

Draft 5/5/09

**AGREEMENT BETWEEN THE TOWN OF FALMOUTH
AND DEEP COVE II, L.L.C.
CONCERNING A WORKFORCE HOUSING DEVELOPMENT
ON WOODS ROAD AND MARSHALL DRIVE IN
THE TOWN OF FALMOUTH**

This Agreement is entered into this ____ day of May, 2009 by and between the TOWN OF FALMOUTH, a Maine municipal corporation with an address of 271 Falmouth Road, Falmouth, Maine 04105 (hereinafter "Town") and DEEP COVE II, L.L.C., a Maine limited liability company with an address of 17 Chestnut Street, Portland, Maine 04101 (hereinafter "Developer").

WHEREAS, Developers Collaborative has been selected by the Town to design and complete a workforce housing development on a Town-owned parcel of land at 61 Woods Road adjacent to the new police station (the "Site");

WHEREAS, the Developer is an affiliate of Developers Collaborative and has been created by Developers Collaborative to work on this project; and

WHEREAS, the Town and the Developer wish to take the next step in a multi-step process of developing the Site by further assessing the feasibility of the project.

NOW THEREFORE, the Town and the Developer agree as follows:.

1. The Developer will promptly begin predevelopment activities with the goal of creating a mutually acceptable development plan and appropriate rezoning proposal for development of the Site, including creation of a 48 unit affordable homeownership project as more fully described in the Developers Collaborative response to the Town's RFP dated April 23, 2008 (the "Development"). The Developer shall also conduct such surveys, engineering tests, title searches, schematic designs and feasibility and market studies as Developer in its judgment deems reasonable and appropriate and shall complete the tasks outlined in Section 2. The Developer will also explore sources of

funding for the Development. All activities conducted under this Section shall be at the Developer's expense, subject to the provisions below concerning reimbursement. The Developer agrees to complete the activities described in this Section by December 31, 2009.

2. The Developer and the Town have identified the following tasks that must be completed under this Agreement to be able to attain a successful Development.

- a. Verification that the concept plan meets the requirements of the currently proposed Natural Resource amendments to the Zoning and Site Plan Review Ordinance;
- b. Determination of required ledge removal and completion of sufficient preliminary engineering to determine infrastructure cost estimates; and
- c. Completion of a market study to include anticipated absorption rates.

The Developer shall use its best efforts to obtain or achieve all of the items in subsections a. through c., and the Town agrees to cooperate in good faith with the Developer. It is estimated that items b. and c. will cost approximately \$20,000.

3. The Town may terminate this Agreement for any reason upon sixty (60) days written notice to the Developer. If the Town terminates this Agreement, it shall reimburse the Developer's expenses as set forth in Section 5 below.

4. Throughout the course of performing the predevelopment activities described in Sections 1 and 2 above, the Developer agrees to conduct an "open book" process, meaning that all expenditures associated with the proposed development and all pro forma development and operating budgets prepared by the Developer shall be available at any time upon request.

5. The Town acknowledges that the Developer will expend significant sums of its own in completing the requirements of this Agreement. The Developer and the Town agree to share the risk. Accordingly, if the Town terminates this Agreement, the Town shall reimburse the Developer 50% of its out-of-pocket expenses for the items listed in Section 2.b. and 2.c. up to a maximum reimbursement of \$10,000. Upon termination of this Agreement by the Town, both parties shall be released from all obligations under this

Agreement except that, upon reimbursement of its expenses as provided in this Section, the Developer shall turn over to the Town all studies and surveys performed as contemplated under Section 1 above.

The Developer may terminate this Agreement for any reason and if it does so the Town shall reimburse the Developer 50% of its out-of-pocket expenses for the items listed in Section 2.b. and 2.c. up to a maximum reimbursement of \$10,000. Upon any termination of this Agreement by the Developer, both parties shall be released from all obligations under this Agreement except for the Town's reimbursement obligation and except that, upon reimbursement of its expenses as provided in this Section, the Developer shall turn over to the Town all studies and surveys performed as contemplated under Section 1 above.

6. The parties agree to negotiate in good faith at all times during the term of this Agreement. The Town agrees that it shall not hold discussions with any other developer or other party concerning the redevelopment of the Site while this Agreement remains in effect.

TOWN OF FALMOUTH

DEEP COVE II, LLC

By: _____
Nathan Poore, its Town Manager

By: _____
James B. Hatch, its Managing Member