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HELD BY A WORKING GROUP; IT HAS NOT BEEN REVIEWED OR APPROVED
BY THE FALMOUTH TOWN COUNCIL**

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the “Memorandum”) is between the Town of Falmouth (the Town) and Tidewater, LLC (Tidewater) regarding the use of property owned by Tidewater and over which the Town has a Conservation Easement, as well as adjacent property.

WHEREAS, the Town previously approved zoning for land owned by Tidewater to facilitate a mixed use development, the protection of the historic Finks Farm Property and the protection of a significant open space area, as well as working with Tidewater to develop a Master Plan and Management Plan for the Protected Property dated April 4, 2005 and entering into a Memorandum of Understanding dated December 20, 2004; and

WHEREAS, Tidewater granted to the Town a Conservation Easement over the parcel of land identified on the Master Plan as TF 1, which Conservation Easement is dated October 14, 2005 and recorded in the Cumberland County Registry of Deeds in Book 23279, Page 235; and

WHEREAS, the parties now seek to amend the terms of the Conservation Easement to allow Tidewater to construct a new structure to be owned by the Tidewater Conservation Foundation or other nonprofit organization to house an educational facility to be utilized by the University of Maine and other non-profit users (the education center) and related parking in a portion of the Conservation Easement area; and

WHEREAS, as the parties also seek to add to the Conservation Easement the area shown as TF 2 on the Master Plan; and

WHEREAS, the parties further wish to clarify and amend the terms of the Conservation Easement so that it contains all of the regulations and restrictions for the property, without the need for reference to the Master Plan, the Management Plan, the prior Memorandum of Understanding or any other document or plan;

NOW, THEREFORE, the parties agree as follows:

1. Exhibit A of the Conservation Easement shall be amended to include both TF 1 and TF 2.

2. Exhibit B of the Conservation Easement shall be amended to specify all temporary and permanent uses permitted on the land covered by that Easement and to regulate the intensity of such uses. As a starting point for discussion, the parties shall use the list of uses in the Zoning Ordinance, Section 3.18, on the Master Plan, within the Conservation Easement and in the Land Management Plan with the exception of the learning center which is an added use. TF 2 shall have different permitted uses, including the uses currently allowed in TF 2 as

established by the Zoning Ordinance, the Master Plan and the Land Management Plan. The area of the education center building shall be included in the TF 2 use area.

3. The proposed education center shall be included as a permitted use in Exhibit B. The Falmouth Town Council shall be granted the authority to review and approve the preliminary site plan for the education center and the building design, including but not limited to the location, construction method and size of parking areas, the overall site plan/design, and the location and size of proposed signage, prior to Planning Board review of the project under applicable Town ordinance provisions. The preliminary site plan shall also demonstrate how the proposed development and parking will impact entrances from the access road to the inn proposed to be located on the area delineated as TF 3 on the Master Plan and within the adjacent residential neighborhoods. The preliminary plan will demonstrate that the allowed uses will minimize the impacts on the property covered by the Conservation Easement to the greatest possible extent. In the event that temporary events will require off-site parking, Tidewater shall demonstrate that it has sufficient control of off-site parking facilities that can be used as part of a parking plan for event parking and will provide for appropriate transportation from the off-site parking location to the event site.

4. Tidewater shall convey the fee interest in TF 1 to Tidewater Conservation Foundation prior to the Town's issuance of any building permits for the education center. Tidewater shall convey the fee interest in TF 2 to Tidewater Conservation Foundation or the then current owner of the fee interest in TF 1 when the owner of TF 2 demonstrates that it is financially able to own and operate the property. Prior to the time of that sale, Tidewater may enter into a ground lease with the owner of TF 1 for the land area associated with the education center.

5. The amended Conservation Easement shall include a grant to the Town the right, but not the obligation, to maintain the historic structures on TF ~~1~~². This grant shall be limited to repairs necessary to maintain the integrity of the structures. ~~The Town may recover its costs of any repairs, up to a maximum of \$20,000.00.~~ The amended Conservation Easement shall include a self-help provision concerning the Town's ability to maintain the structures, with a maximum limit of \$20,000 in costs recoverable from the Town.

6. The parties shall develop design guidelines for any new construction or modification of the existing structures on either TF 1 or TF 2. The design of the education center and other new buildings shall be as established by Section 3 of this Memorandum of Understanding ~~and the existing provisions of the Master Plan and the Land Management Plans~~ and the Conservation Easement and may also look to the existing Tidewater Village Design Guidelines. The developed design guidelines shall also take into account the historic character of the house and barn located on TF 1. The developed design guidelines will not be unduly burdensome as to cost or permitted methods of work.

7. Tidewater shall provide mitigation for the loss of the conservation value of the area of TF ~~1~~² where the education center and parking will be located. This mitigation shall be done in accordance with a plan approved by the Town Council, which plan shall be incorporated as part of this document. Tidewater may satisfy this condition with Tidewater Conservation

Foundation's assistance or may assign this obligation to Tidewater Conservation Foundation without additional Town approval. **EDITORIAL NOTE; THE TERMS OF THE MITIGATION PLAN HAVE NOT BEEN DETERMINED.**

8. ~~Tidewater may retain control of the historic Finks Farm structures after the transfer of TF 1 to Tidewater Conservation Foundation until such time as Tidewater Conservation Foundation demonstrates to Tidewater that it has the financial ability to maintain the historic structures. Any transfer of the structures to any party other than the Tidewater Conservation Foundation shall require the prior approval of the Town.~~ Tidewater and any subsequent owner of TF ~~1~~2 shall maintain the historic character of the structures on that parcel to the greatest practical extent and shall not allow demolition of the structures either by willful act or by neglect.

9. The parties agree to negotiate in good faith in the preparation and execution of all legal documentation reflective of and necessary to implement the terms and conditions of this Memorandum of Understanding.

10. This Memorandum of Understanding and any documents drafted in accordance herewith shall be governed by the laws of the State of Maine, without regard to the conflict of law provisions thereof. Until replacement documents are signed, the original Conservation Easement, the original Memorandum of Understanding and the Master Plan shall remain in full force and effect.

11. Neither party may assign either this Memorandum or any of its rights, interests, or obligations hereunder without the prior written approval of the other party.

Agreed to by the undersigned this ____ day of _____, 2008.

TIDEWATER LLC

TOWN OF FALMOUTH

By: _____

By: _____

Printed Name

Printed Name

Its:

Its