

**ACCESS EASEMENT AGREEMENT**

THIS ACCESS EASEMENT AGREEMENT (this “Agreement”), made as of the \_\_\_\_ day of \_\_\_\_\_, 201\_, by and between BAXTER PLACE, LLC, a Maine limited liability company with a mailing address at 305 Commercial Street, Portland, Maine 04101 (“Baxter”) and J.B. BROWN & SONS, a Maine corporation, with a business address of 36 Danforth Street, Portland, Maine 04101 (“JBBrown”);

**WITNESSETH:**

**WHEREAS**, Baxter is the owner of certain real estate located in the City of Portland, Cumberland County, Maine, and more particularly described in Exhibit “A” which is attached hereto and incorporated herein (the “Baxter Place Property”), a portion of which is an approximate thirty (30) foot wide driveway located on the southwesterly side of the Baxter Place Property and abutting the easterly side of the JBB Property (as defined below), which driveway is formerly known as Foundry Lane and more particularly described in Exhibit A-1 attached hereto and incorporated herein (the “Foundry Lane Parcel”); and

**WHEREAS**, JBBrown owns certain real property adjacent to, and westerly of, the Baxter Place Property, which property is more particularly described on Exhibit “B” attached hereto and incorporated herein (the “JBB Property”); and

**WHEREAS**, JBBrown desires to have access for ingress and egress to and from the JBB Property on, over and across the Foundry Lane Parcel in the location depicted as the grid line area and labeled **Area “D”** on Exhibit “C”, attached hereto and incorporated herein; and

**WHEREAS**, Baxter desires to have access for ingress and egress to and from the Baxter Place Property on, over and across the portion of the JBB Property depicted on Exhibit C with the “+” symbols and labeled **Area “E”**, and

**WHEREAS**, Baxter has agreed, among other things, to grant to JBBrown an irrevocable, non-exclusive, perpetual easement on, over and across the Baxter Place Property located within the Foundry Lane Parcel for access, ingress and egress to and from the JBB Property, and a temporary construction easement during the construction of the improvements to the JBB Property and to the Foundry Lane Parcel, all on the terms and conditions set forth herein; and

**WHEREAS**, JBBrown has agreed, among other things, to grant to Baxter an irrevocable, non-exclusive, perpetual easement on, over and across the JBB Property located within the said Area “E” for access, ingress and egress to and from the Baxter Property, all on the terms and conditions set forth herein;

**NOW, THEREFORE**, for and in consideration of the foregoing and of the mutual covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency whereof are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Access Easement. (a) Baxter hereby grants to JBBrown a non-exclusive, perpetual easement for pedestrian and vehicular ingress, egress and access, including “utilities services” as defined in 33 M.R.S.A. Section 458, for the benefit, use and operation of the JBB Property by tenants, guests, occupants, customers, invitees, contractors, servicemen, successors and assigns thereof, in, over, on, across and through the Baxter Place Property located within the Foundry Lane Parcel as depicted on Exhibit C as Area “B” and Area “D”, but expressly excepting and reserving to Baxter the right to the eleven (11) exclusive parking spaces to be situated on the Foundry Lane Parcel and depicted on Exhibit C in the cross-hatched area labeled Area “C” (the “Baxter Place Parking Spaces”).

(b) JBBrown hereby grants to Baxter a non-exclusive, perpetual easement for pedestrian and vehicular ingress, egress and access for the benefit, use and operation of the Baxter Property by tenants, guests, occupants, customers, invitees, contractors, servicemen, successors and assigns thereof, in, over, on, across and through the JBB Property located within the said Area “E”. Hereinafter Area “B”, Area “C”, Area “D” and Area “E” are collectively referred to herein as the “Access Easement Area”; and Area “B”, Area “D” and Area “E” are collectively referred to herein as the “Access Easement”.

(c) Baxter and JBBrown each reserve, for itself, its successors and assigns, the use and enjoyment of the Access Easement for all purposes consistent with the foregoing use described in Paragraphs (a) and (b) above, including without limitation: (i) the right to regulate traffic in, upon, over and across its respective property; and (ii) the right to maintain, repair and replace any such driveways, roadways and any entrances, exits and other paved surfaces, sidewalks, and curbing located upon the Access Easement so long as reasonably equivalent and convenient access is provided. The easements described in this Section 1 and shall be appurtenant to and run for the benefit of the JBB Property and the Baxter Property, respectively.

(d) JBBrown, and its successors and assigns, shall be responsible, at its sole cost and expense, for the repair and maintenance of the Access Easement Area, including snow and ice removal, in a timely manner so as to provide normal access for each land owner’s respective employees, tenants, guests, occupants, visitors and invitees.

(e) Notwithstanding Baxter’s exclusive reservation to the Baxter Place Parking Spaces as described in paragraph (a) above, JBBrown shall have the right, but not the obligation, to lease at market rates one or more of the available Baxter Place Parking Spaces, as needed, during the overnight hours commencing each evening at 7:00pm and ending the following morning at 7:00am.

(f) Nothing in this Agreement or the Access Easement described in this Section 1 shall be deemed or construed to supersede, modify or diminish the rights set forth in that certain “Order Discontinuing Foundry Lane” attached to the Agreement between City of Portland and J.B. Brown & Sons and Baxter Place Associates dated May 16, 1995 and recorded in the Cumberland County Registry of Deeds in Book 11924, Page 10, that expressly preserved “the retention of a public access easement and an easement for public utility facilities” on the Foundry Lane Parcel.

(g) If either party's use of the Access Easement Area results in damages thereto (except for normal wear and tear) arising from accidents, negligence, or use in a manner not consistent with use by a reasonably prudent operator, such party causing the damage shall be solely responsible for the costs of repairing such damage.

2. Temporary Construction Easement. Baxter does also hereby grant and convey unto JBBrown, its successors and assigns, during the Construction Easement Term (as defined in Section 6 below) for the benefit of the JBB Property, an easement for vehicular and pedestrian ingress, egress and access (including ingress, egress and access for and by construction vehicles), and temporary storage of materials or equipment, over the Baxter Place Property located within or near the Access Easement Area, for the purpose of construction, installation, repair, maintenance and replacement of improvements relating to the JBB Property plus an additional turn-around area for construction vehicles located on the Baxter Place Property depicted as **Area "A"** and shown on the attached Exhibit "C". The Construction Easement granted herein shall include during the Construction Easement Term the right to enter the JBB Property with persons and equipment for the above stated purposes, and including, without limitation, the right to construct driveways, curb cuts, turn-outs for driveways, pavement aprons, roadside landscaping, sidewalks and pedestrian walkways on the Access Easement Area. The Construction Easement shall also include the right to dig up earth and remove vegetation, trees and stones in, on and under the Foundry Lane Parcel located to such depth as may be deemed by JBBrown as necessary and convenient for the construction of the Access Easement Area and the Baxter Place Parking Spaces (hereinafter, the foregoing shall be called the "Construction Easement"). JBBrown shall, at its sole cost and expense, except for the improvements made thereto, restore the Foundry Lane Parcel to substantially the condition that it was in immediately prior to JBBrown's entry thereon. JBBrown shall (i) conduct such construction work at its sole cost, expense and risk, in a good and workmanlike manner; and (ii) comply with such rules and conditions as may reasonably be imposed and agreed to by the parties hereto in connection with such construction work.

3. Hazardous Materials. Neither JBBrown nor Baxter shall cause or permit any hazardous material to be brought upon, kept or used by it or its agents, employees, contractors, sublessees, tenants or invitees in or about the Access Easement Area, unless such hazardous material is necessary to the business of any such person or entity and such hazardous material is used, kept, stored and disposed of in a manner that complies with all applicable laws regulating any such hazardous material so brought upon or used or kept in or about the Access Easement Area.

4. Interference. The parties shall cause all construction, installation, maintenance and repair work required of either party hereunder to be conducted so as not to unreasonably interfere with any construction or business activities of the other party, its tenants, guests, customers, invitees, contractors, servicemen, on the JBB Property or the Baxter Place Property, respectively. Neither the owner of the JBB Property nor the Baxter Place Property, respectively shall, except for the improvements to the Access Easement Area erect or allow to be erected any structures or improvements on or in the Access Easement Area and shall not plant or allow to be planted or grown any trees or other plantings therein nor perform any work therein which may obstruct, impede or interfere with the use of the Access Easement Area for the purposes stated

herein.

5. Indemnity. JBBrown and Baxter each hereby indemnifies and holds the other harmless from and against any loss, cost, damage or expense, including all claims for death or injury to person or damage to or destruction of property, and including, without limitation, actually incurred reasonable attorneys' fees and court costs, which the other suffers or incurs and which arise out of or in connection with or by reason of the negligence or intentional misconduct of such indemnifying party, its tenants, occupants, customers, invitees, servicemen, agents, representatives, contractors or employees, in the conduct of the construction or maintenance performed, or the use, exercise or enjoyment of the rights and easements provided herein or related to mechanic's, materialmen's or other liens or claims arising out of such work or exercise of rights and easement herein, by such indemnifying party as contemplated under this Agreement. JBBrown and Baxter, each of them and their respective successors and assigns, shall obtain and maintain at all times commercial general liability insurance with respect to its respective property.

6. Duration and Effective Date of Construction Easements. Except as otherwise provided herein, the Construction Easement created by this Agreement shall be irrevocable during the period of the construction of the JBB Property (the "Construction Easement Term") and is effective upon the execution of this Agreement and the Construction Easement shall remain in effect throughout the Construction Easement Term, as the Construction Easement Term may be extended from time to time.

7. Grant of Easements Only. JBBrown and Baxter are not hereby conveying any land or title thereto, but merely are granting the rights, privileges and easements hereinabove set forth.

8. Priority of Easements. The easements granted by this Agreement are and will be superior in priority to any mortgages, security deeds, deeds of trust or liens, the foreclosure of which could terminate such easements.

9. Notices. Any notice, request or other communication required or permitted to be given hereunder must be in writing. All notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one Business Day after deposit with such courier, (b) sent by certified or regular U.S. mail, postage prepaid, in which case notice shall be deemed delivered two Business Days after deposit in such mails, (c) sent by facsimile or electronic mail, in which case notice shall be deemed delivered upon the mechanical confirmation of delivery or (d) sent by personal delivery, in which case notice shall be deemed delivered upon receipt or refusal of delivery, or if such receipt or delivery occurs on a day that is not a Business Day, on the next Business Day. All notices shall be addressed to each party at its address as set forth below:

If to JBBrown:

J.B. Brown & Sons  
36 Danforth Street  
Portland, Maine 04112  
Attention: Vincent P. Veroneau  
veroneau@jbbrown.com

If to Baxter:

Baxter Place, LLC  
305 Commercial Street  
Portland, Maine 04101  
Attention: Elizabeth K. Astor  
elizabethastor@aol.com

Any party may designate a change of address by written notice to the other party delivered at least ten (10) days before such change of address is to become effective.

10. Amendment. The provisions of this Agreement may be abrogated, modified, rescinded or amended in whole or in part only with the consent of the parties hereto, their successors and assigns, in a written instrument duly executed, delivered and recorded.

11. Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced exclusively in accordance with the provisions hereof and the laws of the State of Maine.

12. Binding Effect. The easement rights, obligations and restrictions created hereby shall be rights, obligations and restrictions running with the land and shall be binding upon and inure to the benefit of the owner of the Baxter Place Property and the owner of the JBB Property land, and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Agreement under seal as of the day and year first above written.

BAXTER PLACE, LLC

By: \_\_\_\_\_  
Elizabeth K. Astor  
Its

J. B. BROWN & SONS

By: \_\_\_\_\_  
Vincent P. Veroneau  
Its President

STATE OF MAINE  
County of Cumberland \_\_\_\_\_, 201\_

Personally appeared the above-named, Elizabeth K. Astor, the \_\_\_\_\_ of  
Baxter Place, LLC and acknowledged the foregoing instrument to be her free act and deed  
and the free act and deed of said Baxter Place, LLC.

Before me,

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

\_\_\_\_\_  
Printed Name

STATE OF MAINE  
COUNTY OF CUMBERLAND \_\_\_\_\_, 201\_

Personally appeared the above-name Vincent P. Veroneau, the President of J.B.  
Brown & Sons and acknowledged the foregoing instrument to be his free act and deed  
and the free act and deed of said J.B. Brown & Sons.

Before me,

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

\_\_\_\_\_  
Printed Name