

OPTION AGREEMENT

This Option Agreement (“Agreement”) dated this _____ day of _____, 2016 (the “Effective Date”) is by and between EDWARD A. MCLEAN and KATHLEEN T. MCLEAN (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:

Edward & Kathleen McLean
65 Babbidge 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 of approximately thirty-four (34) acres on Babbidge Road in Falmouth, Maine, comprising a portion of the property shown on the Town of Falmouth Tax Map R08 as Lot 036-B and being a portion of the property described in a deed to Seller dated December 1, 2015 and recorded in the Cumberland County Registry of Deeds in Book 32766, Page 179 (the “Subject Property”).

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

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Option.** In consideration of the payment by Buyer to Seller of One Thousand Dollars (\$1,000.00) (the “Option Consideration”), within fifteen (15) business days of execution of this Agreement, Seller hereby 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 Consideration shall be credited toward the Purchase Price (as defined below) of the Subject Property in the event Buyer exercises the Option. In the event Buyer does not exercise its option, Seller shall retain the Option Consideration except as otherwise expressly provided in this Agreement.

2. **Term.** The Buyer may exercise this option by written notice delivered in the manner described herein at any time before the date that is one (1) year from the Effective Date (the “Option Term”).

3. **Purchase Price.** The purchase price of the Subject Property (the “Purchase Price”), if the Buyer elects to exercise its option, shall be the fair market value of the Subject Property as determined by an appraisal, as described in **Section 5** of this Agreement.

4. **Exercise of Option.** Buyer may exercise its option by providing written notice to Seller within the Option Term, notifying Seller of the time and place for the closing (the “Closing”), which shall occur no less than ten (10) days and no more than sixty (60) days from the date of the Seller’s receipt of such notice from Buyer.

5. **Buyer Contingencies; Refund of Option Consideration.**

(a) **Appraisal.** Buyer shall, at its sole cost and expense, obtain an appraisal of the Subject Property within _____ days of the Effective Date, and in the event Buyer exercises its option, the Purchase Price shall be the fair market value as determined by the appraisal. Notwithstanding anything in this Agreement to the contrary, if the appraised value is less than \$250,000 the Seller may terminate this Agreement by providing written notice to Buyer within _____ days of the receipt of the appraisal, in which case the Option Consideration shall be immediately refunded to Buyer in full. If the appraised value is greater than \$290,000 the Buyer may terminate this Agreement by providing written notice to Seller within _____ days of the receipt of the appraisal, in which case the Option Consideration shall be immediately refunded to the Buyer in full. If neither party terminates this Agreement as described in this paragraph within such time period, this contingency shall be waived.

(b) **Survey.** Buyer may, at its sole cost and expense, conduct a survey of the Subject Property. If the results of the Survey are not satisfactory to Buyer in its sole discretion, Buyer shall have the right to terminate this Agreement by providing written notice to Seller within _____ days of the Effective Date, in which case the Option Consideration shall be immediately refunded to Buyer in full. In the event the Buyer obtains a current survey, the Subject Property shall be conveyed using a metes and bounds description based on such survey.

(c) **Public Funding; Town Council Approval.** In the event Buyer, in its sole discretion, does not obtain the required approval of the Falmouth Town Council or sufficient funds from state or federal grants, Buyer may terminate this Agreement by providing written notice to Seller within _____ days of the Effective Date, in which case the Option Consideration shall be immediately refunded to Buyer in full.

Buyer shall have the right to enter to inspect, survey, and conduct other activities on the Subject Property during the Option Term as part of Buyer’s due diligence.

6. **Closing.** At the Closing, Seller shall execute, acknowledge as necessary and deliver to Buyer such documents as Buyer’s attorneys may reasonably require to complete the transaction contemplated herein, including without limitation, a Warranty Deed conveying to the Buyer good and marketable title to the Subject Property, free and clear of liens and encumbrances, a transfer tax declaration, title affidavits relating to Buyer’s title insurance policy, such affidavits or certificates as may be necessary to relieve Buyer of its obligations under §

1445 of the Internal Revenue Code and under 36 M.R.S.A. § 5250-A, and written notice regarding underground oil storage facilities as required under Maine law.

If Seller is unable to give title or to make conveyance, or to deliver possession of the Subject Property, as stipulated in this Agreement, or, if at the time of the Closing the Subject Property does not conform with the terms and conditions of this Agreement, Seller shall use commercially reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Subject Property conform to the terms and conditions hereof, as the case may be, in which event the time for performance hereof shall be extended for a period of up to thirty (30) days, or such longer period as shall be agreed to by Buyer. If at the expiration of such extended time Seller shall have failed to remove any defects in title, deliver possession, or make the Subject Property conform, as the case may be, all as herein agreed, then, at Buyer's option, the Option Consideration shall be promptly refunded to Buyer, and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse of the parties hereto. In addition to such other remedies available to Buyers under this Agreement, Buyers shall have the election, at either the original or such extended time for performance, to accept such title to the Subject Property in its then condition as Seller can deliver and to pay the Purchase Price without deduction, in which case Seller shall convey the Subject Property.

7. **Post-Closing Obligations of Buyer.** In the event the Buyer exercises its Option, the parties will execute and deliver at the Closing a post-closing agreement setting forth certain obligations of the Buyer as follows:

- (a) Within _____ days of the Closing, Buyer will install a wire fence, as shown on **Exhibit _____** three feet in height, along the westerly edge of the entrance road to the Subject Property, a distance of approximately _____ feet. _____ will be responsible for future maintenance and repair of the fence; and
- (b) Within _____ days of the Closing, Buyer will replace the collapsed culvert in the relocated Sellers' driveway in the location approximately shown on Exhibit _____ with a new culvert described as follows: _____; and
- (c) Any parking area constructed by the Town on the Subject Property within five (5) years of the date of the Closing shall be located solely at the southern entrance to the Subject Property, within the area shown on **Exhibit _____**.

8. **Seller's 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 covering the Subject Property, or cause or permit the foreclosure of any other lien affecting the Subject Property.

9. **Seller' Representations.** Seller represents and warrants as follows:

- (a) Seller has full power and authority to enter into this Agreement and to transfer and convey all right, title and interest in and to the Subject Property in accordance with this Agreement, and this Agreement will not constitute a breach or default under any other agreement under which Seller is bound and/or to which the Subject Property is subject.
- (b) Seller knows of 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 the Subject Property, or any portion thereof.
- (c) Other than this Agreement, there is no option, lease, license, permit, right of first refusal or other agreement, other than easements of record, which affect the Subject Property or any portion thereof which will not be removed at closing.
- (d) To the best of 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.
- (e) 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, at any time prior to 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 the same. 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.

10. **Seller's Title Materials.** 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.

11. **Failure to Exercise.** Except as otherwise set forth in this Agreement, if Buyer does not exercise the option granted herein within the Option Term, the Option Consideration

shall be retained by Seller, and neither party shall have any further rights or claims against the other. The Buyer may elect not to exercise its option for any reason whatsoever.

12. **Remedies Upon Default.** In the event Seller defaults in the performance of any of its obligations under this Agreement, Buyer shall have all legal and equitable remedies available, including the right of specific performance and reasonable attorneys fees' and costs. In the event Buyer defaults in the performance of any of its obligations hereunder, the Option Consideration 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.

13. **Removal of Personal Property.** Prior to Closing, Seller must remove from the Subject Property any personal property, trash or solid waste. Buyer shall have the right to inspect the Subject Property within 48 hours of Closing to determine Seller's compliance with this Agreement.

14. **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 and obtain a refund of the Option Consideration.

15. **Prorations; Fees; Transfer Tax.** At the Closing, real property taxes on the Subject Property shall be prorated 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. The Buyer and Seller shall each be responsible for paying its half of the State of Maine transfer tax.

16. **Notices.** All notices pertaining to this Agreement shall be in writing and delivered to the parties hereto by (i) registered or certified mail, return receipt requested, (ii) overnight delivery by a nationally recognized courier, or (iii) hand delivery obtaining a receipt therefor, addressed to the addresses set forth on page 1. Notices shall be deemed delivered when so posted in the case of notice by certified mail, the next business day in the case of notice by overnight courier and the business day when delivered in the case of notice by hand delivery. Either party may, by such manner of notice, substitute persons or addresses for notice other than those listed above.

17. **Broker's Commission.** Each party represents to the other that it has not used a 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.

18. **Binding on Successors.** This Agreement shall be binding upon the parties and their respective heirs, successors and assigns. Notwithstanding the foregoing, this Agreement may not be assigned by either party hereto and any purported assignment shall be void.

19. **Additional Documents.** Seller and Buyer agree to execute such additional documents as may be reasonable and necessary to carry out the provisions of this Agreement.

20. **Memorandum of Option.** The parties shall execute and deliver the Memorandum of Option set forth in **Exhibit A**, to be recorded at Buyer's cost in the Cumberland County Registry of Deeds promptly following execution of this Agreement. If such Memorandum 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 evidencing the release of the Option, which Seller may record at its cost in the Registry of Deeds.

21. **Miscellaneous.** 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 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. 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 in Cumberland County, Maine. 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. Signature pages sent by fax or email (PDF) shall be as effective and binding as originals. 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.

IN WITNESS WHEREOF, the parties have executed this Option Agreement as of the date set forth above.

SELLERS:

BUYER:

TOWN OF FALMOUTH

Edward McLean

Nathan A. Poore
Its Town Manager

Kathleen McLean

EXHIBIT A

**MEMORANDUM OF PURCHASE OPTION AGREEMENT
(Falmouth, Maine)**

This MEMORANDUM OF PURCHASE OPTION AGREEMENT is made this _____ day of _____, 2016 with respect to the following described Option Agreement:

SELLERS: Edward McLean and Kathleen McLean, with a mailing address of 65 Babbidge Rd., Falmouth, Maine 04105

PURCHASER: Town of Falmouth, a municipal corporation with a mailing address of 271 Falmouth Rd., Falmouth, Maine 04105.

PREMISES: Approximately 34 acres of land located on Babbidge Rd. in Falmouth, Cumberland County, Maine, being a portion of the property conveyed to Sellers in a deed from _____ dated December 1, 2015 and recorded in the Cumberland County Registry of Deeds in Book 32766, Page 179 (the "Premises"), a copy of which is attached as **Schedule A**.

TERM: The purchase option shall terminate on _____, 2017.

RIGHT OF EXTENSION: None, without Seller's written consent.

This Memorandum is intended to provide notice of the Option Agreement and shall not modify or amend any of the terms of the Option Agreement. In the event of any conflict between this Memorandum and the Option Agreement, the terms of the Option Agreement shall control.

IN WITNESS WHEREOF, the Seller and Purchaser have executed this Memorandum of Option Agreement as of the day and year set forth above.

BUYER:

Witness:

TOWN OF FALMOUTH

By: _____
Nathan Poore
Its: Town Manager

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2016

Then personally appeared the above-named Nathan Poor, Town Manager of the Town of Falmouth, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Town of Falmouth.

Before me,

Notary Public / Attorney At Law

Print name
My Commission expires: _____

SELLERS:

Witness:

Edward McLean

Kathleen McLean

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2016

Then personally appeared the above-named Edward McLean and Kathleen McLean and acknowledged the foregoing instrument to be their free act and deed.

Before me,

Notary Public / Attorney At Law

Print name
My Commission expires: _____

Schedule A