

OPTION TO PURCHASE AGREEMENT

THIS Option to Purchase Agreement (“Option Agreement”), made and entered into with an effective date of the 5<sup>th</sup> day of March, 2018 by and between the County of Johnston, a political subdivision of the State of North Carolina (hereinafter referred to as the “County”) with an address of P. O. Box 1049, Smithfield, North Carolina 27577, and John C. Hine and Tommy W. Jarrett, Co-Trustees of the Jane P. Smith Power of Appointment Trust under the will of William W. Smith and John C. Hine and Tommy W. Jarrett, Co-Trustees of the Jane P. Smith QTIP Trust (hereinafter referred to as “Seller”) with an address of P.O Box 916, Goldsboro, North Carolina 27533-0916.

WITNESSETH:

1. GRANT OF OPTION. Seller, for and in consideration of \$5,000.00 paid by the County, the receipt of which is hereby acknowledged, does hereby give and grant unto the County the exclusive right and option to purchase all of that certain tract of land, together with all improvements located thereon, located at US Highway 70 Business E and Yelverton Grove Road, Smithfield Township, Johnston County, North Carolina (“the Property”), being ID number 15L11011, which said tract or parcel is more particularly described in “Exhibit A”, consisting of 25.39 +/- acres which is attached hereto and incorporated herein by reference thereto. (The option to purchase granted hereby is hereinafter called the “Option”).
2. TERM. This Option shall begin on the date of the execution of this Option Agreement by the last party to sign (“Effective Date”) and shall expire September 5, 2018 at midnight (“option period”).
3. CONSIDERATION. The consideration for this Option (“Option Money”) is \$5,000.00, payable to Seller upon execution of this Option Agreement, the receipt of which is hereby acknowledged.
4. REASONABLE ACCESS AND INSPECTIONS. During the option period, the Seller shall provide reasonable access to the Property for the purposes of inspections, soil tests, environmental tests, topographical, boundary, physical, area and environmental surveys, examinations, and evaluations, engineering tests, soil borings, feasibility studies, and other evaluations, research, studies and analysis of the Property by the County or County’s agents or representatives. County shall determine in County’s sole discretion if the Property is suitable for the County’s intended purposes for the Property for a government complex, including a public safety facility and detention center. County will bear all expenses related to said inspections, testing, and evaluations, research and analysis of the Property performed by County. Such activities by or on behalf of County on the Property shall not damage the Property and County shall return Property to its

condition prior to the effective date of the Option Agreement, reasonable wear and tear expected. County hereby agrees to indemnify and hold Seller harmless from any loss or liability incurred by Seller as a result of County's negligence or willful misconduct relative to such inspection and/or investigation activities.

5. **REASONABLE COOPERATION.** During the option period, the Seller shall provide reasonable cooperation and participate to the extent reasonably necessary to assist the County in achieving any necessary zoning permits from the proper authorities sufficient to allow the placement of a government complex, including public safety facility and detention center on the Property.
6. **PROPERTY INFORMATION TO COUNTY.** On or before the date ten (10) days after the Effective Date, Seller shall deliver to County, if not previously delivered, or make available to County for examination or copying by County, the following documents and information with respect to the Property, all title information, including but not limited to title insurance policies or title abstracts, surveys, covenants, deeds, notes and deeds of trusts, and easements related to the Property, and all plans, specifications, environmental, engineering and mechanical data relating to the property, and reports such as soils reports and environmental audits, which are in Seller's possession or which Seller can obtain with reasonable effort (the "Property Information"). In addition, Seller authorizes (i) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to County and County's agents and attorneys; and (ii) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to County and County's agents and attorneys. Seller makes no representation as to the accuracy or completeness of the Property Information or of any information released to County by Seller's attorneys or insurers.
7. **EXERCISE.** The County may exercise this Option by giving the Seller written notice at any time before the expiration date of this Option by hand delivery, electronic mail at [jhine@goldsborolawyers.com](mailto:jhine@goldsborolawyers.com), or first class mail, to John C. Hine at the following address: P.O. Box 916 Goldsboro, North Carolina 27533-0916. If the County exercises this Option, the Option shall have been exercised, and this Option Agreement, shall become a purchase and sale agreement among Seller and County.
8. **TERMS AND CONDITIONS OF SALE.** If the County exercises this Option, the terms and conditions for the purchase and sale of the Property shall include as follows:
  - a. Seller and County agree that the actual sale of the Property is conditioned upon the suitability of the Property for the County's intended purposes. County shall determine, in its sole discretion, that the Property is suitable for County's intended purposes.
  - b. The purchase price shall be \$20,000.00 per acre for the entire 25.39 acre parcel for the total amount of \$507,800.00. The total purchase price shall be paid in cash or by bank check.

- c. The County is able to achieve the necessary zoning and permits from the proper authorities sufficient to allow the placement of a governmental complex, including a public safety facility and detention facility on the Property.
  - d. All deeds of trusts, liens, or other charges against the Property must be paid and satisfied by the Seller prior to or at closing.
  - e. There must be no violation of any federal or state environmental regulations.
  - f. Title must be delivered by special warranty deed.
  - g. Closing of the purchase and sale shall take place not later than December 4, 2018, and shall be held at such time and on such date as may be specified by the written notice from County to Seller. Seller shall execute such documents as may be necessary to consummate the purchase and sale of the Property pursuant to this Option Agreement.
  - h. County shall pay the cost of document preparation, recording, survey, inspections, tests and evaluations, and County's attorneys' fees. Seller shall be responsible for Seller's attorneys' fees and any state excise or revenue taxes and will transfer good and marketable fee simple title to the County, free and clear of any liens and encumbrances. For the purposes of this Option, "good and marketable fee simple title" shall mean fee simple ownership which is insurable by a title insurance company reasonably acceptable to County, at then current standard rates under the standard form of ALTA owner's policy of title insurance, with the standard or printed exceptions therein deleted and without exception other than for title exceptions approved by County in writing, in its sole and absolute discretion. All ad valorem taxes and similar impositions levied or imposed upon or assessed against the Property ("taxes") for the year in which Closing occurs shall be prorated on a calendar year basis as of the Closing date. Taxes and similar impositions (including interest and penalties) for the year in which Closing occurs prior years including any rollback taxes for prior years shall be paid pursuant to North Carolina General Statute 105-385(c).
9. APPLICATION OF OPTION MONEY. The consideration paid for this Option shall be applied on the purchase price at closing, if this Option is exercised. If this Option is not exercised, then the Option money shall be retained by the Seller. The Option money is not refundable to the County for any reason other than if the Seller is unable to provide good and marketable fee simple title to the County as defined in 8(h) above.
10. RISK OF LOSS. Risk of loss prior to Closing shall remain with Owner.
11. OWNER RESPONSIBILITY. Owner shall continue to maintain the property in its current condition during the term of this Option Agreement and through the Closing Date.
12. WARRANTIES, REPRESENTATIONS, AND ADDITIONAL COVENANTS OF SELLER. To induce County to enter into this Option Agreement and to purchase the Property, Seller hereby makes the following representations, warranties and covenants

with respect to the Property, which are true as of the Effective Date and shall also be true as of the date of exercise and shall survive Closing for a period of one (1) year, upon each of which the Seller acknowledges and agrees that County is entitled to rely and has relied:

- a. Seller has the lawful right, power, authority and capacity to sell the Property in accordance with the terms, provisions and conditions of this Option Agreement.
- b. To the best of Seller's actual knowledge, Seller has complied with all applicable laws, ordinances, regulations and restrictions relating to the Property except as may be disclosed in the Property Information or otherwise in writing to County.
- c. To the best of Seller's actual knowledge, there are no parties, other than Seller, occupying any portion of the Property as lessees, or otherwise, and there are no leases applicable to or affecting the Property.
- d. Seller has received no notice of and Seller has no actual knowledge of any pending or threatened condemnation or similar proceeding or special assessment affecting the Property, or any part thereof and Seller has no knowledge of any such proceeding or assessment contemplated by any Governmental Authority. As used herein, the term "Governmental Authority" shall mean the United States, the State of North Carolina, and any agency, department, commission, board, bureau or instrumentality of any of them, including any North Carolina city or county. If Seller receives such notice during the term of this Option Agreement, Seller shall immediately notify County in writing.
- e. Seller has no actual knowledge of any overdue charges, debts, liabilities, claims or obligations arising from the construction, occupancy, ownership, use or operation of the Property, which could give rise to any mechanics' or materialmen's or other statutory lien against the Property, or any part thereof.
- f. Seller has neither caused nor does Seller have any actual knowledge of any Hazardous Materials having been placed, held, sorted, located, dumped or disposed of on the Property in a manner which violates applicable law, except as may be disclosed in the Property Information. If such knowledge becomes available, Seller shall immediately notify County in writing. For purposes of this Agreement, "Hazardous Materials" means any substance: (i) the presence of which requires investigation or remediation under any applicable law or federal, state, or local statute, regulation, rule, ordinance, order, action, policy or common law; or (ii) which is or becomes defined as a "hazardous substance," pollutant or contaminant under any applicable law or federal, state, or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act (42 USC § 9601 et seq.) and the Resource Conservation and Recovery Act (42 USC § 6901 et seq.); or (iii) which is toxic, radioactive, carcinogenic, or otherwise hazardous and is or becomes regulated by any governmental authority; or (iv) without limitation which contains polychlorinated biphenyls (PCB's), asbestos or are formaldehyde insulation.
- g. There is no pending, or to Seller's actual knowledge, threatened litigation or administrative proceedings which could adversely affect title to the Property or any part thereof or the ability of Seller to perform any of its obligations

hereunder. If such notice or knowledge becomes available to the Seller during the term of this Option Agreement, Seller shall immediately notify County in writing.

- h. To the best of Seller's actual knowledge, performance of this Option Agreement will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound.
- i. To the best of Seller's actual knowledge, there are no unrecorded leases or claims of lien affecting the Property, except an unrecorded farm lease.
- j. Promptly upon obtaining actual knowledge of the institution of foreclosure or any proceedings for the condemnation of the Property, or any portion thereof, or any other proceedings arising out of injury or damage to the Property, or any portion thereof, Seller will notify County of the pendency of such proceedings.
- k. Seller shall not knowingly and intentionally act in a manner that would cause any of the Seller's representations and warranties to be breached between the date hereof and the exercise of the Option or Closing, provided that (i) Seller shall have no obligation in connection with, nor shall this Option Agreement be affected by, acts of third parties that are inconsistent with such representations, and (ii) Seller shall have no obligation to take any action in connection with the Property except as explicitly required hereunder.
- l. To the best of Seller's actual knowledge there are no confirmed or proposed special assessments against the Property.
- m. Seller shall deliver to County copies of any notices received by Seller after the date of this Option Agreement from governmental authorities relating to violations of any laws relative to the Property.
- n. Seller acknowledges and agrees that no examination or investigation of the Property by or on behalf of County prior to Closing shall in any way modify, affect or diminish Seller's obligations under the representations, warranties, covenants and agreements set forth in this Option Agreement.

13. ASSIGNMENT. The parties may not assign this Option Agreement.

14. MEMORANDUM OF OPTION. This Option Agreement is not to be recorded, but at the request of either party a memorandum hereof in statutory form shall be executed by the parties and recorded at the cost of the party requesting the same. This Option Agreement is a public record and is subject to the North Carolina Public Records Laws.

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

16. ENTIRE AGREEMENT. This instrument contains the entire agreement between the parties relating to the subject Property and supersedes all prior and contemporaneous negotiations, understandings, and agreements, written or oral, between the parties. This Option shall not be amended or modified, and no waiver of any provision hereof shall be

effective, unless set forth in a written instrument authorized and executed with the same formality as this Option.


17. NORTH CAROLINA LAW. This Option Agreement shall be construed in accordance with the laws of the State of North Carolina. Any action on this Option Agreement shall be venued in the Superior Court of Johnston County, North Carolina.
18. SEVERABILITY. If any term, covenant, condition or provision of this Option Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Option Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.
19. NON-WAIVER. Failure by any party to complain of any action, non-action or breach of any other party shall not constitute a waiver of any aggrieved party's rights hereunder. Waiver by any party of any right arising from any breach of any other party shall not constitute a waiver of any other right arising from a subsequent breach of the same obligation or for any other default, past, present, or future.
20. TIME OF ESSENCE. Time is of the essence of this Option Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement. If any date set forth in this Option Agreement shall fall on, or any time period set forth in this Agreement shall expire on, a day which is a Saturday, Sunday, or federal or state holiday, or other non-business day, such date shall automatically be extended to, and the expiration of such time period shall automatically be extended to the next day which is not a Saturday, Sunday, federal or state holiday or other non-business day. The final day of any time period under this Agreement or any deadline under this Agreement shall be the specified day or date, and shall include the period of time through and including such specified day or date. All references to the "Effective Date" shall be deemed to refer to the later of the date of County's or Seller's execution of this Agreement, as indicated below their executions hereon.
21. COUNSEL. Each party hereto warrants and represents that each party has been afforded the opportunity to be represented by counsel of its choice in connection with the execution of this Option Agreement and has had ample opportunity to read, review, and understand the provisions of this Option Agreement.
22. NO CONSTRUCTION AGAINST PREPARER. No provision of this Option Agreement 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.

23. IRAN DIVESTMENT ACT CERTIFICATION. Seller warrants and certifies that as of the effective date of this Option Agreement, Seller is not identified on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. § 147-86.58. Seller further agrees in compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147-86.58, Seller shall not utilize in the performance of the Option Agreement any subcontractor that is identified on the Final Divestment List.

24. NON-APPROPRIATION. Seller recognizes that County is a governmental entity, and that the validity of this Option Agreement is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are not available and not appropriated to purchase Property specified in this Option Agreement, then this Option Agreement shall automatically expire without penalty to County. In the event of a legal change in County's statutory authority, mandate, and mandated functions which adversely affects County's authority to continue its obligations under this Option Agreement, then this Option Agreement shall automatically expire without penalty to County.

IN WITNESS WHEREOF, the parties have hereunto set their hand and seal, on the day and year first above written.

**SELLER:**

  
\_\_\_\_\_  
John C. Hine, Co-Trustee of the Jane P. Smith  
Power of Appointment Trust

Date: 3/3/18

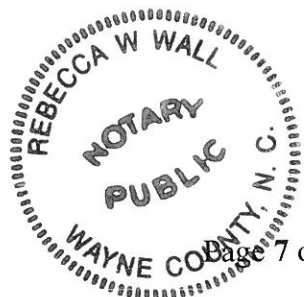
  
\_\_\_\_\_  
Tommy W. Jarrett, Co-Trustee of the Jane P.  
Smith Power of Appointment Trust

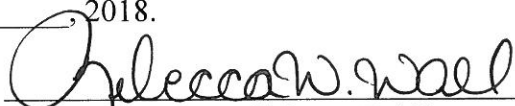
Date: 3/5/18

I, Rebecca W. Wall, a Notary Public of said State and County, certify that John C. Hine, personally appeared before me this day and acknowledged to me that they voluntarily executed the foregoing document for the purpose stated therein and in the capacity indicated.

This the 5<sup>th</sup> day of March, 2018.

Notary Seal



  
\_\_\_\_\_  
Signature of Notary Public  
Rebecca W. Wall  
\_\_\_\_\_  
Printed Name

My Commission Expires: 1-19-2021

I, Rebecca W. Wall, a Notary Public of said State and County, certify that Tommy W. Jarrett personally appeared before me this day and acknowledged to me that they voluntarily executed the foregoing document for the purpose stated therein and in the capacity indicated.

This the 5<sup>th</sup> day of March, 2018.



Rebecca W. Wall

Signature of Notary Public

Rebecca W. Wall

Printed Name

My Commission Expires: 1-19-2021

**SELLER:**

[Signature]

(SEAL)

John C. Hine, Co-Trustee of the Jane P. Smith QTIP Trust

Date: 3/3/18

[Signature]

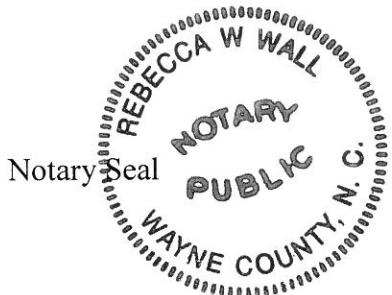
(SEAL)

Tommy W. Jarrett, Co-Trustee of the Jane P. QTIP Trust

Date: 3/5/18

I, Rebecca W. Wall, a Notary Public of said State and County, certify that John C. Hine, personally appeared before me this day and acknowledged to me that they voluntarily executed the foregoing document for the purpose stated therein and in the capacity indicated.

This the 5<sup>th</sup> day of March, 2018.



Rebecca W. Wall

Signature of Notary Public

Rebecca W. Wall

Printed Name

My Commission Expires: 1-19-2021



I, Rebecca W. Wall, a Notary Public of said State and County, certify that Tommy W. Jarrett personally appeared before me this day and acknowledged to me that they voluntarily executed the foregoing document for the purpose stated therein and in the capacity indicated.

This the 5<sup>th</sup> day of March, 2018.

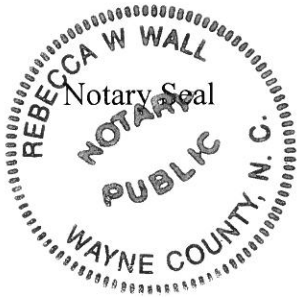
Rebecca W. Wall

Signature of Notary Public

Rebecca W. Wall

Printed Name

My Commission Expires: 1-9-2021



**COUNTY OF JOHNSTON:**

BY: \_\_\_\_\_ (SEAL)  
Jeffrey P. Carver, Chairman  
Johnston County Board of Commissioners

Date: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_  
Paula G. Woodard, Clerk

NORTH CAROLINA  
COUNTY OF JOHNSTON

I, a Notary Public of said State and County, certify that Paula G. Woodard, Clerk of the Johnston County Board of Commissioners, a corporate body, came before me and acknowledged that by authority given, the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal and attested by her as its Clerk.

This the \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name

Notary Seal

My commission expires: \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: J. Chad McLamb  
Title: County Finance Officer

EXHIBIT A

Being all of that certain tract of land situated in Johnston County, North Carolina and being more particularly described as follows:

Being that 17.05 acres, 5.72 acres, and 2.62 acres totaling a 25.39 acre tract as shown on that certain map recorded in Plat Book 38, Page 359, Johnston County Registry.