

Minutes of the October 19, 2020
Special Meeting of the Yancey County Board Of Commissioners
Held at 6:00 pm in the Yancey County Courtroom
Yancey County Courthouse, Burnsville North Carolina

Present at the meeting held October 19, 2020 were Chairman Jeff Whitson, Commissioner David Grindstaff, Commissioner Jill Austin, Commissioner Mark Ledford, County Manager Lynn Austin, Planning and Economic Development Director Jamie McMahan, County Attorney Donny Laws, and Clerk to the Board Sonya Morgan. Members of of the media and the general public attended the meeting. Commissioner Johnny Riddle was absent from the meeting.

Call to Order

Chairman Whitson called the meeting to order and welcomed those in attendance.

Approval of the Agenda

Chairman Whitson asked for a motion to approve the agenda. Commissioner Grindstaff made a motion to approve the agenda. Commissioner Ledford seconded the motion. By unanimous vote the agenda was approved. (Attachment A)

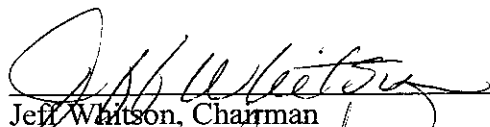
Economic Development Project

Planning and Economic Development Director Jamie McMahan updated the Board on the Little Leaf Farms, Inc. project. Mr. McMahan said that due to geotechnical issues at the former OMC site, the previous option was never executed and the county never paid any money for the project. Mr. McMahan said an alternative site, a 97-acre parcel on Hwy. 80 South adjacent to the former Hickory Springs site, is being considered at the purchase price of \$750,000. Mr. McMahan requested the Board approve the option purchase agreement, with the \$100 option fee, for the site and authorize County Manager Austin to sign. (Attachment B) Chairman Whitson opened the floor for the purpose of holding a public hearing to receive public comment for a proposal to appropriate and expend county funds for an economic development project to aid and encourage Little Leaf Farms, Inc. to locate its new commercial/industrial operations in Yancey County, North Carolina. A citizen attending the meeting asked if the county bought old OMC property. Chairman Whitson reiterated the county did not purchase the site and no money was spent on the site. Mr. McMahan said the former option would have required the county expend \$2.5 million to purchase the former OMC site and \$2.5 million on site development. He further explained Little Leaf Farms, Inc. would only use approximately 30 – 35 acres with balance of the property retained by the county. Mr. McMahan also indicated the county would bid out the site development. Chairman Whitson asked if there were any other questions or public comments. Hearing none, Commissioner Ledford moved to close the public hearing, which was seconded by Commissioner Austin. By unanimous vote the public hearing was closed. Commissioner Grindstaff made a motion to approve the option to purchase agreement and authorize County Manager Austin to sign the agreement. Commissioner Grindstaff seconded the motion. By unanimous vote the motion was approved.

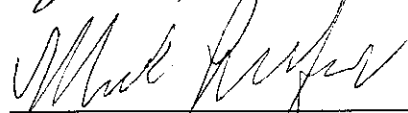
Adjournment

Having no further business, Commissioner Austin made a motion to adjourn with Commissioner Ledford seconding the motion. The Board of Commissioners voted unanimously to adjourn.

Approved and authenticated this the 9th day of November 2020.



Jeff Whitson, Chairman



Mark Ledford, Vice Chairman

Jill Austin

Jill Austin, Commissioner

Sonya Morgan

Sonya Morgan, Clerk to the Board

David Grindstaff

David Grindstaff, Commissioner

Johnny Riddle

Johnny Riddle, Commissioner





Attachment A

**AGENDA
YANCEY COUNTY BOARD OF COMMISSIONERS
SPECIAL MEETING
OCTOBER 19, 2020
6:00 PM**

- I. Call to Order – Chairman Jeff Whitson**
- II. Approval of the Agenda**
- III. PUBLIC HEARING – Appropriation of County Funds for Little Leaf Farms, Inc.
EDC Project**
- IV. Adjourn**

STATE OF NORTH CAROLINA

OPTION TO PURCHASE AGREEMENT

COUNTY OF YANCEY

THIS OPTION TO PURCHASE, hereinafter (“Agreement”) is made and entered into by and between **BRITTANY LONG** (hereinafter “Seller”) and **YANCEY COUNTY, A BODY POLITIC AND CORPORATE** (hereinafter “Buyer”). The effective date of this Agreement shall be the date of the last signature of Buyer and/or Seller, (hereinafter “Effective Date”).

WHEREAS, Buyer wishes to acquire and Seller has agreed to grant and convey an Option to Purchase the real property located in Crabtree Township, Yancey County, North Carolina, more particularly described in a Deed dated _____ August, 2019, from Bennett Family Property, LLC, A NC Limited Liability Company to Brittany Long, and recorded of record at Yancey County Deed Book 805, Page 740, the same being incorporated herein by reference as if set forth in full herein, together with all improvements and personal property currently located thereon and all rights, privileges and appurtenances belonging thereto, (hereinafter “Property”). This Agreement sets forth the terms and conditions relating to such Option.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt of which is hereby acknowledged, the Buyer and Seller agree as follows:

ARTICLE I: OPTION TO PURCHASE PROPERTY

1.1 Option: Seller does hereby give and grant unto Buyer the exclusive right, option and privilege to purchase fee simple interest in the property (hereinafter “Option”) in accordance with the terms and conditions set forth in this Agreement.

1.2 Option Term: The Option shall begin on the effective date of this Agreement and shall expire, if not exercised, at 5:00 p.m. eastern standard time on the ninetieth (90th) day following the effective date of this Agreement;

1.3 Purchase Price: The purchase price for the property shall be SEVEN HUNDRED FIFTY THOUSAND and 00/100 Dollars (\$750,000.00) (hereinafter "Purchase Price");

1.4 Consideration for the Option: As consideration for the Option granted herein, within three (3) days of the effective date of this Agreement, Buyer shall pay to Seller ONE HUNDRED and 00/100 Dollars (\$100.00) in certified funds (hereinafter "Option Money"). The Option Money shall be credited to Buyer at closing against the purchase price.

ARTICLE II: TERMS FOR SALE AND PURCHASE

2.1 Option Exercise: At any time during the option period, Buyer may exercise the Option by giving written notice to this effect to Seller. The exercise date shall be the date such notice is given. Upon the exercise of the Option, Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the property and this Agreement shall constitute the Agreement between Seller and Buyer for the sale and purchase of the property.

2.2 Closing: The closing on the sale and purchase of the property shall take place within thirty (30) days after the date the Buyer exercises the Option at a time and place within Yancey County as designated by Buyer;

2.3 Method of Payment of Purchase Price: The Buyer shall pay the purchase price as follows:

2.3.1 Balance of Purchase Price: Buyer shall deliver to Seller the balance of the purchase price in the amount of SEVEN HUNDRED FORTY-NINE THOUSAND, NINE HUNDRED and 00/100 Dollars (\$749,900.00) in certified funds at closing.

2.4 Closing Expenses and Pro-rations: Seller shall pay for a) the expense of deed preparation conveying title to the property; b) any documentary or transfer tax stamps; c) any unpaid assessments; d) Prior year's ad valorem property taxes; and e) Any other costs or expenses customarily allocated to Seller in commercial property transfers in Yancey County, North Carolina. Buyer shall pay for a) Recordation fees of the Deed; b) All expenses for title examination, including title insurance policy premium; c) Any and all due diligence costs incurred by Buyer; and 4) Any other costs or expenses customarily allocated to the Buyer in commercial property transfers in Yancey County, North Carolina. Ad valorem real property taxes for the current year of closing shall be pro-rated as of the date of the closing and charged or credited on the

closing statement. Each party shall pay its own attorney's fees and any other costs that it may incur in connection with closing.

2.5 Conditions to Buyer's Obligations: Buyer's obligation to close on the sale and purchase of the property after exercise of the Option in accordance with this Article is subject to and contingent upon the satisfaction of each and every one of the following conditions:

- a) There shall have been no material change adverse to the title to the property from the date the Buyer finished its examination of the title during the Due Diligence period;
- b) The truth and accuracy in all material respects as of the closing of the representation and warranties of Seller as set forth in this Agreement;
- c) Prior to the date of closing, there shall have been no material change adverse in the status or condition of the property since the date of Buyer's inspection, review or determination, except for such changes that are a result of Buyer's actions.

That in the event that any of the above conditions are not satisfied at or prior to closing, Buyer may waive such unsatisfied conditional conditions and consummate the purchase of the property in accordance with the terms hereof.

2.6 Items from Seller at Closing: At closing, Seller shall provide to Buyer the following:

- a) A General Warranty Deed in a form acceptable to Buyer (hereinafter "Deed") conveying insurable fee simple title to the property to Buyer, free and clear of all liens, encumbrances, claims, easements, and restrictions, except a) the lien of all ad valorem real estate taxes, not yet due and payable; and b) all easements, restrictions and rights of way of record, reasonably accepted by Buyer, provided however, all such easements, restrictions, and rights of way of record shall be deemed reasonable accepted by Buyer, unless Buyer provides written notice to Seller of any objection to such matters before the expiration of the Due Diligence period;
- b) A customary Lien Affidavit and Agreement in form and substance acceptable to Buyer and its title insurance company warranting and holding harmless Buyer and its title insurance company against unpaid labor and material man's liens;
- c) A "FIRPTA" affidavit confirming that Brittany Long is not a foreign person; and
- d) Any other documents that are customarily provided by the Seller in closings on the sale of commercial real estate in Yancey County, North Carolina, or the Buyer may reasonable require in connection with the consummation of the transaction contemplated by this Agreement;

2.7 Items from Buyer at Closing: At the closing of this sale and purchase, Buyer shall provide the following to Seller:

- a) The purchase price for the property;
- b) A closing statement consistent with the terms of this Agreement and acceptable to both Buyer and Seller;
- c) Any other documents that are customarily provided by the Buyer in closings on the sale of commercial real estate in Yancey County, North Carolina or that Seller may reasonably require in connection with the consummation of the transaction contemplated by this Agreement.

2.8 Risk of Loss: The risk of loss with respect to the Property shall be upon Seller prior to the Closing.

2.9 Default by Buyer: In the event Buyer exercises the Option, but is unable or unwilling to close on the purchase of the Property by the date specified for the Closing, except as may be expressly permitted under this Agreement, then Buyer shall be in default under this Agreement. In the event of a default by Buyer, all sums Buyer has paid Seller under this Agreement shall be retained by Seller as liquidated damages. This shall be Seller's sole remedy, and Seller shall not be entitled to any other or further damages of any kind.

2.10 Seller's Default: In the event Buyer exercises the Option but Seller is unable or unwilling to close on the sale of the Property by the date specified for the Closing, except as may be expressly permitted under this Agreement, then Seller shall be in default under this Agreement. In the event of a default by Seller, (a) Buyer shall have the right to terminate this Agreement, and Seller shall immediately refund all Option monies paid by Buyer to Seller; or (b) Buyer shall have the remedy of specific performance against Seller, or (c) Buyer shall be entitled to pursue any other remedy as may be allowed in law in or equity.

2.11 1031 Like Kind Exchange. In the event that seller chooses to participate in a 1031 like kind exchange then buyer agrees to cooperate with seller in the execution of all documents to facilitate said transaction provided that all expenses relating to said 1031 exchange are paid by seller.

ARTICLE III: MISCELLANEOUS

3.1 Representations and Warranties: Seller makes the following representations and warranties regarding the Property:

- a) Seller has good and marketable fee simple title to the Property, subject only to (i) city/county ad valorem taxes for the year of closing and subsequent years; and (ii) easements, restrictions and rights of way of record that do not materially impair the intended

development of the Property for residential and/or commercial uses.

- b) There are no actions, suits or proceedings of any kind affecting the Property or any portion thereof, or relating to or arising out of the ownership of the Property.
- c) Except for the rights granted Buyer in this Agreement, no person, firm or other legal entity whatsoever has any right or option whatsoever to acquire the Property or any portion or portions thereof or any interest or interests therein.
- d) Seller has the right, power and authority to perform hereunder, and the consummation of the transactions contemplated herein shall not and do not (i) constitute a violation or breach by Seller of any provision of any agreement or other instrument to which Seller is a party or to which Seller may be subject although not a party or (ii) constitute a violation or breach of any judgment, order, writ, injunction or decree issued against Seller.
- e) Seller is not a "foreign person" as that term is used in Section 1445 of the Internal Revenue Code of 1986, as amended.
- f) No taxes, charges or assessments that would constitute a lien against the Property are due and payable, except for the lien of ad valorem real property taxes for the current year that are not yet due and payable.
- g) There is no pending condemnation or similar proceeding or special assessment or potential liability affecting the Property relative to the use or location of hazardous substances on the property and, to Seller's best knowledge, no such proceeding or assessment is contemplated by any governmental authority and to the extent that any such liability exists, Seller assumes sole liability therefore and further agrees to hold Buyer harmless and indemnify Buyer for any liability that Buyer may incur arising out of such prior use of the property and such indemnification obligation shall survive Closing.
- h) No consent or approval of any person or entity is required with respect to the execution and delivery of this Agreement by Seller or the consummation by Seller of the transaction, contemplated hereby or the performance by Seller of its obligations hereunder.

3.2 Buyer's Representations and Warranties: Buyer makes the following representations and warranties:

- a) No consent or approval of any person or entity is required with respect to the execution and delivery of this Agreement by Buyer or the consummation by Buyer of the transaction, contemplated hereby or the performance by Buyer of its obligations hereunder.
- b) This Agreement is binding upon and enforceable against Buyer in accordance with its terms and is not in violation of the provision of any judicial,

governmental or administrative decree, order, writ, injunction, or judgment, or in conflict with or will result in the breach of, or constitute a default under, or any mortgage, indenture, contract, agreement, or other instrument to which Buyer is a party or by which it may be bound.

- c) This Agreement shall be, when duly executed and delivered, a legal and binding obligation of Buyer, enforceable in accordance with its terms.

3.3 Due Diligence Period: Buyer shall have through and until 5:00 o'clock p.m. eastern standard time on ninetieth (90th) day from the Effective Date of this Agreement (the "Due Diligence Period") to make any and all inspections, evaluations, assessments and reviews of the Property and title thereto. Seller hereby grants Buyer the right during the Due Diligence period to enter onto the Property for the purpose of making surveys, engineering and environmental studies, soil tests, water measurements, test borings and such other tests or studies which Buyer may deem advisable; and providing further that Buyer shall not conduct any invasive investigations or tests without Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Without limiting the generality of the foregoing, the following shall apply:

- a) Buyer may, at its sole cost and expense, obtain a written report (the "Environmental Report") by a recognized environmental consulting and/or testing firm chosen by Buyer showing that the Property, including, without limitation, its surface water, groundwater, soils and improvements, thereon, contain no Hazardous Substances.
- b) Buyer may, at its sole costs and expense, obtain a written report (the "Engineering Report") by a recognized engineering firm chose by Buyer showing that the Property is suitable for any proposed development or construction thereon as Buyer may contemplate.
- c) Obtain a commitment from a title company of Buyer's choice for the issuance to Buyer of an owner's title insurance policy.

The cost and expense of all of the aforesaid items shall be borne by the Buyer and Buyer agrees to use and direct its agents, employees, and independent contractors to use due care on, in or about the Property. Buyer agrees to indemnify and hold Seller harmless from and against any and all liability arising out of any damage to the Property as a result of the actions taken by Buyer, its agents, employees, and independent contractors pursuant to this section, and such indemnification obligation shall survive Closing or any termination of this Agreement.

Seller shall be entitled to receive from Buyer, at no cost to Seller, copies of any and all surveys, engineering, geotechnical, and environmental inspections, tests and reports obtain by Buyer as part of its investigation of the Property.

If the Buyer finds any condition or issue from its Due Diligence inquiries which it feels is unacceptable, in its sole discretion, then Buyer shall have the right to terminate this Agreement by delivering to Seller written notice of termination at any time during the Due Diligence period (hereinafter "termination notice"). If Buyer delivers the Termination Notice to Seller this Agreement shall become null and void and the Seller shall be entitled to keep the Initial Option Payment. If the Buyer is satisfied as to all due diligence matters and so elects, Buyer may exercise the Option as set forth hereinabove.

3.4 Due Diligence Documents to be Provided by Seller: Seller shall provide Buyer within ten (10) days of the effective date of this Agreement, at no cost to Buyer, copies of all title insurance policies, surveys, engineering reports, or soil test reports in its possession or control that relate in any way to the Property.

3.5 No Waste: Seller shall commit no waste upon the Property, and Seller shall maintain the Property in as good condition as it is now, usual wear and tear excepted.

3.6 Notice: Any notices permitted or required to be given under this Agreement shall be given to the parties by personal delivery, delivery by a nationally recognized over-night courier service, or by facsimile transmission to the following address:

If to Buyer: Donny J. Laws
County Attorney
PO Box 397
Burnsville, North Carolina 28714
Fax: (828) 682-4312
Email: donnyjoellawsattorney@gmail.com

If to Seller: Stephen Barnwell
Barnwell & Long
Attorneys at Law
PO Box 236
Skyland, NC 28776
Email: stephen@barnwellandlong.com

Each such notice shall be deemed to have been given on the date the notice is actually received; provided, however, that, with respect to any notice delivered by facsimile transmission such notice shall be effective (a) upon sending if the sending party actually received confirmation of delivery by 5:00 p.m. eastern standard time during a business day, or (b) the next business day, if otherwise. Either party may change its address(es) or facsimile number(s) by written notice to the other party pursuant to the provisions hereof.

3.7 Time Periods: If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required under this Agreement must be performed, or by which the Closing must be held, expires on a

Saturday, Sunday or a holiday, then such time period shall be automatically extended to the next business day.

3.8 Time of Essence: Time is of the essence with respect to every provision of this Agreement.

3.9 Assignment: Either Buyer or Seller may assign its rights and obligations under this Agreement without the prior written consent of the other party.

3.10 Survival: The representations and warranties and agreements set forth in this Agreement shall survive Closing and shall not be merged into the deed or instruments of conveyance or any of the other documents or instruments executed or delivered at or after the time of Closing pursuant to or by any reason of this Agreement.

3.11 Attorney's Fees: In the event either party hereunder institutes any legal action or proceeding to enforce its rights under this Agreement, the party substantially prevailing in such litigation shall be entitled to recover its costs and reasonable attorney's fees incurred in the preparation, prosecution and/or defense of such action or proceeding.

3.12 Severability: This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

3.13 General Provisions: No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No amendment to this Agreement shall be binding upon any of the parties hereto unless such amendment is in writing and executed by all parties hereto. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns. The headings inserted at the beginning of each Section are for convenience only, and do not add to or subtract from the meaning of the contents of each Section. This Agreement shall be interpreted under the laws of the State of North Carolina.

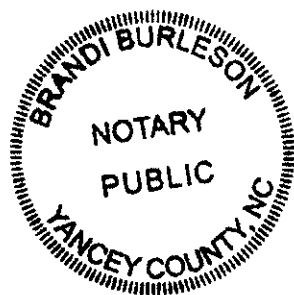
3.14 Counterparts and Facsimile Execution: This Agreement may be executed in counterparts, each of which shall be an original, and all of which together shall constitute the same document. This Agreement, if executed and delivered by facsimile, shall be sufficient for purposes of binding the sending party.

3.15 Memorandum of Option: At the request of the Buyer, Seller agrees to enter into a short form Memorandum of Option for the purpose of recording the same in the Yancey County Public Registry.

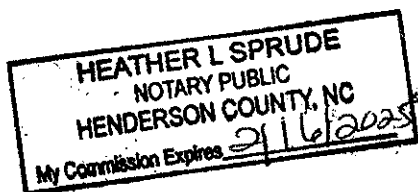
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal as of the date first above written.

Signature Page to Option Agreement

YANCEY COUNTY
BY: [Signature] (SEAL)
Chairman (Vice) County Manager
[Signature] (SEAL)

<p>SEAL-STAMP</p> 	<p>NORTH CAROLINA, Yancey County</p> <p>I, <u>Brandi Burleson</u> a Notary Public of the County and State aforesaid, certify that <u>Lynn Austin</u>, the Chairman ^{County Manager} of the Yancey County Board of Commissioners, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument as the true act and deed of the said public body per authorization given him by action of such body's governing board, pursuant to law. Witness my hand and official stamp or seal, this <u>21</u> day of <u>October</u>, 2020.</p> <p><u>[Signature]</u> Notary Public</p> <p>My commission expires: <u>10/13/2023</u></p>
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SEAL-STAMP



NORTH CAROLINA, ^{Henderson} Madison County

I, Heather L. Sprude a Notary Public of the County and State aforesaid, certify that Brittany Long, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this 20 day of October, 2020.

Heather L Sprude
Notary Public

My commission expires:

2/16/2025