

OPTION AGREEMENT

This is an Agreement dated this ____ day of _____ 2014 (the "Effective Date") between WILSHORE FARMS INC, hereinafter collectively "Seller", and the TOWN OF FALMOUTH, MAINE, a Maine municipal corporation, hereinafter "Buyer".

RECITALS

A. The addresses and telephone numbers of the parties to this Agreement are as follows:

SELLER:

Wilshore Farms Inc.
Attn:
85 Hurricane Road
Falmouth Maine 04105
207-

BUYER:

Town of Falmouth
271 Falmouth Road
Falmouth, Maine 04105
Attn: Nathan Poore, Town Manager
207-781-5253

B. Seller is the owner of certain real property in the Town of Falmouth, Cumberland County, Maine consisting approximately six and one-half (6.5) acres, more or less, comprised of a certain lot or parcel of land located off Babbidge Road as shown on Town of Falmouth Tax Map R-08 Lot 50 and more particularly described by a deed into Seller dated July 22, 1970, recorded in the Cumberland County Registry of Deeds (CCRD) Book 3136 Page 408, which description is incorporated herein by reference. Said real property shall be referred to in this Agreement as the "Subject Property".

C. Buyer is a municipal corporation which, from time to time, acquires real property to be used for public recreation, habitat protection, open space and other public purposes.

THE PARTIES AGREE AS FOLLOWS:

1. **Option.** In consideration of the payment by Buyer to Seller of ONE Dollars (\$1.00), within five (5) business days of execution of this Agreement, Seller grants to Buyer an exclusive and irrevocable option to purchase the Subject Property on the terms and conditions set forth in this Agreement (the "Option"). The option consideration paid above and any additional option consideration paid hereunder ("Option Consideration") shall be credited toward the Purchase Price (as defined below) of the Subject Property in the event Buyer exercises the Option. Seller shall retain the Option Consideration if the Buyer does not exercise the Option for any reason except as specifically provided in Sections 4, 6, 8 and 9 or upon a default by the Seller.

2. **Term.** The Option shall be effective as of the Effective Date set forth in the first paragraph of this Agreement and shall continue to be effective through and including December 31, 2014 (the "Option Term").

3. Exercise. In the event the Buyer elects to exercise the Option, it shall do so by notifying Seller in writing within the Option term. Such notice shall be deemed timely if given in accordance with Section 13 and within the Option Term.

4. Purchase Terms. In the event Buyer exercises the Option, Seller shall sell to Buyer, the Subject Property upon the terms contained in this Agreement.

(a) Purchase Price. Seventeen Thousand Dollars (\$17,000.00) shall be the "Purchase Price" except as provided in the following paragraph (b), payable in full at Closing.

(b) Per Acre Value. The Purchase Price shall be adjusted at Closing, based on the Survey to be prepared pursuant to Section 5(a) of this Agreement to an amount equal to \$2,615 times the number of acres that comprise the Subject Property.

5. Closing. Final settlement of the obligations of the parties hereto (the "Closing") shall occur at such date, time, place and in such manner as Buyer and Seller shall in good faith agree; provided, however, said date shall occur no sooner than ten (10) days and no later than sixty (60) days after the date on which Buyer exercises this Option, provided, however, that the Closing may be extended by Seller for an additional thirty (30) days, i.e., ninety (90) days after exercise of the Option, if extra time is needed to cure a defect in title. At the Closing, and in addition to any other documents referred to in this Agreement to be delivered to Buyer at the Closing, Seller shall execute, acknowledge as necessary and deliver the following documents and such other documents as Buyer's attorneys may reasonably require to complete the transaction contemplated herein:

(a) Transfer Documents. Seller shall execute, acknowledge and deliver to Buyer the Quitclaim Deed with Covenant and a Real Estate Transfer Tax Declaration of Value. The Subject Property is to be conveyed to Buyer by good and sufficient Quitclaim Deed with Covenants, which deeds shall convey good and clear record, marketable and insurable title, free from all liens and encumbrances. Seller shall convey the Subject Property using a metes and bounds description based upon a current survey to be prepared by a surveyor selected by Buyer prior to the Closing (the "**Survey**"), the cost of which Survey shall be paid for by Buyer.

(b) Title Affidavits. Seller shall deliver to Buyer such customary certificates, affidavits or indemnity agreements as the title insurance company issuing the title insurance policy to Buyer on the Premises shall require in order to issue such policy and to omit therefrom all exceptions for unfiled mechanic's, materialmen's or similar liens and for parties in possession.

(c) Nonforeign Person Affidavit. If applicable, Seller shall deliver to Buyer such affidavits and certificates, in form and substance reasonably satisfactory to Buyer, as Buyer shall deem necessary to relieve Buyer of any obligation to deduct and withhold any portion of the purchase price pursuant to § 1445 of the Internal Revenue Code.

(d) Maine Resident Affidavit. If applicable, Seller shall deliver to Buyer such affidavits and certificates, in form and substance reasonably satisfactory to Buyer, as Buyer shall deem necessary to relieve Buyer of any obligation to deduct and withhold any portion of the purchase price pursuant to 36 M.R.S.A. § 5250-A.

(e) Underground Oil Storage Tank Certification. Seller shall deliver to Buyer a written notice, in form and substance reasonably satisfactory to Buyer, which written notice shall certify either (i) that to the best of Seller's knowledge, there is no underground oil storage facility located on the Premises, or (ii) pursuant to 38 M.R.S.A. § 563(6), if there is such a facility on the Premises, that the facility exists and shall disclose its registration number or numbers, the exact location of the facility, whether or not it has been abandoned in place, and that the facility is subject to regulation by the Maine Board of Environmental Protection.

(f) Documentation of Corporate Authority. Seller shall deliver to Buyer a written notice of corporate authority, in form and substance reasonably satisfactory to Buyer, which written notice shall establish that the signatory is duly authorized by the corporation to convey the Subject Premises.

6. Contingencies.

(a) Title. Seller, within five (5) days of the Effective Date shall deliver to Buyer copies of any title insurance policies, title reports or certifications, and surveys Seller has in its possession. Buyer, at Buyer's sole cost and expense, may order a current title report from a title insurance company authorized to do business in Maine, together with copies of all of the documents referred therein as exceptions. Within one hundred twenty (120) days of the Effective Date of this Agreement, Buyer shall advise Seller of any exceptions in the title report, in addition to the standard exceptions, which Buyer deems objectionable. Thereafter, Seller shall use its reasonable best efforts to assure removal before closing of any exceptions which make title to the Subject Property unmarketable under the Maine Title Standards or which have a material adverse impact on the value of the Subject Property as determined by Buyer, but in no event shall the closing be delayed beyond the period set forth in Section 5 above. In the event Seller is unable to remove any such exceptions to which Buyer has objected Buyer may elect to either (1) terminate this Agreement, in which case Seller shall return any and all Option Consideration paid to date; or (2) proceed with purchase of the Subject Property without adjustment in the Purchase Price. In any event, Seller shall satisfy and discharge all monetary liens and encumbrances (except any statutory liens for non-delinquent real property taxes) affecting the Subject Property. To enable Seller to make conveyance as herein provided Seller may, at the time of recording of the deed, use the purchase money or any portion thereof to clear the title and Seller shall furnish whatever documents or evidence will be required by the title insurance company in order to delete the standard exceptions and monetary liens or encumbrances on or before Closing.

(b) Environmental Assessment. During the term of this Agreement, Buyer at its sole cost and expense, through its employees and agents, may enter upon the Subject Property

for the purpose of accomplishing an environmental assessment of the soils and water on the Subject Property, which shall include the right to conduct a Phase I and/or Phase II Environmental Assessment of the Subject Property. Should the Buyer reasonably determine, based on the results of such assessments of the Subject Property, that the environmental conditions have a material adverse effect on the value of the Subject Property, Buyer shall promptly notify Seller. In the event that Seller is unable or unwilling to remove any such environmental conditions by closing, Buyer may elect to either (1) terminate this Agreement and have all Option Consideration paid refunded promptly to Buyer or (2) exercise the Option and purchase the Subject Property in its "as is" condition, without any adjustment in the Purchase Price.

(c) Survey. During the term of this Agreement, Buyer may, at its sole cost and expense, through its employees and agents, enter upon the Subject Property for the purpose of accomplishing a survey of the Subject Property in accordance with Section 5(a). If the results of the Survey are not satisfactory to Buyer in its sole discretion, Buyer may terminate this Agreement by giving Seller written notice of Buyer's intention to do so on or before sixty (60) days from the Effective Date of this Agreement. If Buyer does not notify Seller that the Survey is unsatisfactory within those time limits, this contingency shall be deemed to have been waived by Buyer. Upon termination, the parties shall be relieved of all further obligations under this Agreement.

(d) Public Funding. Buyer's obligations under this Agreement are expressly contingent on Buyer obtaining from the state or federal government a grant to support at least 50% of the Purchase Price, and upon the Falmouth Town Council voting to appropriate the Buyer's share of the Purchase Price (the "Public Funding Contingencies"). If any of the Public Funding Contingencies are not met within the Option Term, the Option Consideration shall be refundable and the parties shall be relieved of all further obligations under this Agreement.

7. Seller's Pre-closing Covenants. Seller shall not, without the prior written consent of Buyer, after the date hereof, (a) make, extend or permit any leases, contracts, mortgages or other liens or encumbrances affecting the Subject Property which will not be removed, released or terminated at closing, (b) take or permit any action that would change the topography or ground cover of the Subject Property, (c) cause or permit any dumping or depositing of any materials on the Subject Property, including, without limitation, garbage, construction debris or solid or liquid wastes of any kind; (d) cut or remove any timber or topsoil from the Subject Property, or permit any other party to do so; or (e) cause or permit any default beyond the applicable cure period under any mortgage or deed of trust covering the Subject Property, or cause or permit the foreclosure of any other lien affecting the Subject Property.

Seller shall promptly cure, at Seller's sole cost and expense, each and every breach or default of any covenant set forth in this Section 7 upon receipt of notice thereof by Buyer. Buyer shall have the right, but not the obligation, to cure or cause to be cured any such breach or default, at Seller's sole cost and expense if, in Buyer's reasonable judgment, Seller has failed to promptly or completely cure the same or if such action on Buyer's part is reasonably necessary to preserve and protect the natural, scenic or other open space values of the Subject Property. The

reasonable costs of such cure attempted or effected by Buyer may, at Buyer's election, be credited against the balance of the purchase price due and payable at Closing.

8. Seller's Representations. Seller makes the following representations and warranties:

(a) Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement) and to transfer and convey all right, title and interest in and to the Subject Property in accordance with this Agreement.

(b) To the best of the Seller's knowledge, there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Subject Property, or any portion thereof, or pending or threatened against Seller which could affect Seller's title to the Subject Property, or any portion thereof, affect the value of the Subject Property, or any portion thereof, or subject an owner of the Subject Property, or any portion thereof, to liability.

(c) There are no:

(i) Actual or impending public improvements or private rights which will result in the creation of any liens upon the Subject Property or any portion thereof, to the best of Seller's knowledge.

(ii) Uncured notices which have been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Subject Property or any portion thereof.

(d) There is no lease, license, permit, option, right of first refusal or other agreement, other than easement of record, which affects the Subject Property or any portion thereof which will not be removed at closing.

(e) To the best of the Seller's knowledge, there is no condition at, on, under or related to the Subject Property presently or potentially posing a significant hazard to human health or the environment, whether or not in compliance with law, and there has been no production, use, treatment, storage, transportation, or disposal of any Hazardous Substance as defined and/or regulated under applicable federal, State and local laws and regulations related to human health and safety or the environment, on the Subject Property nor any release of any Hazardous Substance, pollutant or contaminant into, upon or over the Subject Property.

(f) Neither the grant nor the exercise of the Option will constitute a breach or default under any agreement to which Seller is bound and/or to which the Subject Property is subject.

(g) To the best of Seller's knowledge, Seller is in compliance with all applicable laws,

statutes, orders, rules, regulations and requirements promulgated by governmental or other authorities relating to the Subject Property.

Each of the above representations and warranties is material and is relied upon by Buyer.

If before the Closing, Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing representations and warranties cease to be true before the Closing, Buyer may elect to terminate this Agreement, in which case Buyer shall be entitled to a refund of the Option Consideration, or Buyer may purchase the Subject Property in its "as is" condition, without any adjustment in the Purchase Price.

9. Remedies Upon Default. In the event Seller defaults in the performance of any of Seller's obligations under this Agreement, Buyer shall have the right of specific performance against Seller and said right shall be Buyer's sole remedy. The parties acknowledge that, if Buyer exercises the Option hereunder, Seller has no adequate remedy at law in the event of Buyer's failure to fulfill its obligations hereunder to purchase the Subject Property because it is impossible to compute exactly the damages that would accrue to Seller in such event. The parties therefore agree that: (i) any and all Option Consideration paid hereunder at the date of such termination is the best pre-estimate of such damages which would accrue to Seller; (ii) said amount represents damages and not any penalty against Buyer; and (iii) if Buyer shall terminate this agreement after it has exercised its Option, such amount shall be retained by Seller as Seller's full and liquidated damages in lieu of all other rights and remedies which Seller may have against Buyer at law or in equity for such failure.

10. Removal of Personal Property. Prior to Closing, Seller must remove from the Subject Property any personal property, or any significant quantities of trash or solid waste on the Subject Property. If, on or before the date set for Closing, Seller has not satisfied this obligation, Buyer as its sole remedy may terminate this Agreement.

11. Risk of Loss. All risk of loss shall remain with Seller until closing. In the event the Subject Property is destroyed, damaged or becomes the subject of an eminent domain action after Buyer has exercised the Option and prior to closing, Buyer may terminate this Agreement by written notice to Seller.

12. Prorations and Fees. Current real property taxes on the Subject Property shall be prorated as of the date of Closing based upon the latest available tax bill. Seller shall be responsible for paying any additional taxes, penalties and interest, including but not limited to compensatory or roll back taxes, on the Subject Property arising from the termination of a preferential tax classification of the Subject Property payable as a result of the conveyance to Buyer or as a result of Buyer's conveyance to a public agency as contemplated by the parties to this Agreement. The State of Maine transfer tax shall be paid one-half by Buyer and one-half by Seller, at the then current rate. Other fees and charges shall be allocated in accordance with the customary practice of Cumberland County.

13. Notices. All notices pertaining to this Agreement shall be in writing and delivered to the parties hereto by facsimile transmission, personally by hand, courier service or Express Mail, or

by first class mail, postage prepaid, at the addresses set forth in Recital A. E-mailed notices are not acceptable. A notice shall be deemed delivered when so faxed, delivered personally or mailed with the U.S. Postal Service.

14. No Broker's Commission. Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party on account of whose actions the claim is asserted will indemnify and hold the other party harmless from and against said claim and the provisions of this Section shall survive Closing or any earlier termination of this Agreement.

15. Binding on Successors. This Agreement shall be binding not only upon the parties but also upon their respective heirs, assigns and other successors in interest.

16. Assignment of Interest. This Agreement may not be assigned.

17. Additional Documents. Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

18. Entire Agreement; Modification. This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement shall be binding and no waiver of any provision in this Agreement effective, unless executed in writing by all the parties.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maine and any action brought to enforce this Agreement shall be brought in a federal or State court within Maine.

20. Memorandum of Option. At the Buyer's request, the parties shall sign a Memorandum of Option in recordable form, to be recorded by Buyer. If such a Memorandum of Option is recorded and in the event Buyer does not exercise the Option within the term of this Agreement, Buyer shall, if requested to do so by Seller, record a document, which will eliminate any cloud on Seller's title to the Subject Property occasioned by the Memorandum.

21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.

22. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

IN WITNESS of the foregoing provisions the parties have signed this Agreement below.

SELLER:

BUYER:
TOWN OF FALMOUTH

Name:
Title:
Duly Authorized on behalf of
Wilshore Farms, Inc.

Nathan A. Poore
Town Manager