

STATE OF NORTH CAROLINA

COUNTY OF GASTON

**OPTION TO PURCHASE REAL
ESTATE**

THIS OPTION TO PURCHASE REAL ESTATE ("Agreement") is made and entered into this ____ day of April, 2019, by and between WELLS FARGO BANK, N.A., as Trustee of the Michael N. Beam Trust under Item IV, Paragraph B of the Will of Linda B. Beam dated February 1, 2012, which was admitted probate in the Superior Court of Gaston County, File No. 14-E-421 and M'SHEL B. BOWEN (collectively referred to herein as, "Seller") and GASTON COUNTY, NORTH CAROLINA, a body politic of the State of North Carolina (referred to herein as, "Purchaser").

STATEMENT OF PURPOSE

The Seller desires to grant to the Purchaser an Option to purchase the Property (as defined below) and the purpose of this Agreement is to state the terms and conditions of such Option.

NOW, THEREFORE, for and in consideration of the sum of One Thousand Dollars (\$1,000.00) ("Earnest Money") paid to Seller, the receipt of which is hereby acknowledged, Seller hereby gives, grants and conveys unto the Purchaser, its successors and assigns, the exclusive right and Option to purchase from Seller upon the terms and conditions hereafter set forth ("Option") all those tracts of land containing approximately 93 acres, in Gaston County, North Carolina, being a portion of the following tax parcels: 159046; 159098; 159044; 159103; 210299; 226913, together with any buildings and improvements thereon and all other appurtenances thereunto belonging or appertaining, and all right, title and interest which the Seller may have in all creeks, streams, lakes, rights-of-way, roads, streets and ways bounding said tracts of land. The tracts of land herein optioned are hereinafter referred to as the "Property", and are shown on EXHIBIT A which is attached hereto and made a part hereof.

The terms and conditions of this Agreement are as follows:

1. CONSIDERATION. The Earnest Money paid to Seller for this Agreement is to be part of the Purchase Price and is to be credited toward the payment of the Property, if the Purchaser should elect to exercise the Option as set forth in this Agreement. However, should the Purchaser fail to exercise the Option granted hereunder, then the consideration mentioned above shall become the property of Seller and this Agreement shall become null and void and of no further legal effect, except under those circumstances where failure to exercise the Option is due to noncompliance by the Seller with one or more of the conditions set forth in Paragraph 15 hereof.

2. DURATION. The Option herein shall exist and continue to December 31, 2019 ("Option Period"). In the event that the Army Corps of Engineers has not

accepted the stream and wetlands delineation proposed by the Purchaser and issued the appropriate permits, the Purchaser may choose to extend the Option Period for an additional period of six (6) months ending June 30, 2020.

3. SURVEY. The parties recognize that the acreage recited in the "Statement of Purpose" was derived from the Gaston County tax records and not from a survey. Prior to Closing Purchaser shall cause any existing survey to be updated and recertified, or if there is no existing survey, the Purchaser shall cause the Property to be surveyed by a registered land surveyor or a registered engineer. Such survey shall locate the boundaries of the Property, identify all corners and shall certify to the nearest one one/hundredth of an acre the number of acres included in the Property. The expense of such survey work shall be borne by the Purchaser, and said survey shall be used to draft the description required for the documents called for in Paragraph 18 hereof.

4. EXERCISE OF OPTION TO PURCHASE. Purchaser may exercise the Option by giving Seller written notice of such exercise at any time within the Option Period, as may be extended pursuant to the terms hereof. Said notice of the exercise of the Option, or extension of the Option Period, shall be effective if given to Purchaser at the address set forth in Paragraph 23 hereof. In addition, the Option may be exercised, or the Option Period extended, by delivery of said written notice within the time specified by email to the email address of Seller in Paragraph 23 hereof. Upon exercise by the Purchaser of the Option, this Agreement shall become a contract to purchase the Property, and the Purchaser shall have sixty (60) days from the date of notification of exercise of the Option in which to close the purchase of the Property ("Closing"), the details of said Closing being set forth in Paragraph 7 hereof.

5. PURCHASE PRICE. The purchase price for the Property shall be Six Thousand Dollars (\$6000.00) per acre based on the survey to be prepared pursuant to Paragraph 3 hereof ("Purchase Price") and one hundred percent (100%) of the total Purchase Price shall be paid in cash at the time of Closing, it being understood that the Earnest Money shall be credited towards the Purchase Price.

6. CLOSING. Closing shall be held within the period of time set forth in Paragraph 4 hereof on a date selected by Purchaser at the offices of Stott, Hollowell, Palmer & Windham, 401 East Franklin Boulevard, Gastonia, North Carolina, 28052 or at such other place as may be mutually agreed upon by the parties. At Closing, Seller shall deliver to Purchaser a special warranty deed, prepared at Seller's expense, subject only to permitted exceptions referred to below ("Permitted Exceptions") and with documentary stamps affixed at Seller's expense, conveying to Purchaser or its assignee an indefeasible fee simple title, marketable and insurable at regular rates by Chicago Title Insurance Company without exception, except for the Permitted Exceptions. The Property shall be conveyed to Purchaser free and clear of all liens and encumbrances, claims, easements, leases, restrictions or restrictive covenants, except that the Property may be conveyed subject to the following Permitted Exceptions:

(a) All easements, covenants, restrictions, reservations, rights-of-way and other similar matters of record affecting the Property;

(b) Utility easements in customary form;

(c) Such matters as would be disclosed by a current and accurate survey and inspection of the Property.

(d) The state of compliance or non-compliance of the Property with any laws, codes, ordinances, rules, or regulations applicable to or affecting the Property

(e) Gaston County ad valorem taxes for the year in which the Closing occurs, and

(f) Zoning ordinances for Property.

On or before thirty (30) business days of written notice of the exercise of the Option (the “Review Period”), Purchaser shall provide written notice to Seller (the “Title Notice”) of any exceptions or conditions related to title contained in Purchaser’s title commitment or survey ordered pursuant to Paragraph 3 hereof (the “Title Matters”) which are unacceptable to Purchaser (the “Title Objections”). If Purchaser fails to timely provide the Title Notice, then Purchaser shall be deemed to have waived its right to object hereunder and to have accepted all matters related to title contained in Purchaser’s title commitment or survey. Although Seller may elect in its sole and absolute discretion to cure or attempt to cure any one or more of Purchaser’s Title Objections, Purchaser acknowledges and agrees that Seller has no obligation to cure any Title Objections. Seller shall, within ten (10) business days following receipt of the Title Notice, provide written notice (the “Seller’s Title Notice”) to Purchaser stating whether Seller elects to cure any of the Title Objections; provided that if Seller fails to provide Seller’s Title Notice, then Seller shall be deemed to have elected not to cure any of the Title Objections. If Seller is unable to cure certain Title Objections and such Title Objections have a material and adverse effect on the marketability of title or the value or the intended use of the Property by Purchaser (a “Material Title Defect”), then Purchaser shall, as its sole remedy under this Agreement, have the right (i) to terminate this Agreement by written notice to Seller given within five (5) business days following Purchaser’s receipt of Seller’s Title Notice (the “Response Period”), in which event this Agreement shall terminate and the parties shall have no further obligations to each other hereunder, except as expressly provided herein, and the Earnest Money shall be returned to Purchaser, or (ii) proceed to close and accept a conveyance of the Property, subject to the Permitted Exceptions and any Material Title Defect that Seller has not elected to cure, and without (A) a reduction of the Purchase Price or (B) any claim against Seller, in which case any such Title Objections or Material Title Defect that Seller has elected not to cure shall be waived by Purchaser (i.e., shall become Permitted Exceptions). Purchaser’s failure to respond within the Response Period shall be deemed to be Purchaser’s election to accept the conveyance under clause (ii) above. All Title Objections that Seller elects to cure shall be cured by Seller prior to the Closing; provided that Seller shall have the right to extend the Closing Date one or more times for up to thirty (30) days in the aggregate to the

extent reasonably necessary for Seller to cure any Title Objections that Seller elected to cure.

7. POSSESSION. Subject to the rights of any tenants of the Property (if any) as tenants only, Seller shall deliver possession of the Property to Purchaser as of Closing. Purchaser shall be entitled to receive directly from any tenants all rents coming due on or after Closing.

8. TAXES. It is agreed that all real property taxes levied against the Property shall be prorated to the date of Closing on a calendar year basis.

9. RIGHT OF ENTRY. Purchaser, its agents, employees or other representatives, shall have the right during the term of this Agreement and at any time upon at least twenty-four (24) hours' notice, to the notice party in Paragraph 23 hereof, from and after the exercise of the Option to go upon the Property for the purposes of making such surveys, engineering, topographical, geological and other tests and measurements including, but not limited to, soil tests, percolation tests and subsoil tests, as Purchaser deems necessary or advisable without cost to the Seller. Purchaser shall pay for any damages to the Property caused while such surveys or tests are being made, and shall indemnify Seller against any claims or losses occasioned by the exercise of the right of entry granted under the provisions hereof.

10. CONSTRUCTION OF AGREEMENT.

(a) The parties hereto agree that this Agreement constitutes the entire agreement between the parties; that no representations, stipulations, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the provisions of this Agreement; this Agreement may not be added to or modified except by written agreement signed by each of the parties.

(b) No waiver of any term or condition of this Agreement shall be deemed a waiver of such term or condition in the future unless such waiver shall be in writing and signed by each of the parties.

(c) If the Option is exercised so that this Agreement becomes a contract to purchase, as set forth in Paragraph 4 hereof, nevertheless, Purchaser's obligation to purchase is subject to the terms of Paragraph 16 hereof.

(d) It is understood and recognized that this Agreement is the joint undertaking of the parties hereto and results from their common negotiations.

11. ZONING. Seller represents and warrants that, during the period of Seller's ownership, Seller has received no written notice of any of the following which remain uncured: (i) any violation of any applicable deed restrictions, zoning or subdivision regulations to the Property, as modified by any duly issued variances; or (ii) any action or proceeding relating to the foregoing with respect to the Property.

12. ASSIGNMENT. Purchaser shall have the right to assign this Agreement to a third party in which Purchaser is a majority owner. Any other assignment shall require Seller's prior written consent, which consent shall not be unreasonably withheld.

13. REPRESENTATIONS AND WARRANTIES.

(a) Seller hereby makes the following representations and warranties to Purchaser:

(1) [Intentionally Omitted].

(2) Seller has the right, power and authority to enter into this contract and to sell and convey the Property in accordance with the terms and conditions herein contained.

(3) Seller has received no notice of any condemnation proceedings, or proposed proceedings, against the whole or any part of the Property and no such proceedings or proposed proceedings have commenced.

(4) To the best of Seller's knowledge, the Property is free from any special taxes or assessments, except those generally applicable to other real property in the tax district in which the Property is located.

(5) There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, licensees, or trespassers except as expressly set forth in writing by Seller to Purchaser. Seller has not entered into any agreement with any third party, except this Agreement, creating any option, right of first refusal or other right to purchase the Property or regarding any development rights or restrictions relating to the Property which will affect future ownership, development or operation of the Property after the Closing.

(6) [Intentionally Omitted].

(7) All ad valorem taxes through 2018 have been paid or will have been paid at Closing.

The representations and warranties of Seller in this Paragraph 13 are a material inducement for Purchaser to enter into this Agreement. Such representations and warranties shall survive the Closing for six (6) months after the date of Closing, at which time such representations and warranties shall terminate. This means that if any action is to be brought based upon said representations and warranties, said claim must be commenced within six (6) months after the date of Closing or forever be barred.

(b) Purchaser hereby makes the representations and warranties set forth below in this Paragraph 13(b) in favor of Seller, each of which are true and correct on the date of this Agreement and shall be true and correct on the date of Closing.

(1) Good Standing. Purchaser is body politic of the State of North Carolina duly organized, validly existing and in good standing and has taken all action necessary to enable Purchaser to consummate the transactions contemplated by this Agreement, and has duly authorized the execution and performance of this Agreement.

(2) Authority of Purchaser. This Agreement is a valid and binding obligation of Purchaser. No authorizations or approvals, whether of governmental bodies or otherwise will be necessary in order for Purchaser to enter into this Agreement. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereunder will, to Purchaser's knowledge, conflict with or result in the breach of any law, regulation, writ, injunction or decree of any court or governmental instrumentality applicable to Purchaser.

(3) Bankruptcy. No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors or petition seeking reorganization or arrangement or other action under federal or state bankruptcy or insolvency laws is pending against or contemplated by Purchaser.

The representations and warranties of Purchaser in this Paragraph 13(b) are a material inducement for Seller to enter into this Agreement. Such representations and warranties shall survive the Closing for six (6) months after the date of Closing, at which time such representations and warranties shall terminate. This means that if any action is to be brought based upon said representations and warranties, said claim must be commenced within six (6) months from the date of Closing or forever be barred.

14. SURVIVAL. It is understood and agreed that whether or not it is specifically so provided herein, any provision of this Agreement, which by its nature is required to be kept, observed and performed after the exercise of the Option granted hereunder or Closing of the purchase of the Property, shall survive the exercise and Closing of title and the delivery of the deed hereunder, and shall not be merged therein, but shall be and remain binding upon and for the benefit of the parties hereto until fully observed, kept and performed.

15. CONDITIONS TO CLOSING.

(a) Purchaser's Conditions. Purchaser's obligation to close this transaction is subject to the satisfaction of all of the following conditions in all material respects:

(1) Purchaser's Review. Purchaser's satisfaction or waiver of all conditions contained in Purchaser's Review Period under Paragraph 6;

(2) Seller's Compliance. Seller's fulfillment of each of its obligations under this Agreement in all material respects or Purchaser's waiver thereof;

(3) Seller's Representations. The continuing accuracy of all of Seller's representations in this Agreement in all material respects;

(4) Status of Title. The absence of any monetary lien or other defect in title to the Property which was not permitted by this Agreement or approved by Purchaser;

(5) Title Insurance. Purchaser's title company having issued at Closing, or unconditionally committed at Closing to issue, to Purchaser, an owner's policy of title insurance insuring good and marketable fee simple title to the Property in the amount of the Purchase Price with only the Permitted Exceptions; and

(6) No Litigation. On the dated of Closing, there shall be no litigation pending or threatened, seeking (A) to enjoin the consummation of the sale and purchase hereunder, (B) to recover title to the Property, or any part thereof or any interest therein, or (C) to enjoin the violation of any law, rule, regulation, restrictive covenant or zoning ordinance that may be applicable to the Property.

To the extent that any condition precedent set out above has not been satisfied on the date of Closing, and unless otherwise provided above, Purchaser may terminate this Agreement in which event Purchaser shall be entitled to a refund of the Earnest Money and neither party shall have any further rights or obligations hereunder other than those obligations which survive termination of this Agreement.

(b) Seller's Conditions. Seller's obligation to close this transaction is subject to the satisfaction of all of the following conditions in all material respects:

(1) Purchaser shall have performed and observed in all material respects all covenants and agreements to be performed by Purchaser under this Agreement; and

(2) All of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the Closing Date.

To the extent that any condition precedent set out above has not been satisfied on the date of Closing, and unless otherwise provided above, Seller may terminate this Agreement in which event Seller shall be entitled to receipt of the Earnest Money and neither party shall have any further rights or obligations hereunder other than those obligations which survive termination of this Agreement.

16. RISK OF LOSS. Prior to Closing, all risk of loss or damage by every casualty shall be borne by the Seller. If, prior to Closing, any of the improvements to the Property, shall be destroyed or materially damaged by fire or other casualty, the repair of which shall cost more than \$10,000, the Purchaser may declare this

Agreement to be null and void and of no force and effect, whereupon Seller shall return to Purchaser all monies paid pursuant to the requirements of this Agreement. If this Agreement is not so declared null and void by the Purchaser within 30 days after purchaser's receipt of notice of such casualty, Seller shall, at Closing, pay to Purchaser all sums collected under policies of insurance because of such casualty; or assign to Purchaser all rights to such sums then uncollected.

17. AS IS/WHERE IS CONDITION. Except as provided otherwise in this Agreement or in the documents to be executed and delivered by Seller at Closing, the Property shall be delivered to Purchaser on the date of Closing in an "**AS IS/WHERE IS**" CONDITION WITH ANY AND ALL FAULTS AND SELLER MAKES NO REPRESENTATIONS, WARRANTIES OR AGREEMENTS OF ANY KIND OR NATURE REGARDING THE PROPERTY, EXPRESS OR IMPLIED AND SELLER EXPRESSLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE INCLUDING, WITHOUT LIMITATION, THE: STABILITY OR SUITABILITY OF THE SOIL; PRESENCE OR ABSENCE OF ANY HAZARDOUS SUBSTANCES; BUILDING, ZONING, SENSITIVE AREA, OR OTHER RESTRICTIONS UNDER ANY LAW, RULE, ORDINANCE, OR REGULATION AFFECTING THE USE, IMPROVEMENT, OR OCCUPANCY OF THE PROPERTY; ANY DEFECTIVE CONDITION OF THE PROPERTY; AND BUYER'S ABILITY TO UTILIZE ANY PART OF THE PROPERTY.

18. DOCUMENTS AT CLOSING. At Closing, the Seller shall:

(a) Convey the Property to Purchaser by special warranty deed, subject only to the Permitted Exceptions.

(b) Execute any and all affidavits or the like reasonably required by the Purchaser's title company to enable Seller to deliver marketable title to Purchaser on the date of Closing, including an applicable standard form North Carolina Land Title Association Owner Affidavit and Indemnity Agreement, subject to the Permitted Exceptions.

(c) Deliver to Purchaser all surveys (boundary and topographical) in the possession of Seller having to do with the Property.

(d) Execute and deliver any and all documents and papers (including those documents specified above) that may be necessary in connection with the consummation of the transaction contemplated by this Agreement including the transfer of Seller's interest in the Property, the assignment of various other interests relating to the Property and the improvements thereon, if any, and the certification of compliance with the terms and conditions hereof.

19. NO WASTE. During the existence of this Agreement Seller shall commit no waste upon the Property, including, but not limited to, no cutting of trees and no removal of any improvements without the consent of Purchaser, and Seller shall

maintain the Property in as good condition as it is now, usual wear and tear excepted.

20. LIQUIDATED DAMAGES. The Earnest Money paid to Seller for the Option shall be and represent liquidated damages for any default on the part of the Purchaser or its assignee, which liquidated damages shall be the extent of the liability of the Purchaser with respect to any default hereunder, regardless of whether such default shall arise before or after exercise of the Option, and Seller shall have no other right, claim or cause of action against Purchaser or its assignee. Should the Seller default under any of the provisions of this Agreement, Purchaser may either demand specific performance of this Agreement, but only to the extent of conveyance of the Property free and clear of all liens and encumbrances except those permitted in Paragraphs 6 and 11 above, or Purchaser may consider the Agreement terminated, in which event the extent of the responsibility of the Seller shall be to refund to Purchaser any monies paid to Seller hereunder. Purchaser shall be deemed to have elected to terminate this Agreement and receive back the Earnest Money if Purchaser fails to file suit for specific performance against Seller in a court of competent jurisdiction, on or before the date which is sixty (60) days following the date upon which Closing was to have occurred.

21. BROKERAGE. It is agreed that if any claims for brokerage commissions or fees are ever made against Seller or Purchaser in connection with this transaction, all such claims shall be handled and paid by the party whose actions or alleged commitments form the basis of such claim. The party against whom the claim for such fees is made shall indemnify and defend and hold the other party harmless from any and all such claims or demands with respect to any brokerage fees or agent's commissions or other compensation asserted by any person, firm, or corporation in connection with this Agreement or the transactions contemplated herein.

22. MEMORANDUM OF OPTION. The parties agree that this instrument shall not be recorded; provided, however, that Seller agrees, at the request of Purchaser to execute a Memorandum of Option in recordable form, stating that the Property is subject to the Option and the duration of such Option.

23. NOTICES. Notices under this Agreement shall be in writing and if personally delivered, telefaxed or emailed shall be effective when received. If sent by a commercially recognized overnight courier, a notice shall be deemed effective on the business day after it is deposited with the overnight courier for next business day delivery, directed to the other party. Notices shall be delivered, air couriered, emailed or telefaxed to the following address and telephone numbers:

SELLER: Michael N. Beam Trust
M'Shel Beam Bowen
c/o Wells Fargo Bank, N.A.
Attn: Caroline Thompson
868 Church Street North, 2nd Floor
Concord, NC 28025
Phone: (704) 262-2348
Email: caroline.thompson@wellsfargo.com

Copy to: Poyner Spruill LLP
Attn: Paul M. Fogleman
301 Fayetteville Street, Suite 1900
Raleigh, NC 27601
Phone: (919) 783-1073
Email: pfogleman@poynerspruill.com

PURCHASER: Gaston County
Attn: County Manager
P.O. Box 1578
Gastonia, NC 28053
Phone: (704) 866-3101

24. WAIVER. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

25. ATTORNEYS' FEES. In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees in the preparation of its case at trial, on any appeal, and on any petition for review, in addition to all other sums provided by law.

26. APPLICABLE LAW. This Agreement shall be construed, applied and enforced in accordance with the laws of the State of North Carolina.

27. INVALIDITY OF PROVISIONS. If any provision of this Agreement, or any instrument to be delivered to Purchase at Closing pursuant to this Agreement, is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.

28. FURTHER ASSURANCES. In addition to the acts and deeds recited herein and contemplated to be performed at the Closing, Seller and Purchaser agree to perform such other acts, and to execute and/or deliver such other instruments and documents as either Seller or Purchaser, or their respective counsel, may reasonably require in order to effect the intents and purposes of this Agreement. Further, Seller and Purchaser each agree to deliver to the Purchaser's title company affidavits and such other assurances as may reasonably be necessary or required to enable such title company to issue the policies of title insurance as contemplated in this Agreement.

29. COUNTERPARTS; FACSIMILE SIGNATURES. This Agreement may be executed in any number of original counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and

the same instrument. Each party (i) has agreed to permit the use of telecopied signatures in order to expedite execution of this transaction, (ii) intends to be bound by its respective telecopied signature, (iii) is aware that the other parties will rely on the telecopied signature, and (iv) acknowledges such reliance and waives any defenses to the enforcement of any documents based on the fact that a signature was sent by telecopy. As used herein, the term "telecopied signature" shall include any signature sent via email in portable document format ("pdf"). At the request of either party the parties shall confirm telecopy transmitted signatures by signing an original document.

30. BINDING EFFECT. The provisions hereof shall insure to the benefit of and be binding upon the parties hereto and their heirs, legal representative, successors and assigns.

[SIGNATURES ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed under seal as of the day and year first above written.

SELLER:

WELLS FARGO BANK, N.A., as Trustee of the Michael N. Beam Trust under Item IV, Paragraph B of the Will of Linda B. Beam dated February 1, 2012, which was admitted probate in the Superior Court of Gaston County, File No. 14-E-421

By: _____ (SEAL)

Print Name: _____

Title: Vice President

M'SHEL BEAM BOWEN

PURCHASER:

GASTON COUNTY, NORTH CAROLINA,
a body politic of the State of North Carolina

By: _____ (SEAL)

Print Name: Tracy L. Philbeck

Title: Chairman of the Board of Commissioners

ATTEST:

APPROVED AS TO FORM:

Donna S. Buff, Clerk to the Board

Charles L. Moore, County Attorney

This instrument has been pre-audited in the manner required by the Local
Government Budget and Fiscal Control Act.

Finance Division Director