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**Via email and Hand Delivery**

October 21, 2015

Karyn Forbes Chair  
Zoning Board of Adjustment  
Town of Barrington  
P.O. Box 660  
333 Calef Highway  
Barrington, NH 03825

**Re: Case No. 238-5-TC/SDAO-15 Variance; Calef's Find Foods**

Dear Chairperson Forbes and Members of the Zoning Board:

This law firm represents The Three Socios, LLC ("TTS"), which owns property abutting Calef's Fine Foods. This letter sets forth TTS's objections to the above-referenced variance application.

Some initial background is useful to put this application in context. In July 2013, TTS applied to the Planning Board for site plan approval to construct a gas station and convenience store (the "Development"). One complication of constructing a gas station on this site is that there is no town water, and state law mandates all underground fuel storage tanks be set back specific distances from public water supply wells. There were two such wells within the required separation – one owned by the Journey Baptist Church, and one owed by Millo's Pizza. As part of the development, TTS proposed to install a well outside the required set back on adjacent property owned by Barrington Village Place, LLC ("BVP"), and to allow the Church and Millo's to connect to it. Those parties all agreed, and TTS obtained DES approval, and a variance from this Board, to install the well.

The Calefs have not had any well on their property for several decades. They have historically drawn water from Millo's well. When TTS began plans for its Development, it approached the Calefs and offered to let them tie into TTS's well. The Calefs agreed, in concept, and TTS proceeded with its engineering and approval process. TTS drafted a formal easement for the Calefs to draw water from TTS's well, free of charge (other than a share of pump replacement when necessary). The Calefs privately conceded the terms of the agreement were acceptable, but refused to sign it unless TTS provided several unrelated perks, including an access easement, a snow storage easement, lighting for the Calefs' parking lot, landscaping, and monetary payment.

Although TTS has always been willing to supply the Calefs with free water, they were unwilling to meet those other unrelated demands.

Consequently, Millo's agreed to continue supplying water to the Calefs, as it always has, and TTS agreed to supply Millo's with enough water to do so. See Exhibit A ¶ 3.D. Thus, the Calefs' water supply would remain uninterrupted in all events.

Despite this, the Calefs were upset that TTS would not meet their other demands. The Calefs proceeded to lodge unfounded objections to TTS's site plan approval, and to file several appeals to this Board and the Superior Court. In a final effort to thwart the Development, the Calefs applied to DES for approval to install the present well, knowing that the proposed well location would be within the separation required for TTS's underground storage tanks, and that it would likely prevent TTS from obtaining approval from DES to install the tanks.

Upon learning of DES's approval of the Calefs' well, TTS reminded the Calefs by letter that they must obtain site plan approval for their well prior to installation. Of course, the Calefs were already aware of this requirement, given their active participation in BVP's site plan application months earlier to install the well which would serve TTS's Development. Nonetheless, the Calefs rushed to install their well without obtaining necessary approvals so that they could claim their well predated TTS's underground storage tank permit application, and thereby prevent DES approval.

TTS has repeatedly advised the Calefs that it has no intent to interrupt their water supply, and that it will supply free water to the Calefs either directly or through Millo's, whichever the Calefs prefer. Because the Calefs continue to publically deny that, TTS is prepared to provide the easement attached hereto as Exhibit B to the Calefs.<sup>1</sup> TTS has further advised the Calefs that it does not object to their installation of a well, provided that it does not interfere with TTS's underground storage tank permits. Despite this, the Calefs have filed an objection with DES urging it not to grant TTS a permit.

The Calefs' vindictive approach to prevent TTS's development by installing the present well undermines all of the time, expense and effort dedicated to designing, reviewing and approving TTS's Development. It improperly deprives TTS of the permits and approvals it has obtained to date for the Development, and rewards bad faith behavior designed to extract unrelated and unwarranted benefits from TTS. It further inhibits Millo's Pizza from expanding its business.

With this background in mind, the Board should deny the Calefs' variance application because the Calefs cannot satisfy the statutory criteria required for a variance.

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<sup>1</sup> The 750 gpd reflects the maximum amount of water that may be withdrawn from the Calefs' own well, per the DES approval.

1. There is no unnecessary hardship

The Calefs' variance application generally states that there will be unnecessary hardship because the well currently serving the Calefs' premises is to be abandoned. This argument fails to address the hardship standard mandated by RSA 674:33. For instance, they have not shown that their property is unique, or that there is no substantial relationship between the general public purposes of the ordinance and its application to their property. They have also failed to demonstrate that it is reasonable to install the well within the setback.

Indeed, there is nothing to suggest that the proposed well could not be readily installed more than 15' from the rear property line. As it is, the well is in close proximity to the Calefs' building, parking lot, septic system and coolers, as well as the parking lot, drive through lanes and septic system on the Citizens' Bank property. Moving the well outside of the rear yard setback does not expose the well to any greater threat of contamination (in fact it reduces that threat), or present any hardship at all.

Furthermore, even if the Calefs' water supply argument were relevant, it is intentionally misleading. As set forth above, TTS continues to be willing to grant the Calefs an easement to draw water directly from TTS's well. That easement meets or exceeds the quantity the Calefs may draw from their proposed well, runs with the land in perpetuity, and comes entirely free of charge. TTS has also agreed to supply enough water to Millo's so that the Calefs can continue to get their water from Millo's if they prefer. As such, there is no risk that the Calefs' water supply will be discontinued, and the installation of the well within the setback is neither necessary nor reasonable for the continued use of the property.

2. Granting the Variance Would be Contrary to the Public Interest

A variance is contrary to the public interest if "it unduly and in a marked degree conflicts with an ordinance such that it violates the ordinance's basic zoning objectives." Farrar v. City of Keene, 158 N.H. 684, 691 (2009) (internal quotations omitted). In determining whether a variance would violate basic zoning objectives, the board should examine whether the variance would alter the essential character of the locality, or whether the granting of the variance would threaten public health, safety or welfare. Id.

Here, allowing a well in the rear yard setback directly conflicts with the ordinance's basic zoning objectives and threatens public health, safety and welfare. The proposed well requires a 75' protective radius to prevent possible sources of contamination. The majority of the protective radius lies on the Citizens' Bank property. The Calefs have no control over that portion of the protective well radius, and have no means to prevent possible sources of contamination within it. Currently, the bank's parking lot, drive through lanes, and septic system all lie within the

protective well radius, and present a risk of contamination of the Calefs' water. This is particularly concerning because the Calefs will serve and sell that water to the public. Although requiring the well to be located outside of the setback will not eliminate the potential sources of contamination, it will reduce the potential sources outside of the Calefs' control. Thus, the public interest is not served by granting the variance.

3. The Variance is Inconsistent with the Spirit of the Ordinance

The Supreme Court has determined that the requirement that a variance not be contrary to the public interest "is co-extensive and related to the requirement that a variance be consistent with the spirit of the ordinance." Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 580 (2005). As such, this criterion overlaps with the public interest requirement. For the reasons set forth above, the variance is inconsistent with the spirit of the ordinance.

4. Granting the Variance Would Not Do Substantial Justice

There is no harm to the Calefs by requiring compliance with the rear yard setback. Their protective well radius already contains several sources of potential contamination, and locating the well outside of the setback would reduce potential sources of contamination on the Citizens' Bank property, which are beyond the Calefs' control. The only benefit the variance would provide to the Calefs would be not having to re-drill their well outside of the setback. However, that would be an inappropriate measure of harm, given the Calefs' rush to install their well without first obtaining site plan approval, despite being cautioned by TTS and despite Mr. Calef being a longstanding Planning Board member who actively participated in BVP's site plan application to install a well only months earlier.

The practical consequence of granting this variance is to allow this well to thwart TTS's Development, which would result in substantial public harm. If TTS's development were prevented by the installation of this well, the Church and Millo's will be forced to continue using their existing wells. This will prevent Millo's from expanding its business, and will generally limit the development of TTS's property, Millo's property and the Church property. These lots, as well as several others in the area, are located in the Town Center Zoning District, which seeks to achieve dense commercial development. However, the lots are generally undersized, and lack the space necessary for each to have an individual well. Absent a public water supply in the area, the development of these lots is severely restricted.

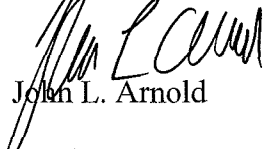
5. Granting the Variance Would Diminish Surrounding Property Values

As set forth above, granting the variance would likely prevent DES issuance of TTS' underground fuel storage tank permit, and prevent TTS's Development. This would necessarily

diminish the value of TTS's property because the property could no longer be used for a gasoline station, as designed and permitted.

For these reasons, the Calefs' variance application should be denied.

Sincerely,



John L. Arnold

JLA/dj

Enclosures

cc: The Three Socios, LLC  
Jae Whitelaw, Esq.  
Gregory D. Wirth, Esq.  
Michael L. Donovan, Esq.

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### EASEMENT DEED

**George Tsoukalas**, an individual with an address of P.O. Box 684, Barrington, New Hampshire 03825 (the "Grantor"), for consideration paid, grants to **The Three Socios, LLC**, a New Hampshire limited liability company having its principal office at 321D Lafayette Road, Hampton, New Hampshire 03842 (the "Grantee"), with WARRANTY COVENANTS, the perpetual right and easement more particularly described below, over, under and across a portion of certain land in the in the Town of Barrington, Strafford County, New Hampshire located off Route 9 known as Tax Map 238, Lot 7 (the "Premises") shown as "40.00' Access & Utility Easement From Map 238 Lot 7 to Benefit Tax Map 235 Lot 4 7,372 SF" (the "Easement Area") on a plan entitled "Easement Plan, Tropic Star Convenience, Calef Highway (Rte. 125), Barrington, NH" dated \_\_\_\_\_, 2014 prepared by Jones & Beach Engineers, Inc. and recorded at the Strafford County Registry of Deeds as Plan No. \_\_\_\_\_ (the "Plan").

Reference is made to the following:

A. Grantee 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 the Plan, which is adjacent to the Premises.

B. Grantee 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 Grantee's sole discretion (the "Development").

C. Grantee has obtained a Well and Water Line Easement over property owned by Barrington Village Place, LLC known as Barrington Tax Map 238 Lot 14 and as shown on the Plan (see Well and Water Line Easement recorded in the Strafford County Registry of Deeds at Book 4163, Page 317) to install a water supply well, underground pipes and related equipment (collectively the "Well") on such property to supply potable water in Grantee's sole discretion to certain properties including the Three Socios Lot and the Premises (collectively the "Served Lots").

D. Grantor has agreed to allow the Grantee to install and maintain a pump house and related equipment and fixtures as hereinafter set forth on the Premises to supply potable water to the Served Lots (the "Pump House" and collectively with the Well and related pipes and equipment providing water to the Served Lots are collectively referred to herein as the "Water System").

### TERMS

1. PURPOSE. The Grantee shall have the perpetual and exclusive right to lay, construct, install, operate, maintain, repair, replace and remove a pump house, underground pipes, ducts, conduits, valves and such equipment and other appurtenances as the Grantee may from time to time desire in its sole discretion to provide water service to the Served Lots. This conveyance shall include the right of access across said Easement Area for all purposes in connection with the exercise of the within granted rights and easement, including the conduct of pump tests and investigations; the construction of a gravel driveway from the Three Socios Lot to the pump house and adjacent land owned by Barrington Village Place, LLC known as Barrington Tax Map 238 Lot 14, not to exceed fifteen (15) feet in width; the right to excavate, trench, and backfill by men or machines and to temporarily place excavated earth and other material on said Easement Area and adjacent to the gravel driveway area, provided that the said Easement Area and areas adjacent to the gravel driveway shall be restored by the Grantee to substantially the condition in which each 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 Easement Area as and to such extent as in the reasonable judgment of the Grantee is necessary for any of the above purposes; the right, to be exercised only for temporary periods when continuity of service requires, to install temporary above-ground water and electricity lines over and across said Easement Area as well as temporary backup generators to provide water service to buildings on the Served Lots; and the right to erect and maintain underground electrical utility lines, at the election of Grantee, as necessary to provide electricity to the Water System.

2. MAINTENANCE. Grantee shall be solely responsible for all work and expenses related to the design, permitting (if any), and initial construction of the Water System and the connection of the Water System to the existing plumbing system that supplies water to the Premises. Grantee agrees to perform such work in a good and workmanlike manner. Grantee assumes no responsibility for the existing plumbing system, pipes and equipment serving the Premises, including any modifications or alterations to such system, pipes or equipment required as a result of the Water System. Grantee shall be solely responsible for the maintenance and repair of the Water System, except that the Grantor shall be solely responsible for work and expenses related to the maintenance and repair of any portions of the Water System that exclusively serve the Premises. Grantor shall be responsible to reimburse Grantee its Share (as hereinafter defined) of Grantee's actual documented fees, costs and expenses related to replacement of the water pump or pumps which are part of the Water System. As used herein, the Grantor'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.

3. WATER SUPPLY.

A. Grantee 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 Premises. Grantee agrees to perform such work in a good and workmanlike manner. Notwithstanding the foregoing, Grantee assumes no responsibility for the existing water pipes and equipment serving the Premises, including any modifications, alterations or replacements of such system, pipes or equipment required as a result of the Water System. Three Socios shall provide reasonable advance notice to the Grantor prior to shutting off the water to the Premises during any period of construction and shall use reasonable efforts to limit the shutoffs to those hours of the day and days of the week when the business on the Premises is not in operation.

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

C. Grantee shall be solely responsible for all work related to the operation, maintenance and repair of the Water System, except that Grantor shall be solely responsible for work and expenses related to the maintenance and repair of any portions of the Water System that serve the Premises exclusively. Grantee 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 Grantor upon request. Notwithstanding the foregoing, Grantor shall be responsible at its sole cost and expense for any monitoring and testing of water required at the taps or faucets used by Grantor on the Premises. If Grantor's monitoring/testing indicates a problem with the water supply which is not evident in the wellhead monitoring/testing, Grantor shall be responsible to obtain a diagnosis of the cause of such problem and shall provide a copy of such diagnosis to Grantee. Grantor shall be solely responsible to remedy the cause(s) of such problems that exist on the Premises outside of the Easement Area and Grantee shall be solely responsible to remedy the cause(s) of such problems that exist within the Easement Area or between the Easement Area and Well.

D. Grantee shall supply reasonable quantities of water to the Premises from the Water System at no charge to Grantor consistent with Grantor's current use of the Premises as a 2,492 square foot, 57 seat paper service restaurant, and in accordance with applicable permits and approvals for the Water System and use of the Premises. It is understood that Grantor's current water use is for consumption by employees, guests and invitees of the Premises as part of its customary restaurant operations. Grantee agrees to

supply Grantor with additional water, up to 4,520 gallons per day, provided that the increased usage complies with applicable permits and approvals for the Water System and use of the Premises. Grantee agrees to supply Grantor with sufficient additional water for Grantor to fulfill Grantor's obligations, if any, arising under a certain unrecorded "Easement" by and between George Tsoukalas and George and Arvilla Calef dated August 2, 2007. Grantee shall not sell or otherwise supply water from the Water System to anyone other than the persons aforementioned in this paragraph 3.D. \*

E. Grantee shall in no way be liable for any loss, damage, or expense that Grantor may sustain or incur by reason of any change, failure, interference, disruption, or unavailability in the supply of the water furnished to the Premises, unless caused by the negligence or willful misconduct of Grantee, its officers, directors, agents, employees, licensees, contractors or invitees.

4. COMMENCEMENT/TERMINATION. Notwithstanding anything else in this Easement, the obligations of the Parties under this Easement shall commence upon Grantee's receipt of all final unappealable permits and approvals necessary for the Development and Water System and Grantee's election to construct the Development and Water System, failing which Grantee is authorized to record in the Strafford County Registry of Deeds a notice of termination of this Easement on behalf of the Parties. If a public water supply becomes available to serve the Premises, Grantor shall connect to such public water supply at Grantor's sole cost and expense, and Grantee shall no longer be obligated to supply water to the Premises. Upon drilling of the well(s) for the Water System, Grantee 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 Grantee is unsatisfied with the results of such testing, in its sole discretion, Grantee shall be entitled to terminate this Easement and record a notice of termination in the Strafford County Registry of Deeds on behalf of the Parties.

5. GRANTOR'S USE OF EASEMENT AREA. The Grantor, for itself and its successors and assigns, covenants and agrees that (i) it will not erect or maintain any permanent building or structure of any kind or nature upon the Easement Area, or plant or permit to be planted any trees, bushes or shrubs over the Water System; (ii) it shall not materially alter the grade of the Easement Area as such grade exists at the time of the installation of the Water System; and (iii) it 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 Grantor further covenants and agrees, for itself and its successors and assigns, that in the event of excavation or grading by Grantor, which in the good faith opinion of the Grantee might materially disturb, dislocate, damage or endanger said Water System, the Grantor will install reasonable shoring or bear the expense of its installation at reasonable locations specified by the Grantee or its representatives, and in the event of any damage to said pipes or other equipment as a result of such excavation or grading, the

Grantor will pay the cost of repair to, or replacement of, said pipes or other equipment as the case may be.

6. RELOCATION. Neither Grantee nor Grantor will unreasonably withhold their respective consent to the other's requests for changes in the location of some or all of the Water System from time to time, provided that the party requesting such relocation shall pay for the costs of such changes, and provided also that such changes shall not materially interfere with the use and operation of the Water System.

7. COMPLIANCE WITH LAW. The parties shall use, possess, and maintain the Easement Area in compliance with all applicable federal, state, and local laws, codes, ordinances, statutes, rules and regulations.

8. INDEMNIFICATION. The Grantee shall hold harmless, defend and indemnify the Grantor for all suits, demands, claims, losses, damages, causes of action and expenses, including reasonable attorney's fees, arising out of the actions of the Grantee and its agents, representatives, employees, contractors or subcontractors undertaken at the direction or authorization of the Grantee within the Easement Area. The Grantee, in its sole discretion, may assume the defense of any and all such suits, demands, claims, losses, damages, causes of action and expenses at its sole cost and expense. The Grantor shall provide timely notice of any and all suits, demands, claims, losses, damages, causes of action and expenses to permit the Grantee to conduct the defense. The indemnity shall not be effective in the event of suits, demands, claims, losses, damages, causes of action and expenses caused by the Grantor's negligent, reckless, willful or wanton conduct.

The Grantor shall hold harmless, defend and indemnify the Grantee for all suits, demands, claims, losses, damages, causes of action and expenses, including reasonable attorney's fees, arising out of the actions of the Grantor and its agents, representatives, employees, contractors or subcontractors undertaken at the direction or authorization of the Grantor within the Easement Area. The Grantor, in its sole discretion, may assume the defense of any and all such suits, demands, claims, losses, damages, causes of action and expenses at its sole cost and expense. The Grantee shall provide timely notice of any and all suits, demands, claims, losses, damages, causes of action and expenses to permit Grantor to conduct its defense. The indemnity shall not be effective in the event of suits, demands, claims, losses, damages, causes of action and expenses caused by Grantee's negligent, reckless, willful or wanton conduct.

9. TEMPORARY WATER LINE CONSTRUCTION EASEMENT. Grantor does hereby establish, create and grant to Grantee a temporary, non-exclusive easement in, to, over, across and through a portion of the Premises shown as "10' Temporary Construction Easement Premises" on the Plan (the "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 plumbing system supplying potable water to the Premises. This conveyance shall include the right of access from, to and across the Premises 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 Premises, provided that the Premises shall be restored by Grantee 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 Premises as and to such extent as in the reasonable judgment of Grantee is necessary for any of the above purposes. The Temporary Construction Easement shall terminate upon completion of construction of such water connection.

10. RUNS WITH THE LAND. This Easement 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 every portion of the respective Parcels and their successors, assigns, tenants, guests, licenses, invitees and mortgagees. Grantee shall be entitled to assign the Water System and operation thereof to a third party without the need to obtain Grantor's consent.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been executed this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
**George Tsoukalas**

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014 by George Tsoukalas.

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

**THE THREE SOCIOS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Duly Authorized

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014 by \_\_\_\_\_, the \_\_\_\_\_ of The Three Socios, LLC, on behalf of the limited liability company.

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

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## WATER EASEMENT

**The Three Socios, LLC**, a New Hampshire limited liability company with an address of 321D Lafayette Road, Hampton, New Hampshire 03842 (“Grantor”), for consideration paid, grants to **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 35 Mallego Road, Barrington, New Hampshire 03825 (collectively “Grantee”), the perpetual right and easement to draw water from the well and to use the water pipes and related equipment to be installed by Grantor on the property owned by Barrington Village Place, LLC known as Barrington Tax Map 238 Lot 14 (the “Well”). See Well and Water Line Easement recorded at Strafford County Registry of Deeds Book 4163, Page 317.

With respect to said right and easement hereby conveyed, the Grantor and the Grantee by its acceptance hereof for themselves and their respective successors and assigns hereby agree as follows:

1. Water Consumption. Grantee may draw up to 750 gallons per day from the Well. Grantee may draw water from the Well in excess of 750 gallons per day provided that the increased usage complies with all applicable permits and approvals.
2. Construction. Grantor shall be solely responsible for all work and expenses related to the design and initial construction of the Well, and the connection of the Well to the existing plumbing, pipes, lines, ducts, pumps, meters, read-out devices, storage facilities and other equipment (the “Equipment”) that supplies water to the Calef Lot. Connection of the Well to the Calef Lot shall be done while the Calef Lot is closed for business. During periods of construction, Grantor shall shut off water to the Calef Lot only while the Calef Lot is closed for business and shall provide reasonable advance notice to Grantee prior to shutting off water to the Calef Lot. Grantor agrees to perform such work in a good and workmanlike manner. Notwithstanding the foregoing, Grantor assumes no responsibility for the existing Equipment serving the Calef Lot, including any modifications, alterations or replacements of such Equipment required as a result of the connection to the Well.

3. Maintenance. Grantor shall be solely responsible for all work related to the operation, maintenance and repair of the Well, except that Grantee shall be solely responsible for work and expenses related to the maintenance and repair of any Equipment that lies within the Calef Lot. Grantor shall, whenever possible, perform maintenance and repairs to the Well during times and in a manner to avoid disruption to Grantee's business. Grantor 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 Grantee upon request. Notwithstanding the foregoing, Grantee shall be responsible at its sole cost and expense for any monitoring and testing of water required on the Calef Lot. If Grantee's monitoring/testing indicates that the water does not meet applicable water quality standards which is not evident in the Grantor's wellhead monitoring/testing, Grantee shall be responsible to obtain a diagnosis of the cause of such problem and shall provide a copy of such diagnosis to Grantor. Grantee shall be solely responsible to remedy the cause(s) of such problems that exist within the Calef Lot, and Grantor shall be solely responsible to remedy the cause(s) of such problems that exist outside of the Calef Lot. Grantee will not unreasonably withhold its consent to Grantor's request from time to time for changes in the location of said pipes or other equipment, provided that Grantor shall pay for the costs of such changes, and provided also that such changes shall not materially interfere with the use and operation of the water systems which are the subject hereof.
4. Commencement Date/Termination. This Easement shall commence only upon Grantor's receipt of all final unappealable permits and approvals necessary for the development of Grantor's property known as Tax Map 238, Lot 4 (the "Three Socios Lot") as a gasoline station and convenience store (the "Development"), receipt of all final unappealable permits and approvals necessary for the installation and operation of the Well, and Grantor's construction of the Development and Well, failing which Grantor is authorized to record in the Strafford County Registry of Deeds a notice of termination of this Easement on behalf of Grantee and Grantor. This Easement shall automatically terminate ninety (90) days after the date on which a public municipal water supply becomes available for connection to serve the Calef Lot.
5. Liability. Grantor shall in no way be liable for any loss, damage, or expense that Grantee 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 negligence or willful misconduct of Grantor, its officers, directors, agents, employees, licensees, contractors or invitees.
6. Compliance with Law. The parties shall use, possess, and maintain the Easement and Well in compliance with all applicable federal, state, and local laws, codes, ordinances, statutes, rules and regulations. Grantee shall not act in any manner that will violate the conditions of any permits or approvals for the Well, or impair



the integrity of the water supply.

7. Runs with Land. This Easement 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 Calef Lot and the Three Socios Lot, and their successors, assigns, tenants, guests, licenses, invitees and mortgagees. Grantor shall be entitled to assign the Well and operation thereof to a third party without the need to obtain Grantee's consent. Grantee shall not assign or transfer its rights under this Easement to

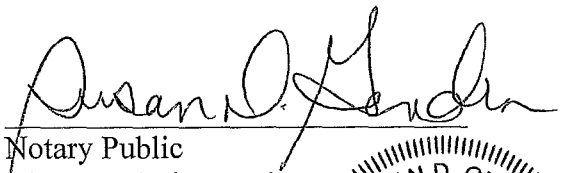
Dated this 19th day of October, 2015

**THE THREE SOCIOS, LLC**

By   
Scott Mitchell, Member

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

On this the 19th day of October, 2015 before me, the undersigned officer, personally appeared the above-named Scott Mitchell, the duly authorized Member of The Three Socios, LLC known to me 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

