

## OPTION TO PURCHASE AGREEMENT

This Option to Purchase Agreement (this “Agreement”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between **James S. Price, Inc.**, a Massachusetts corporation with an address of 5 Turnpike Road, Ipswich, Massachusetts 01938 (the “Grantor”), and the **Town of Topsfield** (the “Town”) a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, and acting by and through its Select Board, having a usual place of business at Topsfield Town Hall, 8 West Common Street, Topsfield, Massachusetts 01983 (collectively, the “Parties”).

### Recitals

Whereas, Grantor is the owner of the property located at 35R Main Street, Topsfield, Massachusetts, identified on Topsfield Assessor’s Map 41 as Lot 133, and described in a deed recorded with the Southern Essex District Registry of Deeds in Book 23653, Page 184 (the “Property”); and

Whereas, the Town is the owner of the property located at 10 School Avenue, Topsfield, Massachusetts, identified on Topsfield Assessor’s Map 41 as Lot 60, and described in a deed recorded with the Southern Essex District Registry of Deeds in Book 40479, Page 547 (the “Town Property”); and

Whereas, the Town Property is adjacent to the Property; and

Whereas, the Town plans to issue a Request for Proposals (“RFP”) for the sale of the Town Property for future development; and

Whereas, the Town Property would benefit from the use of the Property for future development of the Town Property; and

Whereas, the Town desires to obtain an Option to Purchase the Property so that the Town may sell or assign it to the individual or entity whose proposal is selected in the RFP process to allow them to use the Property for septic, parking, sitting areas, walking paths and other similar types of use. Construction of residential dwelling or commercial building shall be prohibited on the Property; and;

Whereas, the Town will record the Option with the Essex County Registry of Deeds within sixty (60) days following Town Meeting approval, and;

Whereas, Grantor is amenable to conveying the Option to Purchase to the Town for this purpose.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

Agreement

1. Option to Purchase. In exchange for the sum of One Dollar (\$1.00) paid by the Town to Grantor (the "Option Payment"), Grantor grants to the Town the option to acquire all of Grantor's right, title and interest in the Property (the "Option"). In the event that the Town fails to exercise the Option within the periods set forth in Sections 2 and 4, or, having timely exercised its Option, fails to close within the time set forth in Section 2, the Option shall terminate and be of no further force and effect.

2. Exercise of the Option. The Option may be exercised by written notice from the Town to Grantor (the "Option Notice") at any time within sixty (60) days of the selection of a winning proposal for the disposition of the Town Property by the Town. Thereafter, the parties shall enter into a purchase and sale agreement substantially on the terms and conditions, including the Closing Conditions, set forth in Exhibit A, attached hereto and incorporated herein (the "Purchase Terms"), and the Town shall have 120 days from the date the parties enter into said purchase and sale agreement to satisfy the Closing Conditions and to purchase the Property.

3. Purchase Price. The purchase price of the Property shall be One Hundred and Seventy-Five Thousand Dollars (\$175,000.00), to be paid at the closing date.

4. Option Term. Notwithstanding any other provision in this Agreement, this Option shall terminate if the Town has not exercised its right to purchase the Property within Three (3) years from the recording of this Agreement with the Southern Essex Registry of Deeds.

5. Option Conditions. The Grantor's obligation to grant the Option to the Town shall be contingent on the satisfaction of the condition that the Town shall have obtained a favorable vote of Town Meeting, authorizing the acquisition of the Property, and appropriating the Option Payment.

6. Closing Conditions. The Town's obligation to purchase the Property shall be contingent on the satisfaction of the following conditions (collectively, the "Closing Conditions"): (a) The Town shall have obtained a favorable vote of Town Meeting, authorizing the acquisition of the Property, and appropriating the purchase price thereof, and, if applicable, approval at an election of a debt exclusion pursuant to G.L. c. 59, §21C, so-called proposition 2 ½, for this purpose; (b) The Town shall have inspected the condition of the Property and title to the Property and be satisfied with the condition thereof, in its sole and absolute discretion; (c) the RFP must have been issued and a winning proposal must have been selected by the Town; and (d) Compliance with the provisions of G.L. c. 30B (the Uniform Procurement Act) for acquisition of real property. For acquisition of real property determined to be unique, thirty (30) days shall have elapsed since the date of publication of the Town's determination of uniqueness in the Central Register, without objection.



If the Town transfers or assigns its rights under this Agreement to a third party who elects to exercise the Option, then conditions 6(a) and 6(d) shall not apply. However, conditions 6(b) and 6(c) shall still apply.

7. Closing. Closing on the sale of the Property pursuant to the Town's exercise of the Option ("Closing") shall occur by the conveyance from Grantor to the Town of the fee simple interest in the Property, together with the performance by the Town on the one hand and Grantor on the other of the various obligations to be performed under this Agreement at Closing, including the payment of the purchase price by the Town.

8. Deed; Plans. Grantor shall prepare the deed. If said deed refers to a plan necessary to be recorded therewith, Grantor shall deliver such plan with the deed in form adequate for recording or registration.

9. Possession and Control of the Property. Full possession of said Property, free of all tenants and occupants, is to be delivered at the time of the delivery of the deed, said Property to be then: (a) In the same condition as it now is, reasonable use and wear thereof excepted, and (b) Not in violation of any building and zoning laws, and (c) In compliance with provisions of any instrument referred to in this Agreement. The Town shall be entitled to inspect said Property personally before the Closing in order to determine whether the condition thereof complies with the terms of this clause.

10. Irrevocable Option. Grantor acknowledges and agrees that it cannot revoke the rights granted to the Town under this Agreement. Grantor agrees not to sell or otherwise transfer or dispose of the Property or any part thereof to any third party, except in compliance with the provisions of this Agreement, prior to the expiration of the Option Term.

11. Recording of Option. The Town shall record this Option with the Southern Essex Registry of Deeds and provide Grantor with a copy.

12. Successors and Assigns. The Town, in its sole discretion, may assign all of its rights pursuant to the Option to a third party under the same terms and conditions of this Agreement. This Agreement shall be binding upon Grantor and Grantor's heirs, successors and assigns, and upon any person acquiring any interest in the Property as a result of insolvency, bankruptcy, foreclosure, or any other involuntary transfer or assignment, or by death, or otherwise by operation of law.

13. Notice. Any notice required or permitted to be given under this Agreement shall be in writing and signed by the party or the party's attorney or agent and shall be deemed to have been given: (a) when delivered by hand, or (b) when sent by Federal Express or other similar courier service, or (c) when mailed by certified mail, return receipt requested, or (d) upon electronically confirmed receipt of facsimile delivery (provided that such facsimile delivery is promptly followed by one of the other permitted forms of notice contained herein), to the party at the address first set forth above.



14. Time Periods. If any of the dates by which any right must be exercised or notice given falls on a Saturday, Sunday, or holiday on which Town offices are closed, such rights shall be exercised or notice given by the next business day on which Town Hall is open.

15. Severability. The provisions of this Agreement are severable. If a court of competent jurisdiction rules that any provision of this Agreement is invalid or unenforceable, such provision shall be replaced by another provision which is valid and enforceable and most closely approximates and gives effect to the intent of the invalid or unenforceable provision. Furthermore, such ruling shall not affect the validity or enforceability of any other provision of this Agreement.

16. Controlling Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts and all disputes shall be brought in the courts of Essex County.

*[signature page follows]*

Two handwritten signatures in blue ink are located at the bottom right of the page. The first signature is a stylized 'V' followed by a checkmark-like flourish. The second signature is a cursive 'U' followed by a horizontal line.

Signed by the parties under seal as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**JAMES S. PRICE, INC.**

**TOWN OF TOPSFIELD,**  
By its Select Board

By: \_\_\_\_\_

Frank Iovanella,  
President and Treasurer

\_\_\_\_\_  
Marshall Hook, Chair

\_\_\_\_\_  
Lynne Bermudez, Vice-Chair & Clerk

\_\_\_\_\_  
Boyd Jackson, Member

\_\_\_\_\_  
Cameron K. Brown, Member

\_\_\_\_\_  
Rafael McDonald, Member

COMMONWEALTH OF MASSACHUSETTS

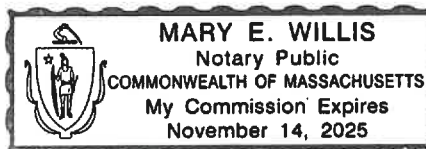
Essex, ss.

On this 10<sup>th</sup> day of April, 2023, before me, the undersigned notary public, personally appeared Frank Iovanella, President and Treasurer, as aforesaid, who proved to me through satisfactory evidence of identification, which was driver's license, to be the person whose name is signed on the preceding or attached documentarily and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of James S. Price, Inc.

Mary E. Willis

Notary Public

My Commission Expires:



JP u

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_, member of the Topsfield Select Board, as aforesaid, who proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached documentarily and acknowledged to me that he/she/they signed it voluntarily for its stated purposes on behalf of the Town of Topsfield.

\_\_\_\_\_  
Notary Public

My Commission Expires:



## EXHIBIT A

### Option to Purchase – Purchase Terms

If the Town exercise its option to purchase the Property, Grantor and the Town shall enter into a purchase and sale agreement substantially on the terms set forth herein.

1. Title to Property. The Property shall be conveyed by Grantor to the Town by a good and sufficient quitclaim deed conveying a good and clear record and marketable and insurable title to the Property free from all encumbrances except (i) taxes to be paid beyond or past the Closing Date, it being acknowledged that taxes owed as of the Closing Date shall be paid by Grantor, (ii) any lien for municipal betterments assessed after the date that the price of the Property has been finalized, (iii) provisions of local building and zoning laws, and (iv) all easements, restrictions, covenants and agreements of record provided the same do not interfere with the Town's intended use of the Property.

2. Registered Title. If the title to said Property is registered, said deed shall be in a form sufficient to entitle the Town to a Certificate of Title of said Property, and Grantor shall deliver with said deed all instruments, if any, necessary to enable the Town to obtain such Certificate of Title.

3. Extension to Perfect Title or Make Property Conform. If Grantor shall be unable to give title or to make conveyance, or to deliver possession of the Property, all as herein stipulated, or if at the time of the delivery of the deed the Property does not conform with the provisions hereof, then Grantor shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said Property conform to the provisions hereof, as the case may be, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days. Reasonable efforts shall not require Grantor to expend more than \$1,000.00 in the aggregate.

4. Failure to Perfect Title or Make Property Conform. If at the expiration of the extended time Grantor shall have failed so to remove any defects in title, deliver possession, or make the Property conform, as the case may be, all as herein agreed, then all obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.

5. Town's Election to Accept Title. The Town shall have the election, at either the original or any extended time for performance, to accept such title as Grantor can deliver to the said Property in its then condition and to pay therefore the purchase price, in which case Grantor shall convey such title.

6. Acceptance of Deed. The acceptance of a deed by the Town, or its assignee or nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.





7. Use of Money to Clear Title. To enable Grantor to make conveyance as herein provided, Grantor may, at the time of delivery of this deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed, or, if an institutional mortgage, within a reasonable time thereafter in accordance with customary Massachusetts conveyancing practices.

8. Adjustments. Taxes for the then-current fiscal year shall be apportioned as follows: if taxes are outstanding as of the closing date, taxes will be apportioned as of the closing date in accordance with G.L. c. 59, §72A; if, however, Grantor has paid taxes through and past the closing date, such payments shall not be refunded, it being acknowledged that the Town has no funds to refund Grantor for such taxes paid and the Town, being tax exempt, has no obligation to pay taxes upon acquisition of the Property. Utilities, if any, shall be adjusted at closing.

9. Brokers. The Town and Grantor each represent and warrant to the other that each has not contacted any real estate broker in connection with this transaction and agree to defend, indemnify the other against and hold the other harmless, to the extent permitted by law, from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against the other by any broker in connection with this transaction. The provisions of this paragraph shall survive delivery of the deed.

10. Title to Property. Notwithstanding anything herein contained, the Property shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless: (a) no building, structure or improvement of any kind belonging to any person or entity encroaches upon or under the Property from other premises; (b) title to the Property is insurable, for the benefit of the Town, by a title insurance company acceptable to the Town, in a fee owner's policy of title insurance at normal premium rates, in the American Land Title Association form currently in use; (c) all structures and improvements and all means of access to the Property shall not encroach upon or under any property not within the lot lines of the Property; and (d) the Property abuts a public way, duly laid out or accepted as such by the Town of Topsfield unless there is a recorded easement or other recorded agreement pertaining to said means of access, and said easements and/or agreements are on terms satisfactory to the Town in its sole and absolute discretion.

11. Affidavits, etc. Grantor shall provide to the Town together with the deed to the Property: (a) Affidavits and indemnities with respect to due authority, parties in possession and mechanic's liens to induce the Town's title insurance company to issue lender's and owner's policies of title insurance without exception for those matters; (b) An affidavit, satisfying the requirements of Section 1445 of the Internal Revenue Code and regulations issued thereunder, which states, under penalty of perjury, Grantor's United States taxpayer identification number, that Grantor is not a foreign person, and Grantor's address; (c) IRS Form W 8 or Form W 9, as applicable, with Grantor's tax identification number, and an affidavit furnishing the information required for the filing of Form 1099S with the Internal Revenue Services and stating Grantor is not subject to back up withholding; (d) a Disclosure of Beneficial Interest form, as required under G.L. c.7C, §38; and (e) Such additional and further instruments and documents as may be



customarily and reasonably required by the Town and/or the Town's title insurance company to complete the transactions described in this Agreement.

12. Title Standards. Any matter or practice arising under or relating to this Agreement which is the subject of a title standard or a practice standard of the Real Estate Bar Association for Massachusetts at the time for delivery of the deed shall be covered by said title standard or practice standard to the extent applicable.

13. Inspection Rights. The Town or the Town's agents shall have the right, upon at least twenty-four (24) hours prior notice to Grantor, which notice may be oral notice, to enter the Property, including any buildings thereon, from time to time at the Town's own risk for the purposes of conducting surveys, inspections, and tests, including environmental site assessments. The Town, to the extent permitted by law, shall hold Grantor harmless against any claim by the Town of any harm to the Town arising from said entry and shall repair any damage caused by the Town to the Property to substantially the same condition as prior to such entry if the closing does not occur. The Town's performance hereunder is expressly conditional, at the Town's option, upon the Town being satisfied, at its sole discretion, with the condition of the Property and on not having found on the Property any oil, hazardous waste or hazardous material, or other materials hazardous to health and safety. In the event hazardous waste, hazardous material, or other hazardous substance is found, or the Town is otherwise not satisfied with the Property, the Town shall have the right, to be exercised in its sole and absolute discretion, to terminate the Agreement without recourse by the closing date.

849977/TOPS/0229

Two handwritten signatures in blue ink are located at the bottom right of the page. The first signature is a stylized 'A' with a horizontal line extending to the right. The second signature is a cursive 'M' followed by a horizontal line.

