

## EASEMENT AND WATER SUPPLY AGREEMENT

This Easement and Water Supply Agreement (the “Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014 by **The Three Socios, LLC**, a New Hampshire limited liability company with an address of 321D Lafayette Road, Hampton, New Hampshire 03842 (“Three Socios”) and **George A. Calef and Arvilla T. Calef, Trustees of the George A. Calef Living Revocable Trust of 2008** and **George A. Calef and Arvilla T. Calef, Trustees of the Arvilla T. Calef Living Revocable Trust of 2008**, each with an address of 9 Mallego Road, Barrington, New Hampshire 03825 (collectively “Calef”).

WHEREAS, Three Socios owns certain real property in the Town of Barrington, Strafford County, New Hampshire located off Route 125 known as Tax Map 238, Lot 4 (the “Three Socios Lot”) as shown on a plan by Jones & Beach Engineers, Inc., entitled “Easement Plan, Tropic Star Convenience, Calef Highway (Route 125), Barrington, NH” dated \_\_\_\_\_, 2014 and recorded at the Strafford County Registry of Deeds as Plan No. \_\_\_\_\_ (the “Plan”).

WHEREAS, Calef owns certain real property in the Town of Barrington, Strafford County, New Hampshire located off Route 125 known as Tax Map 238, Lot 5 (the “Calef Lot”) as on the Plan, which is adjacent to the Three Socios Lot. The Three Socios Lot and the Calef Lot are sometimes referred to herein individually as a “Parcel,” and each of Three Socios and Calef are sometimes referred to herein as a “Party” or collectively as the “Parties.”

WHEREAS, Three Socios seeks to develop the Three Socios Lot as a gas station and convenience store, which will include the installation of underground fuel storage tanks and related equipment, or as any other commercial use in Three Socios’ sole discretion (the “Development”).

WHEREAS, Three Socios intends to install a water supply well, underground pipes and related equipment on the property owned by Barrington Village Place, LLC known as Barrington Tax Map 238 Lot 14 (see Well and Water Line Easement recorded at Strafford County Registry of Deeds Book 4163, Page 317) (collectively the “Well”) and a pump house, underground pipes and related equipment (collectively the “Pump

House”) on the property owned by George Tsoukalas known as Barrington Tax Map 238, Lot 7 to supply potable water to certain properties including the Calef Lot (the Well, Pump House and pipes and related equipment are collectively referred to herein as the “Water System”).

WHEREAS, the Parties wish to establish parking, access and snow storage easements, and to provide for the supply of water from the Water System to the Calef Lot, pursuant to the terms hereof.

NOW, THEREFORE, in consideration of the premises, the mutual undertakings contained herein, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Three Socios and Calef agree as follows:

1. Grant of Easements.

A. Three Socios does hereby establish, create and grant to Calef a perpetual, non-exclusive easement in, to, over, across and through the areas shown as “Parking Easement in Favor of Map 238 Lot 5 841 SF” and “Parking Easement in Favor of Map 238 Lot 5 736 SF” on the Plan (collectively the “Parking Easement Areas”) to park vehicles by Calef, its agents, employees, customers, tenants, assigns, independent contractors and business invitees. This easement shall include non-exclusive access to allow for pedestrian and vehicular ingress and egress (i) between the Calef Lot and the Parking Easement Areas and (ii) between the Parking Easement Areas and Route 125, over the areas shown as “Access Easement in Favor of Map 238 Lot 5” and “40’ Access Easement in Favor of Tax Map 235 Lot 83 & Tax Map 238 Lot 5 12,861 SF” on the Plan. Calef shall use said Parking Easement Areas in common with Three Socios on a first-come, first-served basis. Three Socios shall be solely responsible for all work and expenses related to the design, permitting and construction of the parking spaces within the Parking Easement Areas as shown on the Plan in its sole discretion. Three Socios agrees to perform such work in a good and workmanlike manner. Three Socios, at its sole expense, shall maintain the Parking Easement Areas in good condition, except for damage caused by the negligence or willful misconduct of Calef, for which Calef shall be responsible.

B. Three Socios does hereby establish, create and grant to Calef a perpetual, non-exclusive easement in, to, over, across and through the area shown as “10’ Wide Snow Storage Easement” on the Plan for storage of snow removed from the Calef Lot (the “Snow Storage Easement” and collectively with the Parking Easement Areas, the “Calef Easement Areas”). Calef shall use said Snow Storage Easement in common with Three Socios. Three Socios, at its sole expense, shall maintain the Snow Storage Easement area in good condition, except for damage caused by the negligence or willful misconduct of Calef, for which Calef shall be responsible. Without limiting the foregoing, Three Socios shall maintain the vegetation within the Snow Storage Easement so as to not unreasonably obstruct visibility to/from the Calef Lot and vehicular traffic on Route 125.

C. Calef does hereby establish, create and grant to Three Socios a temporary, non-exclusive easement in, to, over, across and through the areas shown as "10' Wide Temporary Construction Easement" (the "Temporary Construction Easements"). Three Socios shall have the non-exclusive right and easement to enter, use and modify said "10' Wide Temporary Construction Easement" for the purposes of laying, constructing and installing underground pipes, ducts, conduits, valves and such equipment and other appurtenances to connect the Water System to the existing building on the Calef Lot, and for purposes of construction of a driveway to facilitate vehicular traffic between the Calef Lot and the Three Socios Lot. This conveyance shall include the right of access from, to and across the Temporary Construction Easements for all purposes in connection with the exercise of the within granted rights and easement; the right to excavate, trench, and backfill by men or machines and temporarily to place excavated earth and other material on the Calef Lot, provided that the Calef Lot shall be restored by Three Socios to substantially the condition in which it was immediately prior to such access, excavation, trenching, and backfilling; the right to trim, cut down and remove bushes, trees and other plant growth on the Calef Lot as and to such extent as in the reasonable judgment of Three Socios is necessary for any of the above purposes. The Temporary Construction Easement shall terminate upon completion of construction of such water connection and driveway.

2. No Barriers. Each Party covenants and agrees that it shall not erect barriers on its Parcel which would have the effect of impeding the other Party's use of the respective easement areas, temporary easement areas and Water System, except to the extent necessitated to effectuate repairs within such area or as required by governmental authorities.

3. Water System.

A. Three Socios shall be solely responsible for all work and expenses related to the design and initial construction of the Water System, and the connection of the Water System to the existing plumbing that supplies water to the Calef Lot. Three Socios agrees to perform such work in a good and workmanlike manner. Notwithstanding the foregoing, Three Socios assumes no responsibility for the existing water pipes and equipment serving the Calef Lot, including any modifications, alterations or replacements of such system, pipes or equipment required as a result of the Water System.

B. Upon installation of the Water System, Calef shall discontinue the use of the existing well and water supply serving the Calef Lot and to obtain its water from the Water System. Three Socios shall be solely responsible for any costs and expenses required to discontinue the existing well and water supply on the Calef Lot. Calef agrees not to construct or install any wells on the Calef Lot.

C. Three Socios shall be solely responsible for all work related to the operation, maintenance and repair of the Water System, except that Calef shall be solely responsible for work and expenses related to the maintenance and repair of any portions

of the Water System that lie within the Calef Lot. Three Socios shall comply, at its sole expense, with all applicable laws, rules and regulations regarding monitoring and treatment of water at the wellhead/pump-house, and provide evidence of such compliance to Calef upon request. Notwithstanding the foregoing, Calef shall be responsible at its sole cost and expense for any monitoring and testing of water required on the Calef Lot. If Calef's monitoring/testing indicates a problem with the water supply which is not evident in the wellhead monitoring/testing, Calef shall be responsible to obtain a diagnosis of the cause of such problem and shall provide a copy of such diagnosis to Three Socios. Calef shall be solely responsible to remedy the cause(s) of such problems that exist within the Calef Lot, and Three Socios shall be solely responsible to remedy the cause(s) of such problems that exist outside of the Calef Lot.

D. Calef shall be responsible to reimburse Three Socios its Share (as hereinafter defined) of Three Socios' actual documented expenses related to the maintenance, repair or replacement of the water pump or pumps that pump water for the Water System. As used herein, Calef's Share shall be a fraction, the numerator of which shall be 1 and the denominator of which shall be the number of lots connected to the Water System at the time such expenses are incurred. Except as provided in this Section 3.D., Calef shall not be responsible for any costs related to the operation, maintenance, repair or replacement of the Water System.

E. Three Socios shall supply reasonable quantities of water to the Calef Lot from the Water System at no charge to Calef, consistent with Calef's current use of the Calef Lot as set forth in more specifically in Exhibit A hereto, and in accordance with applicable permits and approvals for the Water System. It is understood that Calef's current water use is for consumption by employees, guests and invitees of the Calef Lot as part of its customary fine food restaurant/meat shop operations and that the current use as set forth in Exhibit A will continue. If Calef's demand for water materially increases, Three Socios will use reasonable efforts to accommodate such increased demand, provided that such accommodations do not impose additional direct costs on Three Socios or conflict with the Water System's design and permit capacity. Calef shall not sell or otherwise supply water from the Water System to anyone other than the aforementioned persons.

F. Three Socios shall in no way be liable for any loss, damage, or expense that Calef may sustain or incur by reason of any change, failure, interference, disruption, or unavailability in the supply of the water furnished to the Calef Lot, unless caused by the gross negligence or willful misconduct of Three Socios, its officers, directors, agents, employees, licensees, contractors or invitees. In any event, Three Socios' liability shall be limited to Three Socios' interest in the Three Socios Lot.

4. Commencement Date/Termination. Notwithstanding anything else in this Agreement, the obligations of the Parties under this Agreement shall commence upon Three Socios' receipt of all final unappealable permits and approvals necessary for the Development and Water System and Three Socios' election to construct the Development and Water System, failing which Three Socios is authorized to record in the Strafford

County Registry of Deeds a notice of termination of this Agreement on behalf of the Parties. If a public water supply becomes available to serve the Calef Lot, Calef shall connect to such public water supply at Calef's sole cost and expense, and Three Socios shall no longer be obligated to supply water to the Calef Lot. Upon drilling of the well(s) for the Water System, Three Socios shall have the right to conduct testing in its sole discretion to determine the adequacy of the Water System, including water quantity and quality, to supply water to the intended users. If Three Socios is unsatisfied with the results of such testing, in its sole discretion, Three Socios shall be entitled to terminate this Agreement and record a notice of termination in the Strafford County Registry of Deeds on behalf of the Parties. Notwithstanding anything in this Agreement to the contrary, the easements granted in paragraphs 1.A and 1.B hereof are to benefit the current use of the Calef Lot as a fine food restaurant/meat shop. If that use changes, said easements shall automatically terminate.

5. Breach.

A. If any Party fails to comply with its obligations and responsibilities hereunder, the other Party shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them. The foregoing remedy shall be in addition to and not in lieu of any and all other remedies available at law or in equity to a Party, its successors and assigns.

B. In the event any Party fails to comply with its obligations and responsibilities hereunder, the other Party, upon ten (10) days written notice to the other Party, may pay the costs of discharging any of such obligation or liability and shall be reimbursed by such Party who failed to perform together with interest from the date of disbursement at the rate of ten percent (10%) per annum.

C. In the event any Party fails to comply with its obligations and responsibilities hereunder, the other Party, upon ten (10) days written notice to the other Party, may take such actions as are reasonably necessary to effectuate such compliance so as to prevent further violation of this Agreement.

6. Runs with Land. This Agreement shall be a covenant running with the land and shall be binding upon and inure to the benefit of the owners from time to time of the respective Parcels and their successors, assigns, tenants, guests, licenses, invitees and mortgagees. Three Socios shall be entitled to assign the Water System and operation thereof to a third party without the need to obtain Calef's consent.

7. Insurance. Each Party shall at all times maintain in full force and effect comprehensive liability insurance with a financially responsible, reputable insurance company or companies qualified to do business in the State of New Hampshire, such insurance to provide for a limit of not less than One Million Dollars (\$1,000,000.00) for personal or bodily injury or death to any one person, and for a limit of not less than One Million Dollars (\$1,000,000.00) for personal or bodily injury or death to a number of persons arising out of any one occurrence. To the extent available, such insurance shall

include provisions denying the insurer subrogation rights against the other parties.

8. Indemnification.

A. Calef agrees to defend with counsel acceptable to Three Socios and indemnify and hold Three Socios harmless from and against all claims of whatever nature arising from any act, omission, negligence or willful misconduct of Calef, its officers, customers, tenants, assigns, directors, agents, employees, invitees, licensees or contractors, in or about the Calef Easement Areas, or arising from any accident, injury or death caused to any person, or any damage whatsoever to any property of any person, arising out of the use by any person of the easement granted herein. Excluded from this indemnity are claims exclusively arising from the gross negligence or willful misconduct of Three Socios, its officers, directors, agents, employees, licensees, contractors or invitees. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in conjunction with any such claim or proceeding brought thereon, in the defense thereof, including attorneys' fees. Calef shall not settle or compromise any such claim without the prior written approval of Three Socios.

9. Route 9 Access. If Three Socios obtains all necessary approvals, including approval from the New Hampshire Department of Transportation, for vehicular access to/from Route 9 and the Three Socios Lot, Three Socios agrees to grant Calef an easement allowing Calef to use such access (the "Route 9 Easement") for vehicular and pedestrian traffic between the Calef Lot and Route 9, provided such access is allowed under the applicable permits and approvals. The Route 9 Easement shall be prepared and recorded by Three Socios at its sole expense. The Parties agree to cooperate with each other in reaching mutually agreeable terms for use and maintenance of the Route 9 Easement.

10. Existing Access. The Department of Transportation permit obtained by Three Socios for access to the Three Socios Lot does not require any alteration, relocation or change to the existing access to the Calef Lot from Route 125. Three Socios does not intend to change the current access to the Calef Lot except as otherwise set forth herein.

11. Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the subject matter of this agreement and supersedes all prior agreements with respect thereto. No oral statement or prior written matter shall have any force or effect.

12. Compliance with Law. The parties shall use, possess, and maintain the easements and Water System in compliance with all applicable federal, state, and local laws, codes, ordinances, statutes, rules and regulations. Calef shall not act in any manner that will violate the conditions of any permits or approvals for the Water System, or impair the integrity of the water supply.

The undersigned Trustees, as Trustees of the George A. Calef Living Revocable Trust of 2008 and as Trustees of The Arvilla T. Calef Living Revocable Trust of 2008,

each a New Hampshire revocable trust created by Trust Agreements dated May 21, 2008 (collectively the "Trusts"), have full and absolute power in the Trusts to convey any interest in real estate and improvements thereon held in the Trusts, and no purchaser or third party shall be bound to inquire whether the undersigned Trustees have said power or are properly exercising said power or to see to the application of any Trust asset paid to the undersigned Trustees for a conveyance thereof.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and affixed their seals as of the day and year first above written.

**THE THREE SOCIOS, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
COUNTY OF \_\_\_\_\_

On this the \_\_\_\_ day of \_\_\_\_\_, 2014 before me, the undersigned officer, personally appeared the above-named \_\_\_\_\_, the duly authorized \_\_\_\_\_ of The Three Socios, LLC known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

\_\_\_\_\_  
Notary Public  
My commission expires

**THE GEORGE A. CALEF LIVING  
REVOCABLE TRUST OF 2008**

By: \_\_\_\_\_  
George A. Calef, Trustee

By: \_\_\_\_\_  
Arvilla T. Calef, Trustee

**THE ARVILLA T. CALEF LIVING  
REVOCABLE TRUST OF 2008**

By: \_\_\_\_\_  
George A. Calef, Trustee

By: \_\_\_\_\_  
Arvilla T. Calef, Trustee

STATE OF NEW HAMPSHIRE  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014 by George A. Calef and Arvilla T. Calef, Trustees of the George A. Calef Living Revocable Trust of 2008, on behalf of the George A. Calef Living Revocable Trust of 2008.

\_\_\_\_\_  
Notary Public/Justice of the Peace

STATE OF NEW HAMPSHIRE  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014 by George A. Calef and Arvilla T. Calef, Trustees of the Arvilla T. Calef Living Revocable Trust of 2008, on behalf of the Arvilla T. Calef Living Revocable Trust of 2008.

\_\_\_\_\_  
Notary Public/Justice of the Peace



**EXHIBIT A**

2000 square foot fine food restaurant with two (2) employees.

<u>Description of use(s) within space</u>	<u>Square Feet</u>
<u>Meat Department</u>	
<b>Total</b>	<u>2000</u>