

Recorded August 19, 2015 @ 11:20AM 32526-201

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (this "*Agreement*") is made and entered into as of this 19th day of August 2015, by and between **CHARTER WESTGATE, LLC**, a Delaware limited liability company having a mailing address at c/o Charter Realty Development Corporation, 800 Westchester Avenue, Suite S-632, Rye Brook, New York 10573 ("Grantor") and **THE JEWISH COMMUNITY ALLIANCE OF SOUTHERN MAINE** (as successor by merger between The Jewish Community Center a/k/a The Jewish Community Center of Portland and the Jewish Federation of Southern Maine), a Maine not-for-profit corporation having a mailing address of 57 Ashmont Street, Portland, Maine 04103 ("Grantee");

RECITALS

WHEREAS, Grantor is the owner of certain real estate located in the City of Portland, County of Cumberland, and State of Maine and more particularly described on Exhibit A attached hereto and incorporated herein ("*Grantor's Land*");

WHEREAS, Grantee owns certain real property adjacent to, and on the southwesterly side of, Grantor's Land, which property is more particularly described on Exhibit B attached hereto and incorporated herein ("*Grantee's Land*"); and

WHEREAS, Grantor's Land and Grantee's Land are connected by a paved driveway (the "*Driveway*"); and

WHEREAS, Grantee desires to have vehicular and pedestrian access for ingress and egress to and from Grantor's Land on, over and across the Driveway; and

WHEREAS, Grantor has agreed to grant to Grantee an irrevocable, non-exclusive, perpetual easement on, over and across the Driveway for vehicular and pedestrian access, ingress and egress to and from Grantor's Land, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Access Easement.

(a) Except as set forth in paragraph 5 below, Grantor hereby grants to Grantee and its employees, tenants, guests, occupants, visitors, invitees, successors and assigns, a perpetual, irrevocable and non-exclusive easement for vehicular and pedestrian access, ingress and egress (the "*Access Easement*") on and over that certain portion of Grantor's Land identified as the twenty-four (24) foot wide cross-hatched area traversing Grantor's Land and Grantee's Land on the site plan attached hereto and incorporated herein as Exhibit C (the "*Easement Area*"), which Access Easement shall be appurtenant to, and run with and for the benefit of, Grantee's Land.

(b) The Access Easement may be used only by Grantee and the employees, tenants, guests, occupants, visitors and invitees of Grantee for pedestrian and vehicular ingress and egress. The Access Easement may not be used for parking or for any purpose other than for pedestrian and vehicular ingress and egress and may not be used by commercial or construction vehicles of any type except as otherwise expressly permitted by Grantor in writing. Grantee shall make reasonable efforts to ensure that any adjoining landowner or occupant of any property abutting Grantee's Land shall not use the Access Easement. Grantee and the employees, tenants, guests, occupants, visitors and invitees of Grantee shall use the Access Easement for ingress and egress only and for no other purpose.

(c) Grantor hereby reserves for itself, its successors and assigns, the use and enjoyment of the Easement Area for all purposes consistent with the foregoing use described in subparagraph (a), including: (i) the right to regulate traffic in, upon, over and across Grantor's Land; 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 Easement Area so long as reasonably equivalent and convenient access is provided to Grantee. Notwithstanding anything herein to the contrary, Grantor and Grantee shall ensure that a clear delivery path over the Easement Area shall be maintained for Shaw's delivery trucks at all times and shall not be impeded in any way as it relates to Grantee's use under this Easement.

(d) Grantor, and its successors and assigns, shall be responsible, at its sole cost and expense, for the repair and maintenance of the Easement Area, including snow and ice removal, in a timely manner so as to provide commercially reasonable access for Grantee and its employees, tenants, guests, occupants, visitors and invitees. Grantee, and its successors and assigns, shall be responsible, at its sole cost and expense, for the repair and maintenance of that portion of the Driveway located on Grantee's Land, including snow and ice removal.

(e) If any party's use of the Easement Area or the Driveway 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. Grantee shall indemnify and hold harmless Grantor and Grantor's tenants and employees from and against all claims or lawsuits arising from or caused by Grantee's use of the Easement Area except to the extent that any claims or lawsuits are related to or caused by the negligence or willful misconduct of Grantor or Grantor's tenants or employees.

2. Hazardous Materials. Neither Grantor nor Grantee 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 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 Easement Area.

3. Interference. Grantor and Grantee 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 Grantor's Land or Grantee's Land, respectively. Grantor shall not, except for permitted improvements to the Easement Area, erect or allow to be erected any structures or improvements on or in the 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 Grantee's use of the Easement Area for the purposes stated herein. To the extent that any cleaning, power-washing, security/policing or other costs are caused by the construction of Grantee's new facility or by Grantee, all such costs shall be paid directly by Grantee and not by Grantor.

4. Relocation or Reconfiguration of Easement Area. Grantor, and its successors and assigns, shall have the right to relocate or reconfigure all or any part or parts of the Easement Area upon at least thirty (30) days' prior written notice to Grantee, provided that such relocation or reconfiguration does not, in Grantee's reasonable discretion, materially impair Grantee's use of the Easement Area, and provided further that any such proposed relocation or reconfiguration does not violate a City permit or the permit of any other governing authority. In the event that relocation or reconfiguration of the Easement Area shall require an amendment to a City permit or the permit of any other governing authority, the parties mutually agree to make best efforts and otherwise cooperate in good faith to prosecute said amendment to completion in order to allow the relocation or reconfiguration to occur. Notice under this paragraph 4 shall include a copy of a plan showing the proposed relocation or reconfiguration of the Easement Area. Grantee agrees to promptly execute and deliver to Grantor all documents reasonably requested by Grantor to effectuate any such relocation or reconfiguration.

5. Automatic Termination. Notwithstanding the provisions of paragraph 1 to the contrary, the Access Easement shall automatically terminate and be extinguished upon any of the following events: (i) Grantee has not substantially completed its development plan within thirty-six (36) months after the date that Grantor has both (a) signed this Agreement and (b) obtained all consents required from its lenders and tenants pursuant to paragraph 7 herein; or, (ii) Grantee transfers fee title to Grantee's Land, and the new owner uses Grantee's Land for any purpose other than a private school, community center and/or a place of community public assembly, none of which uses may overburden the Access Easement granted herein and all of which uses shall be of a non-commercial type use; or, (iii) Grantee leases Grantee's Land to any entity or person for any purpose other than as a subsidiary of Grantee or for the uses permitted in subsection (ii) above. The Access Easement shall not run with the land if one of the events provided for in subsections (i), (ii) and/or (iii) above occurs.

6. Insurance. For so long as the Access Easement is in effect, Grantee shall maintain liability insurance in the sum of Two Million Dollars (\$2,000,000.00) combined single limit per occurrence, or in such higher amounts as Grantor may reasonably request from time to time, insuring against the actions of Grantee and its employees, tenants, guests, occupants, visitors and invitees and naming Grantor as an additional insured.

7. Consent of Third Parties. Notwithstanding anything herein to the contrary, the easements, covenants and restrictions set forth in this Agreement shall be effective only upon receipt of the written consent of (i) Grantor's lender who holds the loan secured by Grantor's Land, and (ii) any tenant of Grantor's Land whose consent must be obtained under the terms of its lease. This instrument may not be recorded until such consents are obtained and Grantor shall make and employ best efforts to

obtain the same.

8. Duration and Effective Date. Except as set forth in paragraph 5 above, the Access Easement created by this Agreement is irrevocable and shall be effective upon recording.

9. Grant of Easements Only. Grantor is not hereby conveying any land or title thereto, but merely granting the rights, privileges and easements hereinabove set forth.

10. Priority of Easements. The rights and 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.

11. 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.

12. Further Acts. From time to time after the date of this instrument, the parties hereto shall each promptly perform such acts and execute, acknowledge and deliver any and all additional instruments or documents as either party may reasonably request to fully effectuate the purposes of this Agreement.

13. 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.

14. 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 Grantor and Grantee, and their respective heirs, successors and assigns.

15. Cost of Recording. This instrument shall be recorded at Grantee's expense.

16. Notices. Any notice or demand required or permitted to be given under the Agreement shall be in writing and sent to the parties at their addresses first set forth above by national overnight delivery service. Notices shall be effective upon receipt, or, if delivery is refused, on the date delivery is first attempted.

17. Severability. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

18. Rules of Construction. The parties have experience with the subject matter of this Agreement, have been represented by counsel and have each fully participated in the negotiation and

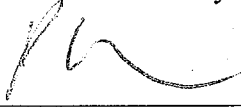
drafting of this Agreement. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the drafter.

19. Counterparts. This Agreement may be executed in multiple counterpart copies, each of which shall constitute an original and which, when taken together, shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this document to form one document.


20. Recitals Incorporated. The foregoing Recitals are hereby incorporated into the covenants of the body of this Agreement.

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

CHARTER WESTGATE, LLC,
a Delaware limited liability company

By: 
Paul S. Brandes, its President

**THE JEWISH COMMUNITY
ALLIANCE OF SOUTHERN MAINE,**
a Maine not-for-profit corporation

By: 
Eric A. Kolben, its President

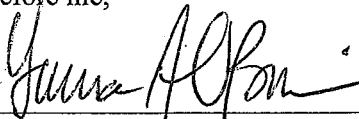
STATE OF CONNECTICUT
COUNTY OF FAIRFIELD, ss.

August 10, 2015

Personally appeared the above-named Paul S. Brandes, President of Charter Westgate, LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of Charter Westgate, LLC.

Laura A. O'Brien
Notary Public
Connecticut
My Commission Expires
March 31, 2016

Before me,



Notary Public/Attorney-at-law

Print name:

My commission expires:

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

AUGUST 19, 2015

Personally appeared the above-named Eric S. Kolben, President of The Jewish Community Alliance of Southern Maine, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of The Jewish Community Alliance of Southern Maine.

Before me,



Notary Public/Attorney-at-law

Print name: **BETH A. SMITH**

My commission expires: **N/A**

EXHIBIT A

["Grantor's Land"]

Legal Description of the Shopping Center

A certain lot or parcel of land with any building and improvements thereon, situated on the southerly side of Congress Street in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning on said southerly side of Congress Street at an iron located at the northeasterly corner of land conveyed by Mary O. Daveis, Trustee under the Will of Edward H. Daveis to C. W. Boyle by deed dated March 2, 1938 and recorded in Cumberland County Registry of Deeds in Book 1543 Page 373;

Thence running South $04^{\circ} 56'$ East by said Boyle land one hundred eight (108) feet to an iron;

Thence South $85^{\circ} 04'$ West ninety-one and sixty-seven hundredths (91.67) feet to an iron;

Thence South $9^{\circ} 27'$ East forty-two and twenty-eight hundredths (42.28) feet to an iron;

Thence South $15^{\circ} 21'$ East two hundred forty-three and thirty-eight hundredths (243.38) feet to an iron;

Thence South $15^{\circ} 06'$ East two hundred eighty-nine and fifty-four hundredths (289.54) feet to an iron, the last three (3) courses being along the easterly line of Congress Terrace, so-called, which plan is recorded in said Registry of Deeds in Plan Book 14, Page 61;

Thence North $85^{\circ} 46'$ East by land of Norman E. Blake, et al, five hundred seventy-four and two tenths (574.2) feet to an iron;

Thence North $01^{\circ} 36'$ West by land of the Roman Catholic Bishop of Portland three hundred one and two tenths (301.2) feet to an iron;

Thence North $32^{\circ} 54'$ East by said land of the Roman Catholic Bishop of Portland two hundred twenty-one and seventy-five hundredths (221.75) feet to an iron at the southerly side line of Congress Street;

Thence running by said Congress Street North $56^{\circ} 16'$ West two hundred twenty-eight and forty-five hundredths (228.45) feet to a point;

Thence by said Congress Street on a curving line with a radius of two hundred eighty-five and twenty-nine hundredths (285.29) feet a distance of ninety-five and one tenth (95.1) feet to an iron;

Thence South $10^{\circ} 04'$ West ninety-four and seventy-five hundredths (94.75) feet to an iron;

Thence South $85^{\circ} 04'$ West three hundred sixty-three and ninety-six hundredths (363.96) feet to an iron;

Thence North $04^{\circ} 56'$ West one hundred eight (108) feet to an iron on said southerly side of Congress Street;

Thence South $85^{\circ} 04'$ West by said Congress Street eighty-five and one tenth (85.1) feet to the iron at the point of beginning.

Also, another certain lot or parcel of land with any buildings and improvements thereon, situated in Portland, County of Cumberland and State of Maine on the southerly side of Congress Street and more particularly bounded and described as follows:

Beginning on the southerly side of Congress Street at an iron located three hundred twenty-three and fifty-five hundredths (323.55) feet westerly by Congress Street from land of Roman Catholic Bishop of Portland and at a corner on said Congress Street of land conveyed by the Trustees u/w/o Mabel S. Daveis to Bradley Realty Co, by deed dated March 27, 1959, and recorded in Cumberland County Registry of Deeds in Book 2462 Page 498;

Thence running South $10^{\circ} 04'$ West ninety-four and seventy-five hundredths (94.75) feet to an iron;

Thence running South $85^{\circ} 04'$ West three hundred sixty-three and ninety-six hundredths (363.96) feet to an iron;

Thence running North $04^{\circ} 56'$ West one hundred eight (108) feet to an iron on said southerly side of Congress Street, said last three courses being by said land conveyed to Bradley Realty Co. as aforesaid;

Thence running North $85^{\circ} 04'$ East by Congress Street to a point;

Thence running by said Congress Street on a curving line with a radius of two hundred eighty-five and ninety-nine hundredths (285.99) feet a distance of ninety-seven and forty-three hundredths (97.43) feet to the point of beginning.

Also, another certain lot or parcel of land with any buildings and improvements thereon; situated in Portland, County of Cumberland and State of Maine and more particularly bounded and described as follows:

Being Lots 11, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 as depicted on a plan entitled "Congress Terrace" made for A.H. Chapman Land Co. by W.M. Hicks, C.E., dated April, 1922 and recorded May 11, 1922 in the Cumberland County Registry of Deeds in Plan Book 14, Page 61.

Also, another certain lot or parcel of land with any buildings and improvements thereon, situated in Portland, County of Cumberland and State of Maine, commonly known as Ainsworth Street and being more particularly shown on a plan entitled "Congress Terrace" made for A.H. Chapman Land Co. by W.M. Hicks, C.E., dated April, 1922 and recorded May 11, 1922 in the Cumberland County Registry of Deeds in Plan Book 14, Page 61.

EXHIBIT B

["Grantee's Land"]

Parcel 1:

A certain lot or parcel of land, with the buildings thereon, situated on the Southwesterly side of Congress Street, in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning on the Southwesterly side line of Congress Street at the Northerly corner of land conveyed by P.H. & J.M. Brown Company to Martin Curran, Jr., by deed dated May 13, 1902, Book 717, page 129; thence North $57^{\circ} 10'$ West by the Southwesterly side line of Congress Street two hundred and five (205) feet more or less to the Easterly corner of land formerly of Edward H. Davels; thence South $32^{\circ} 50'$ West by said Davels land two hundred eleven and two tenths (211.1) feet; thence South $1^{\circ} 41'$ East by said Davels land three hundred two and one tenth (302.1) feet to an angle in said Davels land; thence Southeasterly by a line at right angles with the northwesterly side line of Lassell Street, as extended, one hundred ninety (190) feet more or less to said Northwesterly side line of Lassell Street; thence Northeasterly by the Northwesterly side line of Lassell Street, as extended, forty (40) feet more or less to the Westerly side line of said Curran land; thence North $1^{\circ} 27'$ West by said Curran land two hundred sixty (260) feet more or less to an angle in said Curran line; thence North 33° East by said Curran land two hundred nine and eighty-two hundredths (209.82) feet to the point of beginning.

Excepting land described in Notice of Layout and Taking by the State of Maine, Department of Transportation, dated January 18, 1983 and recorded in Book 6110, Page 287.

Parcel 2:

A certain lot or parcel of land in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Being a rear portion of Lot #5 as shown on a Plan of Lots of Martin Curran, Jr., recorded in Cumberland County Registry of Deeds Plan Book 9, Page 121. Said lot is located on the westerly side of Lassell Street in the City of Portland, County of Cumberland, State of Maine and is more particularly bounded and described as follows: Beginning at the point formed by the intersection of the division line between lots 4 and 5 on said Plan with the easterly line of land conveyed to Roman Catholic Bishop of Portland by Norman E. Blake et.al. by deed dated February 28, 1957 and recorded in said Registry in Book 2338, Page 240. Said point of beginning is located along said easterly property line of Roman Catholic Bishop of Congress Street. Thence continuing by said easterly property line S $33^{\circ} 04' W$, 2.48' to an iron marking an angle in said line. Thence S $0^{\circ} 57' 1/2'' E$, 21.45' to a point on the rear property line of said Lot #5. Thence through said Lot #5 N $33^{\circ} 04' E$, 20.97' to the southerly side of said lot #4. Thence by the southerly side of lot #4 N $60^{\circ} 22' W$, 12.02' to the point of beginning.

Parcel 3:

A certain lot or parcel of land in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Being the rear portion of Lot #4 as shown on a Plan of Lots of Martin Curran, Jr., recorded in Cumberland County Registry of Deeds Plan Book 9, Page 121. Said lot is located on the westerly side of Lassell Street in the City of Portland, County of Cumberland, State of Maine and is more particularly bounded and described as follows:

Beginning at the point formed by the intersection of the division line between Lots 3 and 4 on said plan with the easterly line of land conveyed to Roman Catholic Bishop of Portland by Norman E. Blake et.al. by deed dated February 28, 1957 and recorded in said Registry in Book 2338, Page 240. Said point of beginning is located along said easterly property line of Roman Catholic Bishop of Portland at a point that is distant S $33^{\circ} 04' W$, 157.33' from its intersection with the southerly side of Congress Street. Thence continuing by said easterly property line S $33^{\circ} 04' W$, 50.09' to the most northwesterly corner of Lot #5 as shown on said plan. Thence by the northerly side of said Lot #5 S $60^{\circ} 22' E$, 12.02' to a point. Thence

through said Lot #4 N 33° 04' E, 50.09' to the southerly side of Lot #3. Thence by the southerly side of said Lot #3 N 60° 22' W 12.02' to the point of beginning.

EXHIBIT C

["Site Plan Depicting Easement Area"]

