent as to repair, maintenance, and plowing, then a majority of said owners shall have the authority to make decisions regarding the repair, maintenance, and plowing of McDermott Way. If a majority of said owners cannot agree as to the repair, maintenance, and plowing of McDermott Way, then the said owners shall agree to submit the dispute to mediation. Only if the disagreement cannot be resolved through mediation may an owner file a lawsuit in court.

In the event any such owner incurs expenses without the written consent of the other owners as set forth above, the owner incurring the expense shall be solely responsible for any such costs and shall defend, indemnify and hold the other owners harmless therefrom, including any liens and attachments.

5. Notice of Work. ~~The~~Advance written ~~consent of~~notice to the Town, ~~which shall not be unreasonably withheld or delayed,~~ shall be required prior to the other Parties commencing any work on McDermott Way other than snow plowing. Written notice to the Town thereof must include, at a minimum, an explanation of the scope of work, the timing, and the names of any parties performing work. McDermott Way shall not be paved, in whole or in part, without the prior written consent of the Town.

6. Insurance. The Parties shall not permit any person or entity to perform any plowing, maintenance or repair work on McDermott Way without first providing the Town with a certificate evidencing commercial general liability insurance, automobile insurance and worker's compensation insurance in such amounts as may be reasonably required by the Town.

7. Indemnification. Each of the Parties excepting the Town, for themselves and their heirs, successors and assigns, agrees to maintain adequate insurance and shall defend, indemnify, and hold each of the other of the Parties, excepting the Town, their heirs, successors and assigns, harmless against and from any and all injuries, costs, expenses, liabilities, losses, damages, suits,

actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) from and against any and all claims arising from any injury to or the death of any person, or any loss or damage to any property on or about McDermott Way, excepting where such damage or injury arises out of the gross negligence or willful misconduct of the party to be indemnified.

8. Transferability. The Parties hereby acknowledge and agree that the easements and other rights and obligations set forth in this Agreement are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors and assigns as owners of the properties subject to this Agreement.

9. Other Lots. ~~The parties agree and acknowledge that certain property of Sarah McDermott, shown on the Plan as "N/F Sarah A. McDermott" and as "Proposed Conveyance to Sarah A. Default; Lien. In the event that the owners of the Eagle's Nest Lot, the Leighton Lot, or Blanchard's Land default under this Agreement, and such default is not cured within thirty (30) days of receipt of written notice thereof from the Town, the Town shall have all remedies available at law or in equity, including without limitation the right to undertake such work on McDermott Way as is necessary and to submit an invoice to each property owner for that property owner's share of the costs and expenses for the work, payable within thirty (30) days of the date of the invoice. Any amounts due hereunder and unpaid after said thirty (30) day period shall be a charge upon the responsible property owner, and shall be a continuing lien against that owner's property in favor of the Town. Such lien shall be in the total amount due, together with interest and costs and expenses of enforcement including reasonable attorney's fees and costs. Such lien shall have the same priority as liens created for the benefit of condominium associations under the Maine Condominium Act and may be enforced and foreclosed by the Town in the same manner as a lien under said Act or by any other means presently or hereafter provided by law or in equity. In any action to enforce this Agreement, the prevailing party shall be reimbursed for its reasonable attorney's fees and costs.~~ McDermott 3.00 Acres" and described in deeds recorded in the Cumberland County Registry of Deeds in Book 24300, Page 154; Book 26585, Page 144; and Book \_\_\_\_\_, Page \_\_\_\_\_ ("Sarah's Land") is benefitted by an easement over McDermott Way as set forth in the deed recorded in said Registry in Book 26585, Page 144. The owner of Sarah's Land is not a party hereto, and she, her heirs and assigns, shall retain the right to plow the portion of McDermott Way used to access Sarah's Land, but shall have no obligations under this Agreement.

10. Notices. Notices relating to this Agreement shall be in writing and delivered by registered or certified mail, return receipt requested, to the Town at the Town Office, or to the other Parties at the mailing address on file with the Falmouth Tax Assessor's office. Notices shall be deemed delivered on the first business day after mailing.

11. Severability. Invalidation of any one provision of this Agreement by competent authority shall in no way affect any other provision, which shall remain in full force and effect.

12. Amendment. This Agreement may not be modified, amended or terminated except by written agreement signed by each party hereto and recorded in the Cumberland County Registry of Deeds.

13. Further Cooperation. Each of the parties to this Agreement agree to execute such other

documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intent purpose of this agreement.

14. Miscellaneous. Any failure to exercise or delay in exercising any right or remedy hereunder will not be construed as a waiver or release thereof or preclude the exercise thereof at any time thereafter. This Agreement constitutes the entire agreement of the Parties with respect to its subject matter and supersedes all prior written or oral discussions or agreements between the Parties with respect thereto. 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 under this Agreement shall be brought and maintained solely in the courts of Cumberland County, Maine.

(signatures on following page)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

ESTATE of PATRICIA ANN MCDERMOTT

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Claire Langlois, Personal Representative

State of Maine  
Cumberland County, ss.

April \_\_\_\_, 2017

Then personally appeared the above named Claire Langlois as Personal Representative of the Estate of Patricia Ann McDermott and acknowledged the foregoing instrument to be her free act and deed in said capacity.

Before me,

\_\_\_\_\_  
Notary Public  
Printed Name:  
My Commission Expires:

ARTHUR P. MCDERMOTT REVOCABLE  
LIVING TRUST

\_\_\_\_\_  
Witness

\_\_\_\_\_  
J. Colby Wallace, Trustee

State of Maine  
Cumberland County, ss.

April \_\_, 2017

Then personally appeared the above named J. Colby Wallace as Trustee of the Arthur P. McDermott Revocable Living Trust and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said Trust.

Before me,

\_\_\_\_\_  
Notary Public

Printed Name:

My Commission Expires:



\_\_\_\_\_  
Witness \_\_\_\_\_ Sarah A. McDermott

State of Maine  
Cumberland County, ss. \_\_\_\_\_ April \_\_\_\_, 2017

\_\_\_\_\_ Then personally appeared the above named Sarah a. McDermott and acknowledged the foregoing instrument to be her free act and deed.

Before me,

\_\_\_\_\_  
Notary Public  
Printed Name:  
My Commission Expires:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Seth Blanchard

State of Maine  
Cumberland County, ss.

April \_\_\_\_, 2017

Then personally appeared the above named Seth Blanchard and acknowledged the foregoing instrument to be his free act and deed.

Before me,

\_\_\_\_\_  
Notary Public  
Printed Name:  
My Commission Expires:

TOWN OF FALMOUTH

\_\_\_\_\_  
Witness

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

State of Maine  
Cumberland County, ss.

April \_\_\_\_, 2017

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

Before me,

\_\_\_\_\_  
Notary Public  
Printed Name:  
My Commission Expires:

