

Draft: May 20, 2009

FALMOUTH TOWN COUNCIL

**ORDER TO ADOPT AN AGREEMENT BETWEEN
THE TOWN OF FALMOUTH AND DEVELOPERS COLLABORATIVE
FOR A WORKFORCE HOUSING DEVELOPMENT
ON WOODS ROAD AND MARSHALL DRIVE.**

Public Comment: May 11, 2009

Adopted: _____

WHEREAS, on October 14, 2008 the Falmouth Town Council selected Developers Collaborative as Preferred Developer and Portland Builders as Preferred Builder for the Workforce Housing Development on a Town-owned parcel of land located on Woods Road and Marshall Drive; and

WHEREAS, Developers Collaborative and the Falmouth Workforce Housing Commission have begun work to prepare a detailed proposal for Council consideration; and

WHEREAS, the detailed proposal will include at a minimum the "Round Two Submission Requirements" as articulated in the Town's Request for Proposals; and

WHEREAS, on February 9, April 13, and May 11, 2009, the Council received and discussed an update for the development; and

WHEREAS, the Council understands that the Workforce Housing Development will not be able to proceed unless a Tax Increment Financing District is established for the site; and

WHEREAS, the Council is supportive of establishing Tax Increment Financing District for the site, pending development of required details for such a district; and

WHEREAS, Developers Collaborative desires to complete two work items as its next step:

- a. Determination of required ledge removal and completion of preliminary engineering to determine infrastructure cost estimates; and
- b. Completion of a market study to include anticipated absorption rates.

WHEREAS, the Council acknowledges that Developers Collaborative will expend significant funds of its own in pursuing items a and b above in order to advance a final plan for the development of the site;

WHEREAS, Developers Collaborative and the Council acknowledge that they are both partners in the development and are willing to share the development risk; and

WHEREAS, a draft agreement between the Town of Falmouth and Developers Collaborative, dated May 20, 2009, has been prepared detailing the responsibilities of the parties and reimbursement provisions.

NOW THEREFORE BE IT ORDERED, by the Falmouth Town Council in Town Council assembled, that the Council hereby approve the draft agreement between the Town of Falmouth and Developers Collaborative, dated May 20, 2009, and

BE IT FURTHER ORDERED, that the selection of a developer and builder for the Woods Road project is not final until approval by the Town Council of the Round Two Submission proposal, and

BE IT FURTHER ORDERED, that the Town Council reserves the right to reject any or all submissions and to negotiate development features and funding terms in order to best serve the interests of the residents of Falmouth.

Adopted by the Falmouth Town Council on _____, at its regular meeting.

Town Clerk: _____ Date: _____

**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 as the Preferred Developer to design and complete an affordable homeownership development (the "Project") 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 and the Site;

WHEREAS, upon completion of the work described in Sections 2, 3, and 4 the Town Council will be better prepared to consider whether it is willing to support a longer term commitment and partnership with the Developer;

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 affordable homeownership development plan and

appropriate rezoning proposal for development of the Site. In order to assess the feasibility of the Site and the Project, the Developer shall complete the tasks outlined in Section 2. All activities conducted under Section 2 shall be at the Developer's expense, subject to the provisions below concerning reimbursement.

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

- a. Determination of required ledge removal and completion of sufficient preliminary engineering to determine infrastructure cost estimates; and
- b. Completion of a market study to include anticipated absorption rates.

The Developer shall use its best efforts to obtain or achieve items 2.a. and 2.b., and the Town agrees to cooperate in good faith with the Developer. It is estimated that items 2.a. and 2.b. will cost approximately \$20,000.

The Developer agrees to complete the activities described in this Section 2 by August 31, 2009. If the Developer fails to complete the activities by that date, the Town may treat such failure as a default by the Developer and the termination provisions of Section 6 shall apply.

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 or if the Town decides not to pursue the Project, after the completion of 2.a and 2.b, the Town shall reimburse the Developer 100 % of its out-of-pocket expenses for the items listed in Section 2.a. and 2.b. up to a maximum reimbursement of \$20,000. Failure of the Town to make a decision to pursue the next phase of this project and enter into a mutually acceptable agreement with Developer by December 31, 2009 shall constitute termination by the Town under this Agreement.

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 Sections 1 and 2 above.

6. The Developer may terminate this Agreement for any reason and if it does so the Town shall have no obligation to reimburse the Developer for its out-of-pocket expenses for the items listed in Section 2.a. and 2.b. Upon any termination of this Agreement by the Developer, both parties shall be released from all obligations under this Agreement. In the event of termination by the Developer, the Developer shall turn over to the Town all studies and surveys performed as contemplated under Sections 1 and 2 above.

7. 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 Manager