

Property Disposition and Easement Agreement

This Property Disposition and Easement Agreement (hereafter the “Agreement”) made effective this 7th day of May, 2018, by and between **Theodore H. Heidrich**, currently residing in Scarborough, Cumberland County, Maine (hereafter “Heidrich”), **Deborah E. Zimmermann** (a/k/a Deborah E. Zimmerman), currently residing in Portsmouth, New Hampshire (hereafter “Zimmermann”) and **The Town of Falmouth**, a municipal corporation located in Cumberland County, Maine (hereafter the “Town”).

Whereas, the Town has acquired title to certain real property located off of the Underwood Road in Falmouth, Maine, originally acquired by Zimmermann by deed of Walter R. Edwards, Jr. dated December 28, 1990 recorded in the Cumberland County Registry of Deeds (hereafter the “Registry”) in Book 9502, Page 252, identified on Town tax map U18 as lot 23 (hereafter the “Zimmermann Parcel”), which derives from the maturing of certain municipal real estate tax liens filed against the Zimmermann Parcel recorded in said Registry in Book 13301, Page 325 and Book 14124, Page 264; and

Whereas, Heidrich has proposed to the Town to acquire by municipal release deed the Zimmermann Parcel upon payment by Heidrich to the Town of a fixed and agreed to amount of delinquent real estate taxes owed to the Town in order to release the Town’s interest in the Zimmermann Parcel resulting from the above referenced matured municipal real estate tax liens, which the Town has agreed to convey to Heidrich, provided Heidrich (a) acquires from Casco Bay Limited Partnership two (2) certain real estate parcels abutting to the Zimmermann Parcel (identified on Town tax map U18 as lots 20 and 25, and referred to hereafter as the “CBLP Parcels”) pursuant to a currently pending purchase and sale agreement between Heidrich and said limited partnership and (b) obtains a release deed from Zimmermann of all of her right, title and interest in and to the Zimmermann Parcel, which deed Zimmermann has agreed to provide; and

Whereas, the Town has proposed to Heidrich that in consideration for the transfer of the Zimmermann Parcel, and upon Heidrich’s acquisition of the Zimmermann and CBLP Parcels, that Heidrich grant to the Town certain easement rights associated with the Town’s Underwood Road Drainage Project, those portions of the Zimmermann and CBLP Parcels to be affected by said grant of easement rights being outlined on a certain Exhibit prepared by Wright-Pierce Engineering dated April 2018 under Project No. 13042A, a copy of which is appended hereto as **Exhibit A** and fully incorporated herein, which Heidrich has agreed to grant; and

Whereas, Heidrich, Zimmermann and the Town have all agreed to accomplish all of the above in accordance with the terms and conditions of this Agreement, which are the purposes of this Agreement to recite.

Now, Therefore, in consideration of the mutual promises and representations hereinafter set forth, Heidrich, Zimmermann and the Town hereby mutually agree as follows:

1. Town Action: The Town shall prepare and deliver to Heidrich a municipal release deed conveying all of the Town's right, title and interest acquired by the Town by virtue of the above referenced municipal real estate tax liens filed against Zimmermann and recorded in said Registry in Book 13301, Page 325 and Book 14124, Page 264, provided:

(a) the Falmouth Town Council approves at its regularly scheduled meeting on May 14, 2018 (or any subsequent meeting at which a definitive vote upon this Agreement is made) the conveyance of the Zimmermann Parcel to Heidrich and the other transactions described in this Agreement,

(b) Heidrich pays to Town at the Town Closing, as defined herein, Three Thousand and 00/100 Dollars (\$3,000.00), in immediately available United States funds, constituting full consideration to the Town for all delinquent real estate taxes due on the Zimmermann Parcel (the "Consideration"),

(c) Heidrich acquires the CBLP Parcels pursuant to the above referenced purchase and sale agreement,

(d) Heidrich acquires a release deed for the Zimmermann Parcel from Zimmermann, and

(e) Heidrich executes and delivers to the Town an easement over a portion of the Zimmermann Parcel and a portion of the CBLP Parcels, as more particularly described below (the "Easement").

Provided the Town Council approves the conveyance of the Zimmermann Parcel as provided for in this Section 1, the Town shall instruct its legal counsel to prepare a municipal release deed and associated Maine Real Estate Transfer Tax Declaration to Heidrich to be held in escrow by the Town's legal counsel until subparts (a), (b), (c), (d) and (e) of this Section 1 are accomplished. Upon accomplishment of said subparts (b) and (c) above and notice to the Town of the same, the Town's legal counsel and Heidrich's legal counsel shall promptly close on the transactions between the Town and Heidrich (the "Town Closing") at which time the Town shall deliver to Heidrich the above referenced municipal release deed and transfer tax declaration, with Heidrich being responsible for recording of said release deed, the Consideration shall be paid to the Town, and the Easement shall be delivered to the Town.

Promptly upon execution of this Agreement by the parties hereto, the Town's legal counsel shall prepare the Easement, which easement shall be perpetual, run with the land, be limited to the area designated on the Wright-Pierce Engineering plan appended as Exhibit A to this Agreement, and shall be mutually acceptable in all respects to the Town and Heidrich, and shall include without limitation the right to enter the easement area with persons and equipment to use, inspect, install, maintain, repair and replace culverts, pipes, rip rap or other drainage materials and appurtenances now or hereafter installed therein. Heidrich agrees to work cooperatively and in good faith with the Town and its legal counsel with respect to the above referenced Easement. In the event any one or more of subparts (a), (b), (c), (d) or (e) of this Section 1 fail to be accomplished by _____, 2018 ("Closing Deadline"), there shall be no obligation upon Heidrich to provide any payment to the Town for a deed conveying the Zimmermann Parcel, and no obligation

upon the Town to convey the Zimmermann Parcel to Heidrich, and either party may terminate this Agreement by notice to the other, in which case any documents previously delivered by Zimmermann to Heidrich shall be returned to her.

2. Zimmermann Action: Zimmermann shall execute, have notarized (as applicable) and deliver to Heidrich's legal counsel, on or before May 9, 2018, (a) an original of this Agreement, (b) a release deed to be prepared by Heidrich's legal counsel conveying all of Zimmermann's right, title and interest in and to the Zimmermann Parcel to Heidrich and (c) a Maine Real Estate Transfer Tax Declaration related to the deed described in subpart (b) of this Section 2. Heidrich's legal counsel shall be responsible for the preparation and cost, including the cost of recording, of all documents referenced in this Section 2, and for informing legal counsel for the Town, on or before May 9, 2018, whether these documents set forth in this Section 2 have been fully executed by Zimmermann and returned to Heidrich's legal counsel. Zimmermann agrees to execute the documents identified in subparts (a), (b) and (c) of this Section 2 in consideration of Heidrich satisfying the delinquent real estate tax obligations owed by Zimmermann to the Town on the Zimmermann Parcel. In the event Heidrich either (i) does not obtain the municipal release deed on the Zimmermann Parcel from the Town as provided for in Section 1 of this Agreement, or (ii) does not acquire the CBLP Parcels as set forth above, Heidrich's legal counsel shall return to Zimmermann all of Zimmermann's executed documents prior to recording, and all obligations of Zimmermann to Heidrich and the Town under this Agreement shall terminate.

3. Heidrich Action: Heidrich shall (a) have provided to Heidrich's counsel, on or before May 14, 2018, with Three Thousand and 00/100 Dollars (\$3,000.00) in immediately available United States funds to confirm to the Town that Heidrich has the financial capacity to make the necessary payment to the Town under Section 1 of this Agreement, (b) direct his legal counsel to prepare the release deed and transfer tax declaration for Zimmermann for execution as provided for in Section 2 of this Agreement and to have said counsel coordinate all matters under this Agreement with Zimmermann, (c) work cooperatively and in good faith with the Town, its officials and legal counsel in order to reach mutual agreement on the Easement, and (d) engage in all reasonable efforts to close on acquiring the CBLP Parcels in accord with the pending purchase and sale agreement on the CBLP Parcels, which closing is anticipated to occur no later than _____, 2018.

5. Town Council Approval. The Town's obligations hereunder are expressly contingent upon the approval of the Falmouth Town Council, and if such approval is not obtained by the Closing Deadline set forth in Paragraph 1, any party hereto may terminate this Agreement by written notice to the others.

6. Notices. Any notice relating in any way to this Agreement shall be in writing and shall be delivered to the other parties by (a) registered or certified mail, return receipt requested, (b) overnight courier, (c) hand delivery obtaining a receipt therefor, or (d) email, addressed as follows:

To Zimmermann:

To Heidrich: c/o Kim Visbaras, Esq.
195 Center St.
Auburn, ME 04210
Email: kalex@visbaras.com

To the Town: c/o Lisa R. Magnacca, Esq.
84 Marginal Way, Suite 600
Portland, ME 04101
Email: Lmagnacca@dwmlaw.com

and such notice shall be deemed delivered the business day when delivered in the case of notice by registered or certified mail, overnight courier or hand delivery. Notice sent by email shall be deemed delivered upon sending, except that if the sender receives an “undeliverable” or “out of office” or other similar message indicating that the email was not immediately received by the other party, such notice shall be deemed ineffective and must be provided by one of other methods permitted herein. Either party may, by such manner of notice, substitute persons or addresses for notice other than those listed above.

7. General Provisions: The parties to this Agreement acknowledge and recognize that time is of the essence in order to fully satisfy the express obligations and responsibilities of the parties hereunder. This Agreement shall be governed by the laws of the State of Maine, and shall only be amended by a writing executed by all parties to this Agreement. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and assigns. This Agreement, including the exhibits referenced herein, constitutes the entire agreement of the parties with respect to the transactions contemplated hereby and supersedes all other agreements between the parties, whether written or oral. This Agreement may be executed in counterparts, all of which when delivered shall constitute one and the same Agreement. Signatures delivered by fax or PDF shall be binding with the same force and effect as if such signature were an original.

In Witness Whereof, the parties set forth below have executed this Agreement as their free and voluntary act effective as of May _____, 2018, without regard to the actual date of execution of this Agreement by any party.

Witness

Theodore H. Heidrich

Witness

Deborah E. Zimmermann

Town of Falmouth, Maine

Witness

By: _____
Nathan Poore
Its Town Manager
Duly Authorized

EXHIBIT A