

**OPTION AGREEMENT**  
**To Purchase of a Preservation Easement**

THIS AGREEMENT MADE this \_\_\_\_ day of \_\_\_\_\_ 201\_\_\_\_, by and between, **Perlowski Properties, LLC**, with a mailing address of P.O. Box 1137, Stratham, NH 03885, (hereinafter referred to as the "Owner"),

and the **TOWN OF STRATHAM**, New Hampshire, a body corporate and politic, established pursuant to NH RSA 31:1, with a mailing address of 10 Bunker Hill Avenue, Stratham, NH 03885, (hereinafter referred to as the "Option Holder"), wherein the Owner and the Option Holder agree to pursue a preservation easement on the building located at 151 Portsmouth Avenue also known as the Old Town Hall Building in the Town of Stratham, New Hampshire, identified on Stratham Tax Map 17 Lot 40, and as more particularly described in the deed recorded in the Rockingham County Registry of Deeds at Book 5875, Page 2369, and dated December 1, 2017 (the "Property").

Owner and Option Holder hereby mutually agree, for good and valuable consideration, that this Option to Purchase a Preservation Easement (this agreement hereinafter referred to as "Option Agreement") shall be subject to and governed by the following terms and conditions:

1. **Option Term.** The term of this Option shall begin upon execution of this Option Agreement and shall end April 1, 2018, (the "Option Term"). If Owner and Option Holder fail to reach an agreement pursuant to this Option Agreement in a timely fashion within the Option Term, then its right to exercise this Option shall terminate and be of no further force or effect.
2. **Purchase Price.** The Owner and Option Holder agree that the results of an appraisal commissioned by the Option Holder will become the foundation from which the sale of this easement will result with mutually agreed upon terms and conditions to be reached at a later date.
3. **Exercise of Option; Notice of Election.** Option Holder shall exercise the Option granted herein by giving Owner a written notice of Option Holder's election to purchase under the terms of this Option not later than the end of the Option Term, said Notice of Election to be delivered in the manner set forth in Section 13 hereof.
4. **Appraisal.** Option Holder will conduct an appraisal of the Property subject to the Easement and the value thereof and the Option Holder shall bear the cost this appraisal. If during such appraisal, Option Holder discovers that title to the Property is not marketable, then Option Holder shall notify Owner of the same with details of the reasons why title is not marketable. Upon such notification this Option Agreement shall be void and without recourse to any party, unless Owner elects to use reasonable efforts to remove any such defects in title, in which event Owner shall give written notice thereof to Option Holder within fifteen (15) days after said notice, and thereupon the Owner shall have Thirty (30) days to cure or correct the defect(s). If at the expiration of the time for cure, Owner shall have failed to remove such defect(s) in title, then

at either Option Holder's or Owner's option, this Option Agreement shall be void and without recourse to any party, or Option Holder shall have the election (at that time) to accept such title as Owner can deliver and pay therefor the Purchase Price, with a reduction for the defect(s), in which case the Owner shall deliver such title with proper reference in the Deed that title is delivered subject to the aforementioned defect(s).

5. Conveyance. The Purchase Price will be contingent on the Owner executing, acknowledge and deliver at closing to Option Holder a good and sufficient WARRANTY PRESERVATION EASEMENT DEED in a form to be negotiated in good faith based on the model preservation easement attached hereto as **Appendix A** between the Owner, the Option Holder, and any third party should the Owner and Option Holder find a third party to either purchase the Property with the Easement in place, or should a third party hold the Easement interests. Should a third party hold the Easement Interest, the WARRANTY PRESERVATION EASEMENT DEED shall include an Executory Interest to the Town of Stratham, in recognition of the Town of Stratham's financial contribution towards this purchase, providing the Town of Stratham with the right to enforce the terms of the preservation easement should the third party Easement Holder fail to do so. In consideration for such conveyance, Option Holder shall pay the Purchase Price to Owner at the time of delivery of said Deed (the "Closing"), in cash or by certified or cashier's check, or other funds that may be acceptable to Owner, in its sole discretion.

6. Option Holder's Contingencies. The Option Holder's obligation to exercise its Option under the terms of this Option Agreement is contingent upon the following:

- a. The Town of Stratham Board of Selectmen after public notice and hearings affirmatively voting to provide funding for the agreed upon Purchase Price to acquire the preservation easement on the Property; and
- b. The 2018 Town Meeting votes to raise and appropriate the funds to purchase the Property for the agreed upon price, if necessary; and
- c. The Owner will not demolish the Property, or sell the Property without the approval of the Option Holder during the Option Term; and,
- d. Option Holder and the Owner satisfactorily agreeing to the terms of the preservation easement, and the completion of an easement plan that describes the Property in detail, and which easement plan shall be mutually agreeable to Owner and Option Holder, and neither party shall unreasonably withhold its agreement; and
- e. If a suitable Purchase Price is not agreed to and the Option Holder can identify a third party willing to purchase the Property subject to a Preservation Easement, then the Owner will sell to the third party the Property for the price the Owner paid for it plus expenses; and,

- f. Receipt of a written appraisal report of the Property.

Should these contingencies not be met, this Option Agreement shall be null and void, unless otherwise agreed to in writing by the parties hereto.

7. Extraneous Activities. Without the express written permission of the Option Holder, the Owner shall not undertake or authorize any third party to undertake any activities on the Property, including but not limited to removal of any historic features, major alteration of any exterior components, or other activities that may degrade, damage, or impact the historic nature of the Property.

8. Binding Nature. The provisions of this Option Agreement shall inure to the benefit and be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns.

9. Governing Law. This Option Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of New Hampshire.

10. No Brokers. Each party hereby warrants and represents to the other party that it has dealt with no brokers in connection with the preservation easement under this Option Agreement or any aspect of the transaction herein contemplated. Each party warrants and represents that it will indemnify the other party against, and save the other party harmless from, all commissions, fees and other costs, and claims therefor, arising out of a breach of the indemnifying party's warranty and representation under this Section.

11. Owner Warranties and Representations. The Owner represents and warrants to Option Holder that to the Owner's knowledge and belief:

- a. That Owner knows of no pending or threatened actions or proceedings affecting the Property, which might adversely affect the conveyance referenced herein.
- b. They have received no notice from any governmental or quasi-governmental authority having jurisdiction over the Property or the operation thereof asserting that the Property is in violation of any applicable legal requirement or obligation;
- c. No litigation or other proceeding is pending before any court, administrative body, regulatory authority, or other governmental body, or to the knowledge of Owner is threatened against Owner, which may have a material effect on the Property.
- d. No representation, warranty, or covenant by Owner contained in this

Option Agreement, in any statement, exhibit, schedule, or other document furnished to Option Holder pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any willful untrue statement of a material fact.

- e. The Owner has the authority to convey the Preservation Easement as contemplated herein and shall provide document(s) satisfactory to the Option Holder's counsel to authenticate same.

12. Access. Owner hereby grants Option Holder and its agents access to the Property, at reasonable hours, to conduct assessments, tests, and surveys required by and contemplated by this Option Agreement. Option Holder shall restore the Property to its original condition in the event Option Holder elects not to proceed with the purchase. Option Holder shall indemnify, defend, and hold harmless Owner from any claim, loss, or damage incurred as the result of access to the Property. These obligations of Option Holder shall survive any termination of this Option Agreement.

13. Notice. Notices required under this Option Agreement shall be effective when hand delivered or when mailed, by certified mail, return receipt requested, to the following addresses:

**If to Owner:**

Perlowski Properties, LLC  
P.O. Box 1137  
Stratham, NH 03885

**If to Option Holder:**

Town Of Stratham  
10 Bunker Hill Avenue  
Stratham, NH 03885

14. Merger. The parties agree that this Option Agreement represents the entire understanding of the parties with respect to the subject matter hereof and supersedes any prior agreements, understandings or representations, expressed or implied, oral or written.

15. No failure or delay on the part of either party to this Option Agreement in exercising any right, power, or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

16. The provisions of this Option Agreement are severable and, in the event that any court of competent jurisdiction shall determine that any one or more of the provisions or part of a

provision contained in this Option Agreement shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Option Agreement; but this Option Agreement shall be reformed and construed as if such invalid or illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provisions or part reformed so that it would be valid, legal and enforceable to the maximum extent possible.

**IN WITNESS WHEREOF**, the parties hereto have executed this Option Agreement as of the day and year first above written.

**OWNER:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: Mark Perlowski, Manager  
For Perlowski Properties, LLC  
Duly Authorized

**OPTION HOLDER:**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Town of Stratham  
By:????  
????  
Duly Authorized

