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FALMOUTH TOWN CLERK

FALMOUTH PLANNING BOARD
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FALMOUTH, MASSACHUSETTS 02540
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E-Mail: planning@falmouthmass.us

July 9, 2014

Mr. Michael Palmer, Town Clerk
Town Hall
Falmouth, Massachusetts 02540

Re: Falmouth Hospitality, LLC, Definitive Plan
47B03 016 000; 017 002; 017A004

Dear Michael,

At its meeting of July 8, 2014 the Planning Board voted to approve the application of Falmouth Hospitality, LLC under Article IV - Definitive Plans - Chapter 305 Subdivision Regulations of the Town of Falmouth for a plan entitled: "Definitive Plan for Abandonment of a Portion of Lantern Lane" prepared by Hancock Associates, dated February 24, 2014, scale 1" = 20' with the following findings and conditions:

The applicant seeks to abandon a 10,179 sq. ft. portion of Lantern Lane, a private subdivision road first approved by the Falmouth Planning Board in 1947 as "Fay Lane Road." Lantern Lane intersects with two public ways, Main Street at the southerly end, and Dillingham Avenue at the northern end. The portion proposed to be abandoned is at the southern intersection with Main Street. The applicant is further proposing to replace the abandoned portion of the road layout with an "access and utility easement."

The Planning Board has received a memorandum from Town Counsel dated May 27, 2014 advising that a written easement be required. The Board shall condition this decision accordingly. The Board finds that the easement will allow the lot owners along Lantern Lane access to Main Street, and shall require that the easement be maintained and periodically improved so that access is not impaired.

Furthermore, the Board received correspondence from the Falmouth Fire and Rescue Department dated April 25, 2014, stating that the FFRD reviewed the proposed plans, and did not raise any concerns regarding the proposed abandonment. Finally, the Board received correspondence from the Building Commissioner dated June 3, 2014, stating that it does not appear that the proposed abandonment and easement would create a zoning violation.

CONDITIONS:

1. Prior to plan endorsement, the applicant shall submit a written easement for access and utility purposes, to the Planning Board for approval, in form for recording at the Barnstable County

Registry of Deeds. Furthermore, the applicant shall submit details of how the easement shall be maintained and improved to insure that access to Main Street is not impaired.

Sincerely,

A handwritten signature in black ink, appearing to read "Marlene V. McCollem". The signature is fluid and cursive, with the first name being the most prominent.

Marlene V. McCollem
Assistant Town Planner

cc: applicant

GROUND LEASE

LEASE dated October 16, 2013 between John J. Fay III and Robert A. Fay, as "LANDLORD" and Falmouth Hospitality, LLC, as "TENANT".

Section 1.1. The Subject Premises; the Abutting Premises

- (a) The Lease concerns a certain parcel of land (referred to below as the "Subject Premises", whose address is 556 Main Street, 0 Main Street, 0 Lantern Lane and 4 Lantern Lane, together totaling 1.73 acres, and which is situated in Falmouth, Massachusetts. The Subject Premises is described on a plan attached hereto as Exhibit "B" attached hereto and made a part hereof.
- (b) In addition to the Subject Premises, LANDLORD owns a parcel of land abutting the Subject Premises (referred to below as "Abutting Premises"), whose address is 3 Lantern Lane, Falmouth and contains approximately .173 acres of land. The Abutting Premises is described on a plan attached hereto as Exhibit "B" attached hereto and made a part hereof.

Section 1.2 Description of the Parties

(a) (i) John J. Fay III and Robert A. Fay are individuals and they have an address of 12 Canapitsit Drive, East Falmouth, Massachusetts. Said John J. Fay III and Robert A. Fay are collectively referred to in this Lease as "LANDLORD" unless and until they transfer the "Reversionary Estate" (as defined in Section 2.1.2).

(ii) Each person or entity that owns the "Reversionary Estate" is referred to as "LANDLORD" during the period of its ownership.

(b) (i) Falmouth Hospitality, LLC is a Massachusetts limited liability company established under the laws of the Commonwealth of Massachusetts and it has an office at 2 Lan Drive, Westford, Massachusetts. Falmouth Springhill Inn, LLC is referred to in this Lease as "TENANT" unless and until it assigns the "Leasehold Estate" (as defined in Section 2.1.2) validly in accordance with Chapter 6.2, the assignee shall become the "TENANT" under this Lease, and the assignor shall no longer be the "TENANT".

Section 1.3.1 The Leasehold Improvements

(a) TENANT has advised LANDLORD that it intends to construct lawful allowed improvements (referred to below as the "Project") on, under and over Subject Premises. The construction of the Project and the other improvements to the Subject Premises is governed by Article 3.

(b) The Project and other improvements situated on, over or under Subject Premises from time to time are referred to below as the "Leasehold Improvements".

Section 1.3.2 Financing the Leasehold Improvements

TENANT intends to finance the development of the Leasehold improvements with loans to be secured by one or more mortgages of the "Leasehold Estate" (as defined in Section 2.1.2). A mortgage of the Leasehold Estate is referred to below as a "Leasehold Mortgage"; a holder of a Leasehold Mortgage is referred to below as "Leasehold Mortgagee".

Section 2.1.1 Lease of Subject Premises; Lease of Abutting Premises

- (a) LANDLORD leases the Subject Premises to TENANT, together with all rights, obligations and burdens in connection with any rights of way contained therein.
- (b) LANDLORD may lease the Abutting Premises to TENANT, together with all rights, obligations and burdens in connection with any rights of way contained therein.

Section 2.1.2 The Leasehold Estate and The Reversionary Estate

- (a) The rights granted to TENANT under this Lease are referred to in this Lease as the "Leasehold Estate".
- (b) The rights of LANDLORD in the Subject Premises after giving effect to the Leasehold Estate are referred to in this Lease as the "Reversionary Estate". The "Reversionary Estate" includes all of LANDLORD'S rights pursuant to this Lease.

Section 2.2.1 Commencement of the Term

The term of this Lease will begin on the day immediately following the one year anniversary of the expiration of the Permitting Period (the "Commencement Date"). (the "Commencement Date"). The LANDLORD and TENANT shall execute and record at the Barnstable County Registry of Deeds a Lease Commencement Certificate to evidence the Commencement of the Term.

Section 2.2.2 Expiration of the Term

- (a) The term of this Lease will expire on the "Expiration Date", provided however, that the term of this Lease shall expire earlier upon a transfer of the Reversionary Estate to the TENANT.
 - (b) (i) Except as provided in part (ii), the 99th anniversary of the "Commencement Date" [as defined in subsection (c)] will be the "Expiration Date".
 - (ii) If this Lease is canceled or terminated before the 99th anniversary of the "Commencement Date", the "Expiration Date" will be the effective date of cancellation.
- (c) (i) The "Commencement Date" is as set forth in Section 2.2.1 above.

Section 2.3.1 Delivery of Possession, Due Diligence and Permitting

- (a) LANDLORD shall deliver actual and exclusive possession of the Subject Premises to TENANT on the day this Lease is executed by both parties. From the date on which the Lease is executed by both parties, TENANT shall have 60 days ("Due Diligence Period") to conduct its due diligence on the Subject Premises, including but not limited to: title, encumbrances and zoning matters, inspection for hazardous materials, inspection and review of geotechnical and topographical survey, and

TENANT shall surrender possession of Subject Premises to LANDLORD on the Expiration Date.

Section 3.1.1 Application for Approvals and Permits

(a) TENANT may apply to appropriate governmental authorities in the name of LANDLORD, TENANT or both for all necessary approvals and permits, or both so that the construction of the Project and other initial Leasehold Improvements.

(b) (i) If an approval or permit for which TENANT is entitled to apply pursuant to subsection (a) is not issued within a reasonable time in TENANT'S opinion, TENANT may bring legal proceedings to require that the approval or permit be issued, appeal any adverse decisions, and defend any appeals of favorable decisions; and TENANT may do so in the name of LANDLORD, TENANT, or both.

(ii) If an approval or permit for which TENANT is entitled to apply pursuant to subsection (a) is issued and any person commences legal proceedings to contest the issuance, TENANT may dispute the proceedings, appeal any adverse decisions and defend any appeals of favorable decision; and TENANT, at its sole cost and expense, may do so in the name of LANDLORD, TENANT or both. TENANT hereby indemnifies and hold harmless LANDLORD for all costs, expenses, losses and other damages incurred by LANDLORD in connection herewith.

Section 3.1.2 Covenant to Cooperate

(a) Except as provided in subsection (b), LANDLORD shall cooperate promptly with TENANT in all respects in connection with the applications referred to in Section 3.1.1. To the extent reasonably necessary, the obligation to cooperate includes the obligation to execute appropriate documents needed to support the application and proceedings.

(b) LANDLORD shall not be required to pay application fees or any expenses related to such proceedings.

Section 3.2 Intentionally omitted.

Section 3.3.1 Application for Building Permit

(a) Promptly after the Tenant's final plans for the hotel are adopted, TENANT shall apply in the name of LANDLORD, TENANT or both to the appropriate authorities for building permits to construct the Project and other initial Leasehold Improvements. The applications shall be prosecuted diligently.

(b) (i) If the building permit is not issued within the Permitting Period, TENANT may dispute the failure to issue the Project permit, bring legal proceedings to require that the building permit be issued, appeal any adverse decisions and defend any favorable decisions; and TENANT may do so in the name of LANDLORD, TENANT or both.

(ii) If the building permit is issued and any person commences legal proceedings to contest the issuance, TENANT may dispute the proceedings, appeal any adverse decision, and

defend any appeals of favorable decisions; and TENANT may do so in the name of LANDLORD, TENANT or both.

(c) (i) LANDLORD shall reasonably cooperate with TENANT in all respects in connection with the applications. To the extent necessary, the obligation to cooperate includes the obligation to execute appropriate documents needed to support the application.

(ii) LANDLORD shall not be required to pay application fees or any other fees related to such proceeding.

Section 3.3.2 Definition of "Construction Work"

The construction of the Project and other initial Leasehold Improvements including all labor and materials required in connection with the construction is referred to below as the "Construction Work".

Section 3.3.3 Progress of the Construction Work

The following shall apply after a building permit is issued with respect to the Project and other initial Leasehold Improvements.

(a) As soon as practicable, subject to the other provisions of this Lease, TENANT shall begin the Construction Work, which may include demolition of any and all existing structures. Construction Work shall be deemed to have begun when any excavation work shall have begun.

(b) After having begun, construction shall be prosecuted diligently, subject to "Excusable Delays". "Excusable Delays" are delays caused by Acts of God, strike, lockout, organized slowdown, major accident, civil commotion, war, fire, catastrophe, significant legal requirement, inclement weather, shortage of materials or labor, action of the other party, or cause beyond the reasonable control of a party.

(c) Construction shall be deemed to have been "substantially completed" for the purposes of Sections 3.3 and 3.4 on the date on which the TENANT's Architect issues a certificate that, to the best of its knowledge, information and belief and on the basis of its observations, the Construction Work shall have been substantially completed.

Section 3.3.4 Quality of the Construction Work

The Construction Work shall be performed in accordance with applicable legal requirements. The Construction Work shall also be performed in a good and workmanlike manner in a timely manner and in accordance with good construction practices.

Section 3.3.5 Inspection Rights

(a) After the execution of the Lease, LANDLORD shall have the right to enter the Subject Premises to inspect it at reasonable times during the course of the Construction Work.

(b) (i) LANDLORD may exercise the right of entry after reasonable intervals and with prior reasonable notice to TENANT.

[REDACTED]

[REDACTED]

Section 5.1.1 Permitted Uses of the Project

The Leasehold Improvements may be used for "Commercial Purposes" and purposes incidental to Commercial Purposes. "Commercial Purposes" shall mean all lawful activities or other lawful purposes in connection with, and relating to, a hotel, restaurant or bar services. Any proposed used outside of the Commercial Purposes shall require the prior written consent of the LANDLORD, such consent not to be unreasonably withheld, conditioned or delayed.

Section 5.2.1 Intentionally omitted

[REDACTED]

The rights and privileges of TENANT under this Lease shall also inure to the benefit of each Leasehold Mortgagee.

Witness our hands and seals this 16 day of OCTOBER, 2013.

Attest:

LANDLORD:

John J. Fay III
John J. Fay III

Myrna R. Blakeney

Robert A. Fay
Robert A. Fay



MYRNA R. BLAKENEY
Notary Public
Commonwealth of Massachusetts
My Commission Expires
September 26, 2014

TENANT:

Falmouth Hospitality, LLC

By: _____
Name:
Title:

Exhibit B

Subject Premises Description

0 Main Street, Falmouth, Massachusetts as described in Barnstable County Registry of Deeds Book 2005 Page 69.

556 Main Street and 4 Lantern Lane, Falmouth, Massachusetts as described in Barnstable County Registry of Deeds Book 4806 Page 89.

0 Lantern Lane Street, Falmouth, Massachusetts as described in Barnstable County Registry of Deeds Book 4806 Page 89.

All interests retained in Lantern Lane (f/k/a Faylane), Falmouth, Massachusetts.

Abutting Premises Description

3 Lantern Lane Street, Falmouth, Massachusetts as described in Barnstable County Registry of Deeds Book 3120 Page 230.

All interests retained in Lantern Lane (f/k/a Faylane), Falmouth, Massachusetts.