

STATE OF NORTH CAROLINA  
COUNTY OF GASTON

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter "Lease"), made and entered into as of the last date set forth in the notary acknowledgements below (the "Effective Date"), by and between, the COUNTY OF GASTON, a body politic and corporate, hereinafter referred to as "Lessor"; and the STATE OF NORTH CAROLINA, a body politic and corporate, hereinafter referred to as "Lessee." Lessor and Lessee are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WITNESSETH:

THAT WHEREAS, the North Carolina Department of Agriculture and Consumer Services, North Carolina Forest Service ("NCFS") has requested and approved the execution of this instrument for the purposes herein specified; and

WHEREAS, the execution of this Lease for and on behalf of Lessee has been duly approved by the Governor and Council of State at a meeting held in the City of Raleigh, North Carolina, on the 10<sup>th</sup> day of April 2018; and

WHEREAS, the Parties have mutually agreed to the terms of this Lease as hereinafter set out.

NOW THEREFORE, in consideration of the Leased Premises, as described herein, the rental hereinafter agreed to be paid and the promises and covenants contained in the terms and conditions hereinafter set forth, Lessor does hereby rent, lease and demise unto Lessee for and during the term and under the terms and conditions hereinafter set forth, the Leased Premises with all rights, privileges and appurtenances thereto belonging.

1. Leased Premises. The "Leased Premises" means that certain tract or parcel of land lying and being in Riverbend Township, Gaston County, North Carolina, containing 21.459 acres, more or less, and being more particularly described by legal text description attached hereto and incorporated herein as Exhibit A, and also being described and identified as "Tract 1" on a boundary survey prepared James R. Hobbs, RLS, dated May 1, 1999, captioned "Boundary Survey of Property Owned by Ila Lee Helton" recorded in Plat Book 60, Page 42, Gaston County Registry, a copy of which plat is attached hereto and incorporated herein as Exhibit B.

2. Term. The term of this Lease shall be for a period of thirty (30) years, commencing on the Effective Date and terminating at 2400 hours on the thirtieth anniversary of the Effective Date (the "Term").

3. Rent. Lessee shall pay to Lessor as rental for the Leased Premises, the sum of ONE DOLLAR (\$1.00) for the Term.

4. Condition of Leased Premises. Lessee accepts the Leased Premises in its present condition and agrees that the Leased Premises are suitable for the purposes set forth herein.

5. Permitted Use. Lessee, through NCFS, shall protect the wildlife and other natural heritage values of the Leased Premises and shall develop, use and manage the Leased Premises in a manner that is consistent with its use and management of its other Educational State Forests. In furtherance of these purposes, Lessee shall incorporate the Leased Premises into the Mountain Island Educational State Forest. Lessee shall not use the Leased Premises for any purpose other than those described herein without the written consent of Lessor.

6. Prohibitions and Limitations on Use. Lessee shall not use or knowingly permit any part of the Leased Premises to be used for any unlawful purpose, nor for any purpose or in any manner which is in violation of any present or future federal, state or local governmental laws or regulations, or which will constitute a public or private nuisance, nor for any business, use, or purpose deemed disreputable or extra hazardous.

7. Development of Leased Premises. Lessee shall develop the Leased Premises in accordance with the following terms and conditions:

7.1 Forest Management Plan. Lessee shall cause a registered forester(s) to prepare a long-term forest management plan for the Leased Premises, which shall be reviewed and approved by NCFS (as approved, the "Forest Management Plan"). Lessor shall be provided with a copy of the Forest Management Plan and Lessee, through NCFS, shall maintain a complete record of all activities occurring on the Leased Premises under the Forest Management Plan.

7.2 Permitted Removal of Forest Cover. Lessee may remove forest cover from the Leased Premises in accordance with the Forest Management Plan for the development, construction, maintenance, repair and use of access trails, parking areas, restrooms, picnic shelters, forest demonstration areas, and other forest recreational and educational facilities (collectively, the "Premises Improvements" or "Improvements"). The removal of forest cover for any purpose other than those set forth in this subsection shall only be made in compliance with best management practices under the Forest Management Plan and upon the written recommendation of a registered forester.

7.3 Development Period. Lessee shall substantially complete the construction and development of the planned Premises Improvements within five (5) years of the Effective Date. In the event Lessee is unable to substantially complete the Premises Improvements within said period of time, either Party may terminate this Lease upon ninety (90) days' written notice to the other Party. Lessor may request a progress report from NCFS on the development of the Premises Improvements on a semi-annual basis.

8. Operation and Management of Leased Premises. Lessee shall operate and manage the Leased Premises in accordance with the following terms and conditions:

8.1 Local School System Programs. Lessee shall make the Leased Premises available to the Gaston County Board of Education for use as a field laboratory and forest demonstration

area. Any such use shall be in accordance with the Forest Management Plan and shall be coordinated between representatives of the Gaston County school system and Lessee.

8.2 Casualty. Lessee shall take reasonable precautions to protect the Leased Premises from forest fires, forest insects and diseases, trespass and timber theft; provided that in no event shall Lessee be liable to Lessor for any damage to the Leased Premises or for any damage to the Improvements that may result from any casualty, act of God or illegal activity.

8.3 Forest Product Revenue. Any revenue generated from the sale of forest products on the Leased Premises shall be used by Lessee, as may be permitted by applicable law, for the development, operation and maintenance of the Leased Premises.

8.4 Lessor Funds. Lessor may disburse funds from time to time for the development, maintenance or operation of the Leased Premises or for such other purpose related to the Leased Premises as Lessor may direct. In such event, Lessee shall report the expenditure of any funds received from Lessor using standard recognized accounting practices and shall provide Lessor with a copy of its annual reports that detail the use of any Lessor funds.

8.5 Fees. Lessee may establish and collect use fees reasonably approximately those charged by NCFS at its other Educational State Forests for the purpose of defraying the costs of developing, managing and maintaining the Leased Premises and the Improvements.

9. Governmental Approvals and Compliance. During the Term, Lessee shall comply with all applicable laws affecting the Leased Premises and its use and possession thereof. Lessee shall obtain any necessary state or federal licenses or authorizations required for its use of the Leased Premises and shall comply with government regulations applicable to its operations.

10. Access. Lessor hereby grants to Lessee, its employees and agents, for the Term, an easement for ingress and egress, over and upon its property and any private rights of way necessary to access the Leased Premises for the purposes set forth herein. Lessor warrants and represents that it has the right to convey the easement(s) for ingress and egress hereby granted. Lessee shall be responsible, at its sole cost and expense, for the repair of any damage caused by its use of such rights of way.

11. Insurance and Liability.

11.1 Insurance. Lessor agrees that Lessee's decision to self-insure satisfies all insurance requirements of this Lease applicable to Lessee.

11.2 Liability. As between Lessor and Lessee, Lessee, subject to the terms of this Lease, will be primarily liable for the negligent or intentional acts or omissions of its agents or employees. As to third parties, Lessee is an immune sovereign and is not ordinarily subject to suit. However, Lessee has enacted Chapter 143, Article 31, of the North Carolina General Statutes (the "Tort Claims Act"), pursuant to which the Lessee may be liable for the torts of its officers and employees, within the terms of the Tort Claims Act, and accordingly, Lessee will be primarily liable for any claims within the coverage of the Tort Claims Act.

12. Right to Terminate. Lessee may terminate this Lease, at its option, after giving not less than thirty (30) days' notice to Lessor, if funding has not been appropriated, allocated or is otherwise unavailable to the agency of Lessee responsible for payment of expenses associated with this Lease and said agency or that body responsible for the appropriation of funds determines, in its sole discretion, that funds are insufficient to continue Lessee's operations on the Leased Premises.

13. Surrender of Leased Premises. At the expiration of the Term or the earlier termination of this Lease, Lessee shall peaceably surrender the Leased Premises in as good order and condition as when received, reasonable use and wear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God, or by circumstances over which Lessee had no control or for which Lessor is responsible pursuant to this Lease, excepted.

14. Title and Quiet Possession. Lessor agrees that Lessee, upon keeping and performing the covenants and agreements herein contained, shall at all times during the existence of this Lease peaceably and quietly have, hold, and enjoy the Leased Premises free from the adverse claims of any person. Lessor represents and warrants to Lessee that Lessor has the full right to make this Lease and that Lessee shall have quiet and peaceful possession of the Leased Premises throughout the Term.

15. Holdover. Any hold over after the expiration of the Term, shall be construed to be a tenancy from month to month, and shall otherwise be on the terms and conditions herein specified, so far as applicable; however, either Party shall give not less than sixty (60) days written notice to terminate the tenancy.

16. Environmental Laws. Lessee represents and agrees that it will conduct its activities on the Leased Premises in compliance with all applicable environmental laws. As between Lessor and Lessee, Lessee, subject to the terms of this Lease and to the extent permitted by the Tort Claims Act, will be primarily liable for the existence or discovery of any hazardous substance on the Leased Premises or for the migration of any hazardous substance to other properties or for the release of any hazardous substance into the environment in violation of applicable environmental laws, arising solely from Lessee's use of the Leased Premises. Lessor represents warrants and agrees that it has in the past and will in the future conduct its activities on the Leased Premises in compliance with all applicable environmental laws and that the Leased Premises is free of hazardous substances as of the date of this Lease. Lessor shall be responsible for, and promptly conduct any investigation and remediation as required by any environmental law or common law, of all spills or other release of hazardous substances, not caused solely by Lessee, that have occurred or which may occur on the Leased Premises. Lessor agrees to hold Lessee harmless from and against any and all liens, demands, defenses, suits, proceedings, disbursements, liabilities, losses, litigation, damages, judgments, obligations, penalties, injuries, costs, expenses (including, without limitation, attorneys' and experts' fees) and claims of any and every kind whatsoever paid, incurred, suffered by, or asserted against Lessee with respect to, or as a direct or indirect result of the violation of any environmental laws applicable to the Leased Premises, caused by or within the control of Lessor, specifically including any cost incurred in connection with the investigation of site conditions or the cleanup, remediation, removal, or restoration work required by any governmental authority.

17. Assignment and Subletting. Lessee shall not assign this Lease nor sublet the Leased Premises in whole or in part without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed.
18. Prohibition on Gifts. North Carolina General Statute §133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any employee of Lessee of any gift from anyone with a contract with Lessee, or from any person seeking to do business with Lessee. By execution of this Lease, Lessor attests that Lessor has not offered, accepted, or promised any such gifts and that Lessor is not aware that any such gifts have been offered, accepted, or promised by any of Lessor's employees or agents.
19. Modification. No modification of any provision hereof and no cancellation or surrender hereof shall be valid unless made in writing and signed and agreed to by both Parties.
20. Binding Effect. Subject to the provisions herein, this Lease shall extend to and bind the Parties and their heirs, executors, administrators, successors and assigns.
21. Applicable Law. This Lease shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of North Carolina, regardless of conflict of law principles.
22. Effect of Waiver. The failure of either Party to insist in any instance upon strict performance of any of the terms and conditions set forth in this Lease shall not be construed as a waiver of the same in any other instance.
23. Complete Agreement. This Lease represents the entire agreement between the Parties covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the Parties.
24. Severability. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
25. Construction. No provision of this Lease shall be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party's having or being deemed to have prepared or imposed such provision.
26. Interpretation. The use of headings, captions and numbers in this Lease is solely for the convenience of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease. Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural may be substituted for the singular number in any place or places herein in which the context may require such substitution or substitutions.

27. Terms. Capitalized terms used in this Lease shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

28. Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

29. Memorandum of Lease for Recording. At the request of either Party, Lessor and Lessee shall execute a memorandum of this Lease for recording in the public records at the requesting Party's sole cost and expense. The memorandum of Lease shall set forth the Parties, provide a description of the Leased Premises, specify the Term and incorporate this Lease by reference.

30. Notices. All notices herein provided to be given, or which may be given by either Party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as follows:

to Lessee: NC Department of Agriculture and Consumer Services  
Manager, Real Property and Construction  
1001 Mail Service Center  
Raleigh, North Carolina 27699-1001

with copy to: State Property Office  
Attn: Manager, Leasing and Space Planning Section  
1321 Mail Service Center  
Raleigh, North Carolina 27699-1321

to Lessor: County of Gaston  
Attn: County Manager  
P.O. Box 1578  
Gastonia, North Carolina 28053

Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either Party may be changed by written notice.

[signatures begin on following page]

IN TESTIMONY WHEREOF, this Lease has been executed by the Parties, in duplicate originals, as of the dates set forth in the notary acknowledgements below.

**LESSOR:**

COUNTY OF GASTON

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk (Seal)

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for the aforesaid County and State do hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is Clerk of the COUNTY OF GASTON and that by authority duly given and as an act of the COUNTY OF GASTON, the foregoing instrument was signed by \_\_\_\_\_, its \_\_\_\_\_ (title), attested by himself/herself as Clerk and sealed with the common seal.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_

**LESSEE:**

STATE OF NORTH CAROLINA

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

ATTEST:

\_\_\_\_\_  
Secretary of State

APPROVED AS TO FORM:  
JOSH STEIN, Attorney General

By: \_\_\_\_\_  
Special Deputy Attorney General

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, \_\_\_\_\_, a Notary Public in and for the County of \_\_\_\_\_ and State of North Carolina, do hereby certify that ELAINE F. MARSHALL, Secretary of State of North Carolina, personally came before me this day and acknowledged that she is Secretary of State of North Carolina, and that by authority duly given and as the act of the State, the foregoing instrument was signed in its name by ROY COOPER, Governor of the State of North Carolina, sealed with the Great Seal of the State of North Carolina, and attested by herself as Secretary of State of North Carolina.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_