



Gaston County

Gaston County
Board of Commissioners
www.gastongov.com

County Attorney Board Action

File #: 19-185

Commissioner Fraley - County Attorney - Approve Option to Purchase Property from Beam Trust and M'Shel Bowen

STAFF CONTACT

Charles Moore - County Attorney

BUDGET IMPACT

N/A

BUDGET ORDINANCE IMPACT

N/A

BACKGROUND

This tract in Cherryville has potential for development of manufacturing facilities. It includes approximately 100 acres and is adjacent to existing manufacturing plants.

POLICY IMPACT

N/A

ATTACHMENTS

Option to Purchase Real Estate Agreement

DO NOT TYPE BELOW THIS LINE

I, Donna S. Buff, Clerk to the County Commission, do hereby certify that the above is a true and correct copy of action taken by the Board of Commissioners as follows:

NO.	DATE	M1	M2	CBrown	JBrown	AFraley	BHovis	TKelgher	TPhilbeck	RVeney	Vote
2019-097	04/23/2019	BH	JB	A	A	A	A	A	AB	A	U

DISTRIBUTION:

Laserfiche Users

A=AYE, N=NAY, AB=ABSENT, ABS=ABSTAIN, U=UNANIMOUS

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

(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

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 dated of this Agreement and shall be true and correct on the date of Closing.

(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

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
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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]

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