

PURCHASE AND SALE AGREEMENT

1. **PARTIES.** **TOWN OF FALMOUTH**, a Maine municipal corporation whose mailing address is 271 Falmouth Rd., Falmouth, ME 04105 (“Seller”), agrees to sell, and **FALMOUTH LAND TRUST**, a Maine non-profit corporation whose mailing address is _____, Falmouth, ME 04105 (“Buyer”), agrees to buy, upon the terms and conditions hereinafter set forth, the following property, with all buildings and improvements thereon and all rights and easements appurtenant thereto, located in the Tidewater Master Planned Development District in Falmouth, Cumberland County Maine and more particularly described on Exhibit A attached hereto. (referred to herein as the “Premises”). The Premises shall be conveyed together with all outbuildings, fixtures and appliances, if any, located thereon as of the date of this Agreement. The Premises were conveyed to Seller by deed dated December 20, 2018 and recorded in the Cumberland County Registry of Deeds in Book _____, Page ____.

2. **DEED; CONSERVATION EASEMENT.** The Premises are to be conveyed by municipal release deed from Seller to Buyer. The Buyer acknowledges that the Premises will be conveyed subject to the terms of a certain Conservation Easement held by the Seller dated October 14, 2005 and recorded in the Cumberland County Registry of Deeds in Book 23279, Page 235 (the “Conservation Easement”). Buyer acknowledges and agrees that it will assume the rights and responsibilities that run with the land under the Conservation Easement. Buyer further acknowledges that Seller will convey the Premises with a reserved easement for a public way over the gravel roads on the Premises.

3. **PURCHASE PRICE.** The Buyer shall pay to Seller a purchase price of [Three Hundred Fifty Thousand Dollars (\$350,000)] (the “Purchase Price”):
 - (a) The Buyer shall deliver to Seller a promissory note for the remainder of the Purchase Price, subject to the credits and proration set forth herein (the “Note”), at the Closing. The Note will bear no interest for ten (10) years (the “Loan Term”). During the Loan Term, Buyer may make payments of principal in any amount, at any frequency, provided, however, that Buyer will have paid at least \$[175,000/50%] no later than December 20, 2022, and that Buyer will have paid the full amount owing under the Note at the end of the Loan Term, in accordance with the terms and conditions of the Note. The Note and Buyer’s obligations thereunder shall be secured by a mortgage on the Premises to be made and given by Buyer to Seller at the closing.

4. **TIME FOR PERFORMANCE/DELIVERY OF DEED.** The deed and other transfer documents are to be delivered and the Purchase Price paid on or before December 20, 2018, at 1:00 p.m. at the offices of Buyer’s attorney, Bernstein, Shur, Sawyer & Nelson, 100 Middle Street, Portland, Maine 04101 (the “Closing”), unless otherwise agreed to by Seller and Buyer.

5. CLOSING DOCUMENTS. At the Closing, and in addition to any other documents referred to in this Agreement to be delivered to Buyer at the Closing, Buyer and Seller shall execute, acknowledge as necessary and deliver the following documents and such other documents as Buyer's or Seller's attorneys may reasonably require to complete the transaction contemplated herein, including without limitation: (a) the deed; (b) transfer tax declaration; (c) any title affidavits required by Buyer's title insurance company; (d) Non-foreign person affidavits pursuant to § 1445 of the Internal Revenue Code; (e) Forms 1099-S; (f) certificates of Maine residency or reduction/waiver of withholding under 36 M.R.S. § 5250-A; and (g) oil storage tank certifications in accordance with 38 M.R.S. § 563 evidencing that, to the best of Seller's knowledge, the Premises contain no underground oil storage facility or aboveground oil storage facility with underground piping.

6. CONDITION OF PREMISES; POSSESSION. Prior to the Closing, Seller shall not directly or indirectly cause or permit any mortgage, lien, encumbrance, interest or encroachment to be placed against the Premises, whether recorded or not, or take any other action that could adversely affect title to the Premises without the prior written consent of the Buyer. Seller shall maintain the Premises consistent with the manner in which the Seller has operated and maintained the Premises prior to this Agreement. Full possession of the Premises free of all tenants and occupants, other than those listed on Exhibit B, is to be delivered at the Closing, the Premises to be then in the same condition as they now are, reasonable wear and tear excepted. Buyer and Buyer's agents may inspect the Premises up to forty-eight (48) hours prior to the Closing in order to determine whether the condition thereof complies with the terms and conditions of this Agreement.

7. ASSIGNMENT AND ASSUMPTION OF AGREEMENTS. Seller will assign the agreements listed on Exhibit B to Buyer, and Buyer will assume all rights and obligations under said agreements.

8. MEMORADUM OF UNDERSTANDING. At Closing, Buyer and Seller will execute a Memorandum of Understanding, substantially in the form attached hereto as Exhibit C.

9. RIGHT OF FIRST REFUSAL. During a period beginning as of the day of the closing and extending for the next consecutive twenty (20) years thereafter, if at any time Buyer receives a bona-fide third party offer to purchase the Premises or any portion thereof that Buyer wishes to accept, Seller will have a right of first refusal to repurchase the Premises, upon the same terms and conditions as contained in the third party offer, excepting i) the purchase price, which will be the Purchase Price under this Agreement and ii) the closing date, which shall be extended by forty five (45) days. Upon receipt of the third party offer to purchase, Buyer shall transmit the same to Seller. Seller shall have a period of forty five (45) days to exercise its right of first refusal in writing to Buyer. If Seller does not exercise its right of first refusal within the forty five (45) day period, Buyer shall have the right to complete the sale to the third party, free of the Seller's right of first refusal, provided, however, that if the Seller shall fail to complete the sale to the third party or the terms of the third party offer shall have changed, Seller's right of first

refusal shall reattach and continue to be of full force and effect. In order to protect Seller and its Right of First Refusal rights hereunder, a notice of this agreement will be recorded in the Cumberland County Registry of Deeds. Seller agrees to execute and record a discharge and release or the rights hereunder in the event Seller's rights have expired or are no longer applicable. This provision will survive the Closing.

10. RISK OF LOSS. Until delivery of possession of the Premises from Seller to Buyer, risk or loss or damage to the Premises by fire or otherwise shall be on Seller.

11. ADJUSTMENTS. The following shall be prorated and/or adjusted between Buyer and Seller on a per diem basis as of the date of the Closing: real and personal property taxes and other municipal assessments, water/sewer and other utility charges, and other items of expense customarily prorated on the transfer of properties similar to the Premises. The date of the closing shall be a Seller day for purposes of all prorations. Transfer tax shall be split equally between the Buyer and Seller in accordance with Maine law for each transfer.

12. BROKERAGE. Seller and Buyer each represent and warrant to the other that no brokers, agents or consultants have been employed with respect to this transaction by any of them, and Seller and Buyer each agree to indemnify and hold the others harmless from any claim by any broker or agent claiming compensation in respect of this transaction, alleging an agreement with Seller or Buyer, as the case may be, including reasonable attorney's fees and costs defending the same. This agreement to indemnify and hold harmless shall survive the Closing or termination of this Agreement.

13. DEFAULT/DAMAGES. Should Seller fail to fulfill Seller's obligations hereunder, Buyer may elect to terminate this Agreement by written notice thereof to Seller, and pursue all available remedies, including specific performance and reasonable attorney's fees and costs. Should Buyer fail to fulfill Buyer's obligations hereunder, Seller may terminate this Agreement by written notice thereof to Buyer, as Seller's sole and exclusive remedy at law or in equity. Upon termination in accordance with this Section, Buyer and Seller shall be relieved of all obligations hereunder following termination except for such obligations as by their terms survive termination of this Agreement.

14. NOTICES. Except where expressly stated otherwise, any notice relating in any way to this Agreement shall be in writing and shall be delivered to the other party by (a) registered or certified mail, return receipt requested, (b) overnight by a nationally recognized courier, (c) hand delivery obtaining a receipt therefor, or (d) email, addressed to the parties as follows:

To Seller:	Town of Falmouth Attn: Nathan Poore, Town Manager 271 Falmouth Rd. Falmouth, ME 04105 Email: npoore@falmouthme.org
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With copy to: Suzanne Breselor Lowell, Esq.
Bernstein, Shur, Sawyer & Nelson
100 Middle Street
Portland, ME 04101
Email: slowell@bernsteinshur.com

To Buyer: Falmouth Land Trust
Attn:

Falmouth, ME 04105
Email:

With copy to: Tom S. Hanson
Bernstein, Shur, Sawyer & Nelson
100 Middle Street
Portland, ME 04101
Email: thanson@bernsteinshur.com

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 by email shall be deemed delivered upon sending if sent prior to 5:00pm on a business day (otherwise such notice shall be deemed given the next business day), except that if the sender receives an “out of office” or “undeliverable” or similar message indicating that the email was not immediately received by the recipient, or if the receiving party does not confirm receipt of such notice by telephone or email within twenty four (24) hours, such emailed notice shall be deemed ineffective and must be provided by one of the other methods permitted herein. Any party may, by such manner of notice, substitute persons or addresses for notice other than those listed above.

15. TOWN COUNCIL APPROVAL. Seller represents that this Agreement was approved by the Falmouth Town Council at a duly held public meeting on _____, 2018.

16. COUNTERPARTS. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but which together shall constitute one and the same instrument. Signatures delivered by fax or email (PDF) shall be as effective as an original.

17. DAYS. Except as otherwise expressly provided herein, the term “days” used herein shall mean calendar days, provided however, that if the date for performance of any action under this Agreement shall fall on a weekend or a holiday on which banks in the state of Maine are closed, such deadline shall be the next business day thereafter.

18. MISCELLANEOUS. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Headings are for convenience of reference only and have no independent legal significance. This Agreement may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto. Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the parties are merged in this Agreement, and the exhibits referenced herein, which alone fully and completely express their entire agreement. It is expressly understood and agreed that time is of the essence with respect to this Agreement. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which this Agreement is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. This Agreement shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their undersigned respective representatives, thereunto duly authorized, as of the dates set forth below.

BUYER:

FALMOUTH LAND TRUST

By: _____

Date: _____, 2018

Its

SELLER:

TOWN OF FALMOUTH

By: _____

Date: _____, 2018

Nathan Poore
Its Town Manager

EXHIBIT A

[Premises description]

EXHIBIT B

1. Tidewater Farm Apple Orchard Maintenance Agreement Between Jennifer & Thomas Hoerth, d/b/a Middle Hoerth Winter Gardens and Tidewater, LLC & Tidewater Conservation Foundation, dated as of October 1, 2015, as assigned pursuant to an Assignment and Assumption Agreement by and among Tidewater, LLC and Tidewater Conservation Foundation and the Town of Falmouth dated as of December 20, 2018.
2. Agreement between Tidewater LLC and Tidewater Conservation Foundation and Portland Trails, dated as of April 2, 2009, as assigned pursuant to an Assignment and Assumption Agreement by and among Tidewater, LLC and Tidewater Conservation Foundation and the Town of Falmouth dated as of December 20, 2018.
3. Service Agreement by and between Tidewater LLC and the University of Maine Cooperative extension, dated as of May 10, 2011, as assigned pursuant to an Assignment and Assumption Agreement by and among Tidewater, LLC and Tidewater Conservation Foundation and the Town of Falmouth dated as of December 20, 2018.

EXHIBIT C

[MEMORANDUM OF UNDERSTANDING REGARDING INVASIVE PLANT
MANAGEMENT ESCROW AND WETLANDS MITIGATION FUNDS]