

OPTION TO PURCHASE CONSERVATION EASEMENT

THIS OPTION TO PURCHASE CONSERVATION EASEMENT (the “Option Agreement”) is made and entered into this ___ day of _____, 2024 (the “Effective Date”), by and between the County of Chatham, a North Carolina county government, whose address is PO Box 608 Pittsboro, NC 27312 (the “Grantor”), and Pokeberry Mitigation, L.L.C., a North Carolina limited liability company located at 932 Cooke Rd. Louisburg, NC 27549 (“PM”).

W I T N E S S E T H:

WHEREAS, Grantor is the owner of certain tracts of real property located in Chatham County, North Carolina, containing approximately 66.21 acres, having PIN No. 9765-70-0357, said tract being more particularly described on Exhibit A attached hereto and incorporated herein by reference, together with the improvements thereon and all appurtenances thereto belonging and appertaining, and all creeks, streams, rights-of-way, roads, streets and ways bounding said real property (the “Property”); and

WHEREAS, Grantor has agreed to convey to Pokeberry Mitigation, L.L.C, an exclusive right and option to acquire a conservation easement (the “Conservation Easement”) over approximately **1.50 acres** of land out of the Property, more particularly described on the attached Exhibit B (the “Easement Area”), in accordance with the terms of this Option Agreement; and

WHEREAS, PM is interested in acquiring the Conservation Easement, together with the Temporary Construction Easements and Permanent Access Easements (defined in Section 7 below), in order to develop and construct a full delivery wetland, stream, and/or buffer restoration project over the Easement Area for the purpose of creating wetland, stream, and/or buffer mitigation credits (the “Project”); and

WHEREAS, the Project will include construction of improvements and other work more particularly described and/or depicted on Exhibit C, attached hereto (the “Work”); and

WHEREAS, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, PM hereby notifies Grantor that: (i) PM believes the fair market value of the Conservation Easement, Temporary Construction Easement, and Permanent Access Easement (collectively, the “Easements”) is the Purchase Price (defined in Section 5 (a)), together with the value of the environmental improvements to be made by PM in performing the Work on the Easement; and (ii) PM does not possess the power of eminent domain.

NOW THEREFORE, in consideration of the sum of ONE THOUSAND DOLLARS (\$1,000.00) (the “Option Deposit”) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Grant of Option. Grantor hereby grants unto PM, its successors and assigns, including a third-party designated by PM qualified to be the grantee of a conservation easement under N.C.G.S. § 121-35, the exclusive right and option to purchase the Easements (the “Option”) in accordance with and subject to the terms and conditions set forth in this Option Agreement.

2. Term. The term of the Option shall commence on the Effective Date and shall **expire eighteen (18) months** after the Effective Date (the “Initial Term”); provided that PM shall have the right to extend the Initial Term of this Option for one (1) additional period of twelve (12) months (the “Extension Term”) by delivering written notice of same to Grantor on or before the expiration of the Initial Term, along with a payment of Five Thousand and 00/100ths Dollars

(\$5,000.00) (the “Extension Payment”), which Extension Payment shall be credited towards the Purchase Price at Closing, and shall be non-refundable unless failure to close is the fault of the Grantor. The Initial Term and the Extension Term are hereinafter referred to, whether together or separately, as the “Term”.

3. Memorandum of Option. A Memorandum of Option to Purchase Conservation Easement in the form attached as Exhibit D shall be executed by both parties simultaneously with this Option and recorded at PM’s sole discretion and expense in the county where the Property is located to provide record notice of this Option. In no event shall this Option be recorded or filed in the public records. In the event the Term is extended by way of any Extension Payments as provided in Section 2 of this Agreement, Grantor shall execute an Amended Memorandum of Option specifying the terms of the extension and the new expiration date, which PM may file in the public records.

4. Exclusivity of Option. Grantor covenants and agrees that it will take no action to sell or transfer any portion of the Property affected by this Option Agreement or encumber the Property in a manner that would impair the intended use of the Easements hereunder, it being intended and agreed that the Option is exclusive to PM and PM’s successors and assigns.

5. Exercise of Option. At any time prior to the expiration of the Term, PM may exercise the Option by giving Grantor no less than ten (10) days prior written notice of the date PM desires to consummate the purchase of the Easements under this Option Agreement (the “Closing”). Closing shall take place at a time and place reasonably acceptable to both parties. The terms of the purchase and sale of the Easements at Closing shall be as follows:

- (a) Purchase Price. The total purchase price for the Easements (the “Purchase Price”) shall be TWENTY THOUSAND DOLLARS (\$20,000.00). The Option Deposit and any Extension Payments made in accordance herewith shall be credited towards the Purchase Price at Closing.
- (b) Payment of Purchase Price.
 - (i) At closing, PM shall pay to Grantor, Twenty Thousand and 00/100 Dollars (\$20,000.00) of the Purchase Price, less any Option Deposit and Extension Payments, by bank cashier’s check, certified check or attorney’s trust account check.
- (c) Survey. Prior to Closing, PM shall obtain, at PM’s expense, a survey prepared by a registered land surveyor duly licensed in the State of North Carolina showing the boundary of the Easement Area as well as all easements, rights-of-way, encroachments and improvements located thereon, and the exact acreage of the Easement Area (the “Survey”). The survey shall be prepared in collaboration with Grantor, with due regard to Grantor’s use of and access to and through the Property and the requirements of the U.S. Army Corps of Engineers for mitigation sites and mitigation credits. Following the completion of the Survey, a new legal description of the Easement Area shall be prepared from the Survey. The new legal description shall be substituted for the description currently attached hereto as Exhibit B, and all references contained herein to the “Easement Area” shall be deemed to refer to the new description prepared from the Survey.

- (d) Prorations, Costs and Expenses of Closing. At Closing, ad valorem taxes for the current year for the Easement Area shall be prorated, and Grantor shall remain responsible for all other ad valorem taxes applicable to the remainder of the Property subsequent to Closing. At Closing, Grantor shall pay any outstanding ad valorem taxes for prior years, including any applicable deferred or rollback taxes, on Grantor's real or personal property, as well as any late list penalties, revenue stamps or transfer taxes applicable to the Easement. Any mortgages or liens with respect to the Property shall be subordinated to the Conservation Easement or paid at Closing.

At Closing, PM shall pay any costs related to the Survey, any title examination expenses, title insurance premiums, recording costs for the deed conveying the Easements, costs of recordation of any recorded plats showing the Easements, as well as any engineering or site plan costs. Each party shall bear its own accounting and attorneys' fees.

- (e) Grantor's Closing Deliveries. At Closing, Grantor shall execute, have executed and/or notarized, as appropriate, and deliver to PM:

- (i) A Deed For Conservation Easement substantially in the form of the attached Exhibit E (the "Deed") conveying to either (A) PM; (B) a third-party designated by PM and qualified to be the grantee of a conservation easement under N.C.G.S. § 121-35; or (C) a non-profit organization mutually designated by PM and the Grantor, good, marketable, and insurable title to the Conservation Easement and the Permanent Access Easement (defined in Section 7(b) below), each free and clear from all mortgages, liens, easements, covenants, restrictions and other encumbrances, except those previously accepted by PM in writing;
- (ii) Any plat or plats depicting the Conservation Easement, which plat or plats are to be recorded;
- (iii) Lien affidavits warranting and holding harmless any title insurance company insuring title to the Easements, from and against unpaid mechanics and materialmen's liens;
- (iv) A settlement statement setting forth each party's costs, expenses, prorations and other financial analysis of the purchase and sale of the Easements as contemplated hereby (the "Settlement Statement"); and
- (v) Any other documents and papers necessary or appropriate in connection with the consummation of the transaction contemplated by this Option Agreement.

- (f) PM's Closing Deliveries. At Closing, PM shall execute, have executed and/or notarized, as appropriate, and deliver:

- (i) The Settlement Statement;
- (ii) Payment of the portion of the Purchase Price then due, subject to (A) a credit for the Option Deposit and any other deposits made by PM; and (B) any deductions for applicable closing costs to be borne by Grantor;
- (iii) Payment or funding for any closing costs to be borne by PM, including recording fees; and

- (iv) Any other documents necessary to consummate the transaction contemplated by the Option Agreement.
- (g) Condition of Property; Intended Use. Grantor shall refrain from any use of the Property for any purpose or in any manner that would diminish the value of the Easements or adversely affect PM's intended use of the land for the Easements, which use is to generate wetland, stream and/or buffer mitigation credits. Grantor acknowledges that PM will enter into agreements to provide these credits, and Grantor agrees not to undertake or permit any activities on the Property that would diminish PM's ability to obtain such credits. Likewise, PM or its successors will, in conjunction with Grantor or its successors, design and construct the Easements and access thereto, in a manner consistent with Grantor's intended use of the Property adjacent to the Easements, to the end that Grantor shall retain quiet enjoyment and use of the areas adjacent to the Easements, and access to such areas. PM will cause no adverse change to the Property which shall prevent or impair Grantor's intended use of the areas adjacent to the Easements. Grantor agrees to not mow or otherwise damage vegetation within the Easement Area after PM plants or replants the same.
- (h) Adverse Change. If any adverse change occurs or is found in the condition of the Property prior to Closing which would adversely affect the use of the Property or the Easement Area for PM's intended use, whether such change is caused by Grantor or by forces beyond Grantor's reasonable control, PM may elect to (i) refuse to accept the Easements at Closing; (ii) accept the Conservation Easement over the entire Easement Area or a portion thereof, with a corresponding adjustment of the Purchase Price; or (iii) terminate this Option Agreement and the transaction itself, and declare this Option Agreement null and void.
- (i) Warranty of Title. Grantor covenants, represents and warrants that, as of the Effective Date and Closing: (i) Grantor is the sole owner(s) of the Property and is seized of the Property in fee simple absolute; (ii) Grantor has the right and authority to convey the Option and the Easements without the joinder or approval of any other third party, and Grantor will hold the grantee of the Easements harmless from any failure in Grantor's right and authority to convey the Easements, including issues of title; (iii) there is legal access to the Property and to the Easement Area; (iv) the Easements are free from any and all encumbrances, except those accepted by PM in writing; (v) Grantor will defend title to the Easements against all lawful claims of other parties; (vi) the grantee of the Easements shall have the use and enjoyment of all of the benefits derived from and arising out of the Easements, including, without limitation, construction and access to the Easement Area as otherwise provided herein; (vii) that the Property is free of any hazardous wastes. The provisions and warranties of this Section shall survive the Closing.

6. Right of Entry and Inspections. PM, and its agents and employees or other authorized representatives, may enter upon the Property during the Term for the purpose of making surveys, conducting soil, engineering, geological and other subsoil or environmental tests to determine the suitability of the Property for the Easements. PM shall repair or pay for any damage done to the Property caused while such tests are being made. PM shall advise Grantor at least seventy-two (72) hours in advance of any entry upon the Property for the purposes of surveying,

testing or inspecting as set forth herein. PM shall be permitted during the Term to obtain land use permits or other approvals relating to any part of the Easements, and Grantor agrees to execute such documents, petitions, and authorizations as may be appropriate or required in order to obtain such land use permits and/or approvals. Grantor shall join with PM in applications and proceedings to obtain such approvals, if necessary. After Closing, PM reserves the right to perform periodic inspections of the Conservation Easement to ensure compliance with easement restrictions contained in the Deed. If PM does not duly exercise this Option and purchase the Easements, PM shall return the Property to the condition in which it existed prior to any investigations undertaken by PM, its agents, employees or contractors pursuant to this Option Agreement, to the extent such change in condition was caused by PM, its agent, employees, or contractors. For the avoidance of doubt, Grantor or its agents must be notified a minimum of seventy-two (72) hours prior to accessing the site unless a predetermined schedule is provided and approved by Grantor or its appointed agent or agents. Access by PM or its agents, employees or contractors shall not unduly disturb Grantor's quiet enjoyment to the portions of the Property adjacent to the Easements or access to such Property.

7. Permanent Access and Construction Easements. In connection with this Option Agreement, the delivery of the Easements, and at locations agreed upon by PM and Grantor, Grantor shall also:

- (a) Temporary Construction Easement. Convey and grant to PM, its successors, assigns, contractors and agents, a non-exclusive temporary construction easement for ingress, egress and regress on, over and upon Grantor's Property, sufficient to allow PM, its agents and contractors to construct and restore the Easement Area to stream and wetland conditions, including any staging areas and sufficient access to allow heavy equipment to access the Property and the Easements, as necessary (the "Temporary Construction Easement"); and
- (b) Permanent Access Easement. Convey and grant to PM, its successors and assigns, a non-exclusive permanent easement for ingress and egress to the Conservation Easement and Easement Area at a location mutually agreeable to the parties, in order that PM, its successors and assigns, may have a permanent means of adequately accessing the area covered by the Easement (the "Permanent Access Easement"). The Permanent Access Easement shall be set forth in an accurate survey, the legal description of which shall be included in a recorded Permanent Access Easement which shall run with the land.

8. Work. PM will design the Project substantially consistent with the descriptions set forth in Exhibit C. PM further agrees to design the Project in conjunction with Grantor and will submit copies of such design plans to Grantor during the design process in order to provide Grantor an opportunity to comment on the plans. Grantor shall have thirty (30) days after its receipt of the partially completed design plans to deliver its comments to PM. PM agrees to consider Grantor's comments and incorporate such comments into the final design plans to the extent practical and appropriate for mitigation purposes. Final design plans shall be approved by Grantor, which approval shall not be unreasonably withheld. PM shall perform the Work, or cause the Work to be performed, in accordance with this Option Agreement and the final design plans. PM also agrees to provide Grantor with a copy of any monitoring reports prepared or received by PM as may be required by the Deed.

9. Assignment. PM may, without Grantor’s consent, transfer or assign its rights under this Option Agreement, including the right to exercise the Option and to acquire and take title to the Easements, to any affiliate, subsidiary or other entity directly or indirectly controlling, controlled by, or under common control with PM, which entity is qualified to be the grantee of a conservation easement under N.C.G.S. § 121-35; provided PM may not assign its rights and responsibilities to perform the Work without the express written consent of Grantor, which consent shall not be unreasonably withheld.

10. Indemnification. PM agrees to indemnify and save harmless Grantor from and against any loss, claim, damage, cost or expense (including reasonable attorney’s fees) suffered or incurred by Grantor by reason of any injury to person or damage to property on or about the Property to the extent caused by PM, its officers, employees, agents, invitees, contractors, or subcontractors entering or conducting work upon the Property, except for any loss, claim, damage, cost or expense suffered or incurred as a result of the negligence or intentional misconduct of Grantor or Grantor’s employees, agents or invitees. [ADD INSURANCE INFORMATION]

11. Remedies. In addition to any other remedy specifically set forth in this Option Agreement, PM shall have the right to specific performance of the provisions of this Option Agreement, as well as injunctive relief, damages, contribution or any other available proceedings in law or equity. The election of any one remedy available under this Option Agreement shall not constitute a waiver of any other available remedies. In the event the Option is not exercised, Grantor shall be entitled to the Option Deposit only, and there shall be no further liability of PM whatsoever under this Option Agreement.

12. Notices. Unless otherwise set forth, any notice or other communication required or permitted hereunder shall be in writing and (a) delivered by overnight courier; (b) sent by facsimile transmission, or (c) mailed by Registered or Certified Mail, postage prepaid, addressed as follows (or to such other address for a party as shall be specified by like notice; provided that notice of change of address shall be effective only upon receipt thereof);

If to PM: POKEBERRY MITIGATION, L.L.C.
 932 Cooke Rd.
 Louisburg, NC 27549

With a copy to: Robert H. Merritt, Jr.
 BAILEY & DIXON, LLP
 434 Fayetteville St., Suite 2500
 P.O. Box 1351
 Raleigh, NC 27602
 Fax: (919) 828-6592

If to the Grantor: COUNTY OF CATHAM
 Po Box 608
 Pittsboro, NC 27312

With a copy to: _____

13. **Successors and Assigns.** This Option Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns.

14. **Waiver.** No act or failure to act by either party shall be deemed a waiver of its rights hereunder, and no waiver in any one circumstance or of any one provision shall be deemed a waiver in other circumstances or of other provisions.

15. **Severability.** Any provision of this Option Agreement that shall be found to be contrary to applicable law or otherwise unenforceable shall not affect the remaining terms of this Option Agreement, which shall be construed as if the unenforceable provision or clause were absent from this Option Agreement.

16. **Governing Law.** This Option Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without application of its conflicts of laws provisions.

17. **Miscellaneous.** PM will provide Grantor up to One Hundred Thousand Dollars (\$100,000.00) in improvements to the Property, including wells, gravel roads, land clearing, fencing, crossings built to agricultural use standards, and other amenities or improvements agreed upon within six (6) months of the Effective Date hereunder. Such improvements and amenities shall be at locations mutually agreed upon by Grantor and PM. In the event that the cost of the improvements chosen by Grantor exceeds One Hundred Thousand Dollars (\$100,000.00), Grantor shall be responsible for and pay such excess upon completion of such improvements. In the event that the cost of the improvements chosen by Grantor is less than One Hundred Thousand Dollars (\$100,000.00), PM shall pay to Grantor the difference between such cost and One Hundred Thousand Dollars (\$100,000.00) within ninety (90) days of completion of such improvements and such payment shall not be credited to or otherwise reduce the purchase price to be paid by PM for the conservation easement(s). All contracts for the aforementioned improvements shall be subject to the approval of Grantor, which approval will not be unreasonably withheld. PM shall provide multiple bids for work being performed by contractors pursuant to this Paragraph 17.

18. **Entire Agreement.** This Option Agreement, together with the exhibits attached hereto which are incorporated herein by reference, contains the entire understanding of the parties hereto with respect to the subject matter contained herein. No amendment, modification, or discharge of this Option Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the parties hereto.

IN WITNESS WHEREOF, the parties have duly executed this Option as of the date first above written.

GRANTOR:

PM:

COUNTY OF CHATAM, a North Carolina State County.

POKEBERRY MITIGATION, L.L.C. a North Carolina limited liability company

By: _____

By: _____

EXHIBIT A

[INSERT LEGAL DESCRIPTION OF PROPERTY]

EXHIBIT B

[INSERT DESCRIPTION OF EASEMENT]

EXHIBIT C

[INSERT SCOPE OF WORK]

EXHIBIT D

Prepared by and Return:
Vivus Viridis, L.L.C

MEMORANDUM OF OPTION TO PURCHASE CONSERVATION EASEMENT

THIS MEMORANDUM OF OPTION TO PURCHASE CONSERVATION EASEMENT (“Memorandum”) is made and entered into this ___ day of _____, 2024, by and between COUNTY OF CHATHAM, a North Carolina State County, whose address is PO Box 608 Pittsboro, NC 27312, (the “Grantor”), and POKEBERRY MITIGATION, L.L.C., a North Carolina limited liability company located at 932 Cooke Rd. Louisburg, NC 27549, (“PM”).

WHEREAS, Grantor and PM have entered into a certain Option to Purchase Conservation Easement (the “Option”) dated _____, 2024, pursuant to which Grantor granted to PM, its successors and assigns, an option to purchase a conservation easement (the “Easement”) over certain real property located in Chatham County having Chatham County PIN No. 9765-70-0357 containing 66.21 acres, which property is more particularly described on the attached Exhibit A (the “Property”); and

WHEREAS, the parties enter into this Memorandum for the purpose of setting forth certain terms and conditions of the Option and to provide constructive notice of the Option;

NOW, THEREFORE, in consideration of the foregoing, the parties hereby agree as follows.

1. The term of the Option commenced on _____ and shall expire on _____.

2. The Option grants PM the right to unilaterally extend the term of the Option until _____ pursuant to paragraph 2 of the Option. In the event of such extension, PM may, but is not required to, file an Amended Memorandum of Option in the public records advising of the fact of such extension and the expiration date, as so extended.

3. All of the provisions set forth in the Option are incorporated in this Memorandum by reference.

4. The Option shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns.

[SIGNATURES AND NOTARY ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have duly executed this Memorandum as of the date first above written.

**GRANTOR: CHATHAM COUNTY a
North Carolina State County**

By: _____

STATE OF NORTH CAROLINA

COUNTY OF CHATHAM

I, _____, the undersigned Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day, acknowledging to me that he/she is _____ of _____ LLC, a North Carolina limited liability company, and that he/she acknowledged to me that he/she voluntarily signed the foregoing document for the purposes therein expressed and in the representative capacity so stated.

Witness my hand and Notarial stamp or seal, this ____ day of _____, 2024.

Official Signature of Notary

Notary Public Notary's printed or typed name

My Commission Expires: _____

[AFFIX NOTARIAL STAMP-SEAL]

**POKEBERRY MITIGATION, LLC,
a North Carolina limited liability company**

By: _____

Print Name: Adam McIntyre

Title: President

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, _____, the undersigned Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day, acknowledging to me that he/she is _____ of POKEBERRY MITIGATION, L.L.C., a North Carolina limited liability company and that he/she acknowledged to me that he/she voluntarily signed the foregoing document for the purposes therein expressed and in the representative capacity so stated.

Witness my hand and Notarial stamp or seal, this ____ day of _____, 20__.

Notary Public

Typed or Printed Name of Notary

My Commission Expires: _____

[AFFIX NOTARIAL STAMP-SEAL]

EXHIBIT E

[INSERT DEED FOR CONSERVATION EASEMENT]