MINUTES
BREVARD CITY COUNCIL
Special Called Meeting
Joint Transylvania County Board of Commissioners and
Brevard City Council Workshop
November 14, 2017 – 9:00 AM

The Brevard City Council met with the Transylvania County Board of Commissioners during the regular scheduled Commissioner meeting held on Tuesday, November 14, 2017, at 9:00 a.m. in the Board of Commissioners Chambers. Purpose of the meeting was to consider approval of a joint economic development project on Ecusta Road.

City Council Members Present – Mayor Jimmy Harris, Mayor Pro Tem Mac Morrow, Council Members Maurice Jones, Ann Hollingsworth, Charlie Landreth and Gary Daniel.

Board of County Commissioners Present – Chairman Larry Chapman, Commissioners Mike Hawkins, Page Lemel and Jason Chappell. Commissioner Kelvin Phillips was present in the building, however due to health issues, was observing the meeting from a private office with video and audio access of the meeting in progress.

County Staff Present - County Attorney Misti Bass, County Manager Jaime Laughter, and Clerk to the Board Trisha Hogan.

City Staff Present – City Attorney Michael Pratt and City Clerk Desiree Perry

Press Present – Derek McKissock, Transylvania Times

Welcome and Call to Order. Chairman Chapman called the meeting to order at 9:00 a.m. Commissioners and staff were introduced, Chairman Chapman offered an invocation and led in the pledge to the Flag.

Mayor Harris thanked the Commissioners for inviting Council and then called the meeting of Brevard City Council to order at 9:05 a.m.

Quorum – City Clerk certified a quorum of City Council was present, and affirmed proper Notice of the Special Called Meeting was provided.

The Board of Commissioners conducted business as scheduled upon their Agenda.

Commissioners Agenda Item IV – Joint Meeting With Brevard City Council.

A. Golden Leaf Foundation: Light Industrial Building
    1. Adoption of legal documents
    2. Authorize signatures

The Ms. Laughter shared the following power-point side providing an overview of the Ecusta Road economic development project:

1. Transylvania County, the City of Brevard and Transylvania Economic Alliance collaborated to design and construct a 60,750 sq. ft. multi-tenant light industrial building on a +/- 7-acre site on Ecusta Road to provide industrial space.
    - First tenant Sylvan Sport.
2. Funds to construct the building will be supplemented by a $1 million Golden

4. Transylvania Economic Alliance will manage the building and use the lease payments to repay the promissory notes.
5. County and Alliance to have performance agreement with terms.
6. County and City interlocal agreement with terms to govern project and operations.
7. November 27 Board of Commissioners Meeting – Public Hearing for appropriation of funds for economic development purposes, award the bid for construction, approve project budget and appropriate funds.

Exhibit A - Architectural rendering of the proposed building.

Exhibit B - Amendments to the legal documents, as provided and read aloud by County Attorney Bass.

Exhibit C - Documents presented for adoption consideration. (Development Agreement, Deed, Deed of Trust, Golden Leaf Performance Agreement, Promissory Note to the County, Interlocal Agreement)

Exhibit D – October 13, 2017, Memo from Josh Hallingse, Executive Director, Transylvania Economic Alliance; Subject: Golden Leaf Foundation Light Industrial Building; 3 pages.

Motion: Ms. Lemel moved, seconded by Mr. Hawkins, the County Commissioners approve and adopt, as amended, the Performance/Development Agreement with Transylvania Economic Alliance, Deed of Trust, Respective Promissory Notes, and Interlocal Agreement, and, authorize signatures for all documents. The motion carried unanimously.

Motion: Mayor Harris called for a motion. Mr. Morrow moved, seconded by Mr. Landreth, the City Council approve and adopt, as amended, the Performance/Development Agreement with Transylvania Economic Alliance, Deed of Trust, Respective Promissory Notes, and Interlocal Agreement, and, authorize signature for all documents. City Manager authorized to sign the Interlocal Agreement. The motion carried unanimously.

Both County and City elected officials expressed appreciation for the respective Boards, for the Transylvania County Economic Alliance, and for the grant funding provided by NC Department of Commerce and Golden Leaf Foundation. This project is a great example of elected bodies working together to accomplish economic development for our community.

~~ Chairman Chapman called for a break to allow for the signing of the documents. Refreshments were provided during the break. ~~

Adjourn City Council Joint Meeting - At 9:33 a.m. Mr. Morrow moved, seconded by Mr. Daniel, to adjourn Brevard City Council's joint meeting with the Board of Commissioners. Motion carried unanimously.

The Commissioners meeting continued with the next item upon their Agenda.

The official Minutes of the Board of Commissioners regular meeting can be found in the records of the Transylvania County Board of Commissioners.

EXHIBIT A

A. Golden Leaf Foundation: Light Industrial Building

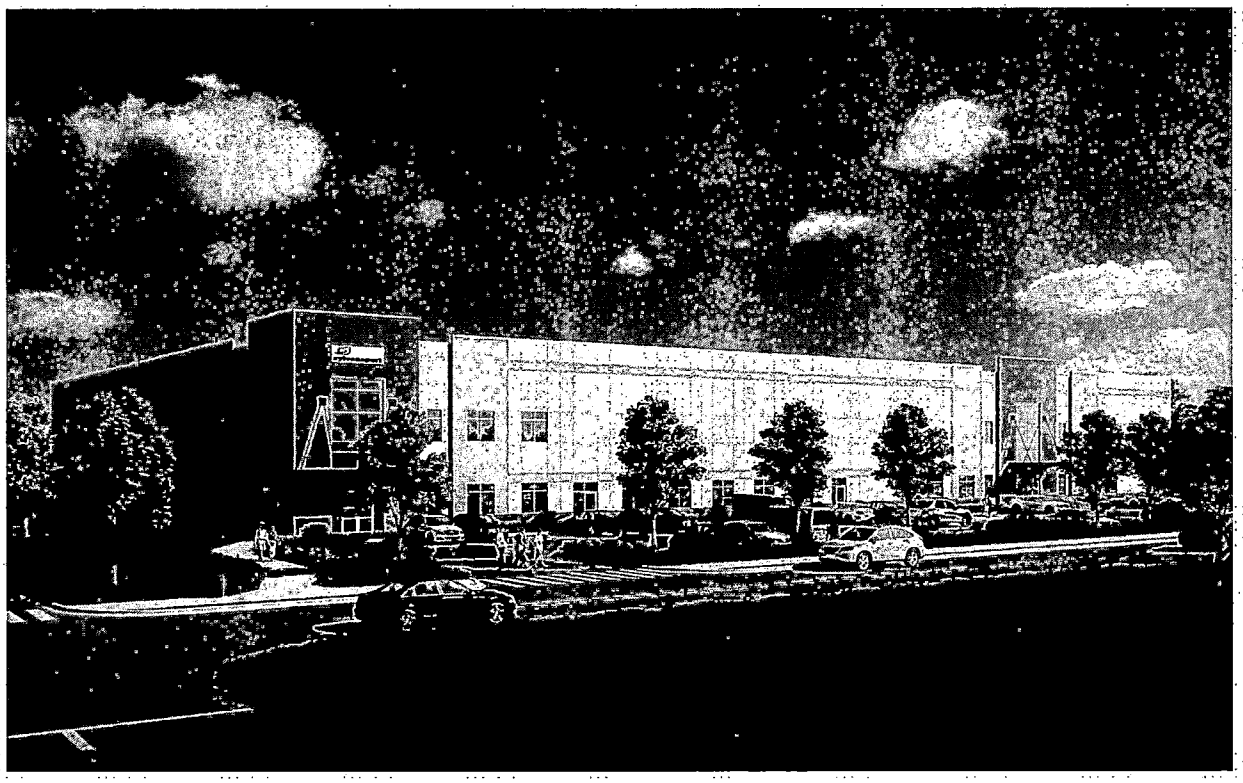


EXHIBIT B

Minutes – Special Called Meeting of Brevard City Council – November 14, 2017

County Attorney Misti Bass presented two amendments to the legal documents. These amendments have been authorized by the attorneys for all parties in order to ensure we are compliant with the Golden Leaf Foundation's expectations.

1. Development Agreement – page 9, Article V Reports and Audits, Section 5.01 Reports : This change was requested by the Alliance. A statement was added to the last paragraph in this section. It reads, "The County will provide annual reports to the Alliance summarizing the balance of the Promissory Note owed to them and the associated reserve funds."
2. The Golden Leaf Foundation attorney also reviewed these documents and recommended changes to the Promissory Note between the City of Brevard and the Alliance. The recommendation is to change paragraph 2 of the Promissory Note to read, "Upon the sale or lease of space in the Building for a term of five years or longer, a portion of the remaining $400,000 balance shall be forgiven in an amount equal to the proportionate value of the property sold or leased to the value of the property as a whole. Upon sale or lease of such property, the City's interest in the Deed of Trust securing this promissory note for such property shall be considered satisfied." In addition, she recommended changes to paragraph 3 to read, "As long as the maker continues to be actively seeking buyers or tenants for the building on the Property, the entire remaining balance on the Note shall be forgiven ten years from the date of this Note, and the City's interest in the Deed of Trust securing the Note shall be considered satisfied. If the building, is not constructed on the Property within ten years, or the project is abandoned prior to that time, this Note shall be considered to be in default, and the Property may be foreclosed pursuant the Deed of Trust securing this Note."

EXHIBIT C

DEVELOPMENT AGREEMENT

BY AND AMONG

TRANSYLVANIA COUNTY, NORTH CAROLINA

CITY OF BREVARD, NORTH CAROLINA

AND

TRANSYLVANIA PARTNERSHIP, INC.

Dated as of the 14th day of November 2017.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made and entered into this 14th day of November 2017, by and among **TRANSYLVANIA COUNTY, NORTH CAROLINA,** political subdivision of the State of North Carolina (the "**County**"); **THE CITY OF BREVARD, NORTH CAROLINA,** a municipal corporation (the "**City**"); and **TRANSYLVANIA PARTNERSHIP, INC.,** doing business as **TRANSYLVANIA ECONOMIC ALLIANCE,** a North Carolina nonprofit 501(c)3 corporation (the "**Alliance**"), all at times alternatively referred singularly to as a "**Party**" or cumulatively as "**Parties.**"

WITNESSETH:

WHEREAS, economic development within Transylvania County and the City of Brevard is a critical public purpose, which leads to more and better jobs, and an improved tax base for the citizens of the County and the City;

WHEREAS, the County and the City have for many years supported a vigorous economic development promotional effort;

WHEREAS, it is determined by North Carolina Department of Commerce officials that a very high percentage of companies which consider locating in the State initially require an existing building as one of the criteria for localities which they will consider;

WHEREAS, the City and County have not had a quality building for quite some time to serve as an attraction to companies considering locating within the State;

WHEREAS, having certified sites for the construction of buildings is an important recruitment need;

WHEREAS, the County and City do not have adequate certified sites to serve as an inducement for companies to consider locating within the County;

WHEREAS, the Parties have identified a tract of property, within and owned by the City, as described herein which would be suitable to serve as a location for a new building and to have the additional property certified;

WHEREAS, the Parties to this Agreement wish to cooperate in developing a building on this site and in preparing the remainder of the site as a certified business park site;

WHEREAS, the County has obtained $1,000,000 in grant funds from the Golden LEAF Foundation to assist in the development of the Project, and the terms of that grant must be accommodated by the terms of this Agreement.

WHEREAS, the North Carolina Legislature allocated grant funds of $200,000 for use on this project in the Fiscal Year 2018 State Budget; and,

WHEREAS, the pursuit of this development effort will significantly improve the economic development prospects for the citizens of the County and the City and,

WHEREAS, the Parties desire to enter into this Agreement to set forth their understanding and intentions regarding this project.

NOW THEREFORE, in consideration of the mutual covenants and promises made herein, the sufficiency of which is acknowledged by the Parties to this Agreement, the Parties agree as follows.

ARTICLE I

PROJECT

1.01. Location. The development of this business/light industrial site (the "**Site**") and the construction of an initial building, will be on a parcel of property more fully described at Exhibit A, which is attached hereto and incorporated herein as though fully set forth herein. This description of the Site may vary slightly based upon updated survey work, and subject to the Parties agreement in writing as to any variations from the description as shown at Exhibit A. All of the development and construction of a building on the Site shall be referred to as the "**Project.**"

1.02. Building. The initial work shall consist of the development of a portion of the site and the construction of a building of approximately sixty thousand seven hundred and fifty (60,750) square feet in size (the **"Building"**). The location of this Building on the Site and a general description of the type of construction, configuration, and essential design features of the Building are as set forth in Exhibit B, which is attached hereto and incorporate herein as though fully set forth herein.

ARTICLE II

CONTIBUTION BY THE CITY

2.01. Property. The City is the owner of the Site. The City will transfer the ownership of the property to the Alliance in fee simple at the time of the execution of this document. A copy of this deed is attached hereto and incorporated herein as Exhibit A. This transfer of ownership shall be in exchange for a Promissory Note from the Alliance to the City in the amount of $1,000,000 which is attached hereto as Exhibit C and incorporated herein by reference as though fully set forth herein. That this Promissory note shall be secured by a Joint Deed of Trust between the Alliance, the City and the County, which is attached hereto as Exhibit D and incorporated herein as though fully set forth herein.

The City of Brevard's contribution to this project is the real estate, which has been contributed in reliance on the terms and conditions of this Agreement.

ARTICLE III

DEVELOPMENT AND IMPROVEMENTS

3.01. Development Responsibilities. The County will have all responsibilities for the development of the Site, and for the construction of the Building as materially described in Exhibit B. The contract for construction will be held between the County and Alliance with the contractor. All invoices, supply construction contracts and change orders must be approved by the designee of

Alliance and the County. The County will then provide payment to the contractor. In the event that an agreement as to the change order cannot be reached by the designee of the Alliance and the County; the County designee should issue final approval of the change in so much that the change does not violate any part of the Golden LEAF Foundation Grantee Acknowledgement and Agreement (the "Golden Leaf Agreement") (Exhibit E).

3.02 Alliance Contributions: The Alliance shall obtain and maintain builders risk insurance. The builders risk policy shall be approved by the County prior to issuance. The Alliance will contribute to the funding the sum of Two Hundred Thousand Dollars in monies obtained from a grant of Two Hundred Thousand Dollars ($200,000) from the North Carolina Department of Commerce.

3.03 Financial Tracking and Reporting. The County shall be responsible for financial tracking under public finance standards and reporting to the Golden LEAF Foundation. The Alliance agrees to cooperate with and assist the County in meeting these requirements including but not limited to providing any and all information needed to comply in a timely manner.

3.04 Management, Operations and Leasing Services. Upon completion of the Project, which shall be defined as the first calendar day of the month following the issuance of a certificate of occupancy for the Premises it is agreed that the Alliance will be responsible for the management, operations and leasing of the Project. The Alliance shall have full and unrestricted access to the Project, that may only be limited by a subsequent tenant lease agreement. Management and operations of the building will include but shall not be limited to the Alliance's efforts to seek tenants, negotiate and execute tenant leases as restricted in Section 4.05, perform necessary accounting and rent collections, negotiate and enter into contracts with vendors to provide management, maintenance, life safety, inspections, repairs and services deemed important and critical to the operations of the Site and Building.

3.05. Funding Contributions by the County. The County agrees to provide the funds up to four million seven hundred thousand dollars in lawful money of the United States of America. Said sum shall include a contribution by the County of up to Three million seven hundred thousand dollars; and utilization of grant funds of One Million Dollars ($1,000,000) from the Golden LEAF Foundation. During the Site preparation and construction of the Building the payment of these sums shall be made by draws from the principal balance to pay the costs. The County shall have the right and opportunity to review and approve all contracts and plans in advance of signing and the County shall have a right to inspect and approve the work before draw payments are made. The final principal balance upon completion of the building may be less than $4,700,00. The Alliance shall execute simultaneous with this agreement a Promissory Note to the County (the "County Note") attached hereto as Exhibit F and incorporated herein as though fully set forth herein. This note is given as a purchase money note and shall be secured by a Deed of Trust which is the first lien on the property therein described. This Deed of Trust is Attached hereto as Exhibit D which is incorporated herein as though fully set forth herein.

The payments on the Promissory note issued by the Alliance to the County will be by way of the share of net proceeds from the rental of the Building on the Site, as set forth herein in Section 4.01. It is understood by the Parties that if and when the Building is not occupied by any tenants, payments will be abated during that period of time, with no assessment of penalties, provided that the Alliance is making reasonable efforts to actively seek tenants for the building. The parties expect that it will be necessary for the Alliance to sell the building to generate sufficient funds to pay off the note. At such time as the County Promissory note is paid in full and all specific terms are fulfilled the County Promissory note will be cancelled. Cancellation of the County Promissory note does not absolve the Alliance from continued restrictions in place by the Golden LEAF Foundation.

3.06 Golden LEAF Foundation Agreement. All parties agree to comply with the terms of the Golden LEAF Foundation Agreement governing the $1,000,000 in grant funds, the terms of

which are attached hereto as Exhibit E and incorporated herein as though fully set forth herein. The parties agree to the specific terms and reporting obligations specific to the Golden LEAF Foundation's ongoing requirements. The Alliance shall provide any documentation required to meet the obligations outlined by the Golden LEAF Foundation Agreement to the County to facilitate timely reporting.

3.07 Purpose. The Parties agree that the entire purpose of this Agreement is for the County, City and Alliance to develop the Site and build a Building which will serve to attract companies to locate facilities within the County and thereby serve the public purpose of creation of more and better paying jobs, and attracting additional capital investments which will enhance the property tax revenues of the County and City.

ARTICLE IV

DIVISION OF FUNDS

4.01. Priorities for Division of Funds. All rental proceeds paid by tenants in the Building shall be disbursed as follows:

(a.) Five (5) percent of the gross proceeds shall be retained by the Alliance as a management fee which shall constitute an approved building expense;

(b.) All reasonable expenses directly related to the management and maintenance of the Site and the Building not contemplated in a lease agreement shall be reimbursed to the Alliance upon approval by the County;

(c.) The remaining funds shall be divided as follows:

(1.) Forty-Six (46) percent shall be to the County's General Fund, or may be designated by the County Commissioners for any purpose.

(2.) Eighteen (18) percent to the County, to be applied to a reserve fund to be utilized solely for the purposes of future economic development or job creation in the city of Brevard and/or Transylvania County.

(3) Eighteen (18) percent to the County, to be applied to a reserve fund to be maintained by the County which may only be utilized solely for economic development consistent with the terms of the Golden LEAF Foundation Agreement.

(4) Eighteen (18) percent to the Alliance, to be applied to a reserve fund to be utilized solely for economic development purposes, by the organization's Board of Directors for sites and buildings initiatives.

4.02. Timing of Funds Disbursement. All funds owed to the County shall be disbursed by the Alliance no later than thirty (30) business days following receipt of rental payments from any tenant(s) in the Building.

4.03 Repayment of Promissory Note. All monies received by the County pursuant to 4.01 (c) (1-3) of this document shall be credited to the repayment of the Promissory Note owed by the Alliance to the County.

4.04 Sale of Project.

(1.) Should the Alliance desire to sell the Building and/or any portions of the Site proceeds of that sale shall first be applied to payment of the County's Promissory note in full, and specific conditions outlined in the Deed of Trust (Exhibit D) and Golden LEAF Foundation Agreement (Exhibit E). Proceeds of the sale shall be applied in the same proportion as described in the Section 5 of the Interlocal Agreement between the County and the City (Exhibit G). Any excess proceeds not applied to payment of the Promissory note[s] should revert to a restricted sites/buildings fund maintained by the Alliance.

(2.) No sale shall commence without complete repayment of the County's Promissory Note unless agreed to by a majority vote of the Transylvania County Board of Commissioners.

4.05 Fair Market Value Rent and Sales Price. The rental amount paid by any Tenant in the Building and or the sales price of the Building if sold, shall be at fair market value. Fair market value shall be determined by a licensed appraiser who is agreed to by the Parties. The ability to sell the entire Building and Site shall first comply with sections 4.04.1 and 4.04.2.

ARTICLE V

REPORTS AND AUDITS

5.01. Reports. Upon project completion the Alliance shall provide semi-annual reports by January 31 and July 31 of each year to the County regarding the management of this Project. The report shall summarize the status of the tenants in the buildings, including the number of employees of each tenant and whether the employees are full or part time, and efforts to recruit other tenants. The County will provide annual reports to the Alliance summarizing the balance of the Promissory Note owed to them and the associated reserve funds.

5.02. Audits. The Alliance shall provide annual audits to the County in compliance with established rules and regulations. Additionally, the County may at its own expense conduct special audits of the Alliance and its records. These audits may be conducted in the discretion of the County. The Alliance will cooperate fully with any such special audit, provided however that the timing of the work required by the audit shall be coordinated and agreed to by the Alliance.

5.03. Documentation for Grant Review. To the extent that the County is in need of documents or reports for this project as a condition of the grant agreement with the Golden LEAF Foundation, Alliance will cooperate fully to supply any needed documents or information.

ARTICLE VI

CONTINUING CONTRACT

It is understood and agreed to by the parties that this Agreement is a continuing contract as defined by North Carolina General Statute § 153A-13 for the County and § 160A-17 and as such creates a binding obligation on the part of the Parties.

ARTICLE VII

INDEMNIFICATION

The Alliance hereby agrees to indemnify, protect and save the County and the City and their respective officers, directors and employees harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Site or the Building or the transactions contemplated by or relating to this Agreement, including without limitation, the possession, condition, construction or use thereof, insofar as such matters relate to events subject to the control of the Alliance and not the County. The indemnification arising under this Article shall survive the Agreement's termination.

ARTICLE VIII

TERMINATION OF AGREEMENT

8.01. Termination by County. Upon failure of the City or the Alliance to comply with any term of this agreement, the County shall have the option of terminating this Agreement.

8.02 Termination by the Alliance. Upon failure of the County or the City to comply with the terms of this agreement, the Alliance shall have the option of terminating this Agreement.

8.03 Application of Deed of Trust. Should the County or the Alliance exercise the option to terminate this Agreement, prior to the complete satisfaction of the Promissory Notes to the County and the City, the terms of the Deed of Trust shall apply. Thereafter, there shall be no further obligations under this Agreement from one Party to the other.

8.04 Compliance with Golden LEAF Foundation Grant. If there is a termination of this Agreement pursuant to Section 8.01 or 8.02 above, proceeds from any transfer shall be applied in the same proportion as described in the Section 5 of the Interlocal Agreement between the County and the City (Exhibit G).

8.05 Priority of Agreements: In the event of any conflict between the terms of this agreement and the terms of the Golden LEAF Foundation Agreement, the terms of the Golden LEAF Foundation Agreement shall control.

ARTICLE IX

OWNERSHIP AND COMPLIANCE

9.01 Ownership by Parties. The Parties anticipate that the Alliance will own the property, subject to the Promissory notes issued to the City and County, the Deed of Trust and the terms of this agreement. However, if any of the Parties own the property at any time that Party will comply with the terms of the Golden LEAF Foundation Agreement.

9.02 Ownership by Non-Parties. If, as a result of foreclosure, a nonparty to this agreement becomes the owner of the property, proceeds of the foreclosure sale shall be applied in the manner as described in the Section 5 of the Interlocal Agreement between the County and the City (Exhibit G).

ARTICLE X

ASSIGNMENTS

No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties.

ARTICLE XI

LIMITED OBLIGATION OF COUNTY

NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS DELEGATING GOVERNMENTAL POWERS NOR AS A DONATION OR A LENDING OF THE CREDIT OF THE COUNTY WITHIN THE MEANING OF THE STATE CONSTITUTION. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE COUNTY'S SOLE DISCRETION FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT SHALL BE IN EFFECT. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE COUNTY'S MONEYS, NOR SHALL ANY PROVISION OF THE AGREEMENT RESTRICT TO ANY EXTENT PROHIBITED BY LAW, ANY ACTION OR RIGHT OF ACTION ON THE PART OF ANY FUTURE COUNTY GOVERNING BODY. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE AND ANY OTHER PROVISION OF THIS AGREEMENT, THIS ARTICLE SHALL TAKE PRIORITY.

ARTICLE XII

MISCELLANEOUS

11.01 **Governing Law.** The parties intend that this Agreement shall be governed by the law of the State of North Carolina.

11.02 **Notices.**

(a) Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement.

(b) Any communication shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first-class mail, postage prepaid, and addressed or by email as follows:

(1) If to the Alliance, to:

Transylvania Economic Alliance
147 East Main Street
Suite 301
Brevard, North Carolina 28712

(2) If to the County, to:

County Manager
Transylvania County
101 South Broad Street
Brevard, NC 28712

(3) If to the City, to:

City Manager
95 West Main Street
Brevard, NC 28712

(c) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

11.03 **Non-Business Days**. If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next Business Day.

11.04 **Severability.** If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

11.05. **Entire Agreement; Amendments.** This Agreement, including Exhibits A through G attached, which are incorporated herein and made a part hereof, constitutes the entire

contract between the parties, and this Agreement shall not be changed except in writing signed by all the parties.

11.06. **Binding Effect.** Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

11.07. **Time.** Time is of the essence in this Agreement and each and all of its provisions.

11.08. **Liability of Officers and Agents.** No officer, agent or employee of the City County or Alliance shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

11.09. **Counterparts.** This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

[SEAL]

ATTEST:

Secretary

[SEAL]

ATTEST:

Secretary

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

Name:
Finance Officer, Transylvania County, North Carolina

[SEAL]

ATTEST:

Secretary City Clerk

TRANSYLVANIA ECONOMIC ALLIANCE

By

TRANSYLVANIA COUNTY, NORTH CAROLINA

By

CITY OF BREVARD, NORTH CAROLINA

By

Exhibits

A – Deed from County to the Alliance
B – Location and General Description of Building
C – Promissory Note-City of Brevard
D- Deed of Trust to City and County
E –Golden Leaf Foundation Agreement
F- Promissory Note- County
G Interlocal Agreement

EXHIBIT A

DEED

http://transylvaniaalliance.com/images/uploads/CMS16060-TOPO_FINAL_10-13-16.pdf

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: $160.00

Parcel Identifier No. _____ Verified by _____ County on the ____ day of _____, 20___
By: _____

Mail/Box to: Ramsey & Pratt, P.A., 35 North Gaston Street, Brevard, NC 28712

This instrument was prepared by: MICHAEL K. PRATT - No Title Search Performed by Preparer

Brief description for the Index: _____

THIS DEED made this 16th day of October, 2017, by and between

GRANTOR	GRANTEE
CITY OF BREVARD	TRANSYLVANIA PARTNERSHIP, INC.
95 West Main Street Brevard, NC 28712	203 East Morgan Street, 2nd Floor Brevard, NC 28712

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of n/a, Brevard Township, Transylvania County, North Carolina and more particularly described as follows:

BEING ALL OF THE SAME LAND DESCRIBED ON THE PAGE WHICH IS ATTACHED HERETO, DESIGNATED AS EXHIBIT "A" AND INCORPORATED HEREIN BY REFERENCE.

All or a portion of the property herein conveyed ___ includes or _X_ does not include the primary residence of the Grantor.
The property hereinabove described was acquired by Grantor by instrument recorded in Book _____ page _____.
A map showing the above described property is recorded in Plat File _____ Slide _____.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

Exceptions and reservations contained in this deed and/or in instruments referenced herein.
Easements and rights of way for public and private roads and utilities, of public record.
Lien of ad valorem taxes for the current year and subsequent years, not yet due and payable.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

CITY OF BREVARD

By: _____ **(SEAL)**
JIMMY HARRIS, Mayor

ATTEST:

Desiree D Perry
DESIREE PERRY, City Clerk

STATE OF NORTH CAROLINA,
COUNTY OF Transylvania.

I, Trisha M Hogan, **a Notary Public of said State and County, do hereby certify that DESIREE PERRY personally appeared before me this day and acknowledged that she is City Clerk for CITY OF BREVARD, a North Carolina municipal corporation, and that by authority duly given and as the act of this corporation, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal, and attested by DESIREE PERRY as its City Clerk.**

WITNESS my hand and Notarial Seal, this the 14 **day of** November **, 2017.**

TRISHA M HOGAN NOTARY PUBLIC TRANSYLVANIA COUNTY, N.C.

Trisha M. Hogan
Notary Public

My Commission Expires: June 13, 2019.

EXHIBIT "A" TO A DEED FROM CITY OF BREVARD, TO TRANSYLVANIA PARTNERSHIP, INC.

TRACT I:

Being Tract 1-K, containing 6.43 acres, more or less, as shown on a plat thereof recorded in Plat File 6, Slide 240, Records of Plats for Transylvania County.

AND being a part of the same land described in a deed from P. H. Glatfelter Company, to the City of Brevard , recorded on November 28, 1995, in Deed Book 395, Page 378, of the Transylvania County Registry.

TRACT II:

Being all of the same land described in a deed from Harold Siniard and wife, Thelma Siniard, to City of Brevard recorded on November 9, 2016, in Document Book 784, Page 16, of the Transylvania County Registry.

AND being all of the same land described in a deed from Charles Dimmit Purnell and wife, Patricia Ann Purnell, to Harold Siniard and wife, Thelma Siniard, dated September 8, 1977, and recorded in Deed Book 225, Page 750, of the Transylvania County Registry.

And being all of the same land as shown on a plat thereof recorded in Plat File 16, Slide 922, Records of Plats for Transylvania County.

This conveyance is made subject to all easements and other matters which may be shown on the recorded plat referred to herein above.
The following matters also apply to this conveyance:

A. The City Council of the City of Brevard duly enacted a Resolution approving this sale on May 15, 2017.

B. The City of Brevard has duly published a Public Notice of this sale in the Transylvania Times on May 22, 2017, as required by law.

EXHIBIT B

LOCATION AND GENERAL DESCRIPTION OF BUILDING

General Description:

a. Site: Site work includes demolition of existing hardscape and storm water system, site grading, new asphalt, paving entrances, asphalt park (50 spaces), asphalt truck court, new concrete truck apron. New utilities from main road, new storm water and drainage. Site lighting and landscaping. The balance of the site will be graded pad ready for a +/- 40,000 s.f. expansion.

b. Building: The building consists of a +/- 60,750 s.f. new light industrial building. The building structure will be a conventional steel structure with load-bearing insulted concrete panel exterior walls. The deck bearing at the high side of the warehouse is approximately 33' and at the low side approximately 28'. This allows for a clear interior height under the girder at the low end (plan north) of approximately 26'0". There will be approximately five (5) dock doors and a drive-in door location. 30,000 s.f. of the building will house a tenant that will include approximately 5,000 s.f. of conditioned office space. The remaining space will have freeze protection and minimal lighting. The project will be fully sprinklered with an ESFR sprinkler system.

EXHIBIT C

PROMISSORY NOTE

Brevard, North Carolina

$1,000,000

Date: **November 14, 2017**

FOR VALUE RECEIVED the undersigned promises to pay to **The City of Brevard** or order, the principal sum of **ONE MILLION DOLLARS ($1,000,000)**, with no interest payable in lawful money of the United States of America, at the office of HOLDER or at such place as the legal holder hereof may designate in writing. The principal shall be either paid or forgiven as follows:

1. Upon the completion of construction of a building containing at least 60,000 square feet on the 6.397 acres shown on the Plat recorded in Plat File 16, Slide 922 (the Property), the sum of $600,000 shall be forgiven, leaving a balance due on this Note of $400,000. Completion shall occur when the space has roughed in electric, plumbing and HVAC systems, sometimes referred to as a "warm shell", and is ready for tenant finish items such as partition walls, light fixtures, flooring and sheetrock.

2. Upon the sale or lease of space in the Building for a term of five years or longer, a portion of the remaining $400,000 balance shall be forgiven in an amount equal to the proportionate value of the property sold or leased to the value of the property as a whole. Upon sale or lease of such property, the City's interest in the Deed of Trust securing this promissory note for such property shall be considered satisfied.

3. As long as the maker continues to be actively seeking buyers or tenants for the building on the Property, the entire remaining balance on the Note shall be forgiven ten years from the date of this Note, and the City's interest in the Deed of Trust securing the Note shall be considered Satisfied. If the building is not constructed on the Property within ten years, or if the project is abandoned prior to that time, this Note shall be considered to be in default, and the Property may be foreclosed pursuant the Deed of Trust securing this Note.

If not sooner paid, the entire remaining indebtedness shall be due and payable on November 14, 2037.

If payable in installments, each such installment shall, unless otherwise provided, be applied first to payment of interest then accrued and due on the unpaid principal balance, with the remainder applied to the unpaid principal.

Unless otherwise provided, this Note may be prepaid in full or in part at any time without penalty or premium. Partial prepayments shall be applied to installments due in reverse order of their maturity.

In the event of (a) default in payment of any installment of principal or interest hereof as the same becomes due and such default is not cured within ten (10) days from the due date, or (b) default under the terms of any instrument securing this Note, and such default is not cured within fifteen (15) days after written notice to maker, then in either such event the holder may without further notice, declare the remainder of the principal sum, together with all interest accrued thereon and, the prepayment premium, if any, at once due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any other time. The unpaid principal of this Note and any part thereof, accrued interest and all other sums due under this Note and the Deed of Trust, if any, shall bear interest at the rate of **six percent (6%)** per annum after default until paid. The maker waives protest, presentment, notice of dishonor, and notice of acceleration of maturity and agree to continue to remain bound for the payment of principal, interest and all other sums due under this Note and the Deed of Trust notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Note or by way of any extension or extensions of time for the payment of principal and interest.

Upon default the holder of this Note may employ an attorney to enforce the holder's rights and remedies and the maker of this Note hereby agrees to pay to the holder reasonable attorneys fees not exceeding a sum equal to fifteen percent (15%) of the outstanding balance owing on said Note, plus all other reasonable expenses incurred by the holder in exercising any of the holder's rights and remedies upon default. The rights and remedies of the holder as provided in this Note and any instrument securing this Note shall be cumulative and may be pursued singly, successively, or together against the property described in the Deed of Trust or any other funds, property or security held by the holder for payment or security, in the sole discretion of the holder. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

This Note is to be governed and construed in accordance with the laws of the State of North Carolina.

This Note is given AS A PURCHASE MONEY NOTE and is secured by a DEED OF TRUST which is a FIRST lien upon the property therein described.

Transylvania Partnership, Inc.
Doing business as the Transylvania Economic Alliance

President

EXHIBIT D

DEED OF TRUST

NORTH CAROLINA DEED OF TRUST

Mail/Box to: Donald E. Jordan

This instrument was prepared by: Donald E. Jordan, Attorney

Brief description for the Index: 6.397 acres

THIS DEED of TRUST made this 14th day of November, 2017, by and between:

GRANTOR	TRUSTEE	BENEFICIARY
TRANSYLVANIA PARTNERSHIP, INC. Doing business as the **TRANSYLVANIA ECONOMIC ALLIANCE**	**MICHAEL K. PRATT**	**THE CITY OF BREVARD and TRANSYLVANIA COUNTY**

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor, Trustee, and Beneficiary as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, That whereas the Grantor is indebted to the City of Brevard in the principal sum of **One Million Dollars ($1,000,000)**, as evidenced by a Promissory Note of even date herewith, the terms of which are incorporated herein by reference. The final due date for payments of said Promissory Note, if not sooner paid, is **November 14, 2037**. Grantor is also indebted to Transylvania County pursuant to the November 14, 2017 Promissory Note in the amount of **Four Million Seven Hundred Thousand Dollars ($4,700,000)** and as supplemented by the November 14, 2017 Development Agreement. The terms of both County instruments are also incorporated into this Deed of Trust. The interests of the City and County in this Deed of Trust are set forth in detail in the Interlocal Agreement dated November 14, 2017.

NOW, THEREFORE, as security for said indebtedness, advancements and other sums expended by Beneficiary pursuant to this Deed of Trust and costs of collection (including attorneys fees as provided in the Promissory Note) and other valuable consideration, the receipt of which is hereby acknowledged, the Grantor has bargained, sold, given and conveyed and does by these presents bargain, sell, give, grant and convey to said Trustee, his heirs, or successors, and assigns, the parcel(s) of land situated in Brevard Township, Transylvania County, North Carolina, (the "Premises") and more particularly described as follows:

as described in Exhibit "A" attached

TO HAVE AND TO HOLD said Premises with all privileges and appurtenances thereunto belonging, to said Trustee, his heirs,

If the Grantor shall pay the Note secured hereby in accordance with its terms, together with interest thereon, and any renewals or extensions thereof in whole or in part, all other sums secured hereby and shall comply with all of the covenants, terms and conditions of this Deed of Trust, then this conveyance shall be null and void and may be canceled of record at the request and the expense of the Grantor.

If, however, there shall be any default (a) in the payment of any sums due under the Note, this Deed of Trust or any other instrument securing the Note and such default is not cured within ten (10) days from the due date, or (b) if there shall be default in any of the other covenants, terms or conditions of the Note secured hereby, or any failure or neglect to comply with the covenants, terms or conditions contained in this Deed of Trust or any other instrument securing the Note and such default is not cured within fifteen (15) days after written notice, then and in any of such events, without further notice, it shall be lawful for and the duty of the Trustee, upon request of the Beneficiary, to sell the land herein conveyed at public auction for cash, after having first giving such notice of hearing as to commencement of foreclosure proceedings and obtained such findings or leave of court as may then be required by law and giving such notice and advertising the time and place of such sale in such manner as may then be provided by law, and upon such and any resales and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey title to the purchaser in as full and ample manner as the Trustee is empowered. The Trustee shall be authorized to retain an attorney to represent him in such proceedings.

The proceeds of the Sale shall after the Trustee retains his commission, together with reasonable attorneys fees incurred by the Trustee in such proceedings, be applied to the costs of sale, including, but not limited to, costs of collection, taxes, assessments, costs of recording, service fees and incidental expenditures, the amount due on the Note hereby secured and advancements and other sums expended by the Beneficiary according to the provisions hereof and otherwise as required by the then existing law relating to foreclosures. The Trustee's commission shall be five percent (5%) of the gross proceeds of the sale or the minimum sum of **$2,000.00** whichever is greater, for a completed foreclosure. In the event foreclosure is commenced, but not completed, the Grantor shall pay all expenses incurred by Trustee, including reasonable attorneys fees, and a partial commission computed on five per cent (5%) of the outstanding indebtedness or the above stated minimum sum, whichever is greater, in accordance with the following schedule, to-wit: one-fourth (¼) thereof before the Trustee issues a notice of hearing on the right to foreclosure; one-half (½) thereof after issuance of said notice, three-fourths (¾) thereof after such hearing; and the greater of the full commission or minimum sum after the initial sale.

And the said Grantor does hereby covenant and agree with the Trustee as follows:

1. INSURANCE. Grantor shall keep all improvements on said land, now or hereafter erected, constantly insured for the benefit of the Beneficiary against loss by fire, windstorm and such other casualties and contingencies, in such manner and in such companies and for such amounts, not less than that amount necessary to pay the sum secured by this Deed of Trust, and as may be satisfactory to the Beneficiary. Grantor shall purchase such insurance, pay all premiums therefor, and shall deliver to Beneficiary such policies along with evidence of premium payments as long as the Note secured hereby remains unpaid. If Grantor fails to purchase such insurance, pay premiums therefor or deliver said policies along with evidence of payment of premiums thereon, then Beneficiary, at his option, may purchase such insurance. Such amounts paid by Beneficiary shall be added to the principal of the Note secured by this Deed of Trust, and shall be due and payable upon demand of Beneficiary. All proceeds from any insurance so maintained shall at the option of Beneficiary be applied to the debt secured hereby and if payable in installments, applied in the inverse order of maturity of such installments or to the repair or reconstruction of any improvements located upon the Property.

2. TAXES, ASSESSMENTS, CHARGES. Grantor shall pay all taxes, assessments and charges as may be lawfully levied against said Premises within thirty (30) days after the same shall become due. In the event that Grantor fails to so pay all taxes, assessments and charges as herein required, then Beneficiary, at his option, may pay the same and the amounts so paid shall be added to the principal of the Note secured by this Deed of Trust, and shall be due and payable upon demand of Beneficiary.

3. ASSIGNMENTS OF RENTS AND PROFITS. Grantor assigns to Beneficiary, in the event of default, all rents and profits from the land and any improvements thereon, and authorizes Beneficiary to enter upon and take possession of such land and improvements, to rent same, at any reasonable rate of rent determined by Beneficiary, and after deducting from any such rents the cost of reletting and collection, to apply the remainder to the debt secured hereby.

4. PARTIAL RELEASE. Grantor shall not be entitled to the partial release of any of the above described property unless a specific provision providing therefor is included in this Deed of Trust. In the event a partial release provision is included in this Deed of Trust, Grantor must strictly comply with the terms thereof. Notwithstanding anything herein contained, Grantor shall not be entitled to any release of property unless Grantor is not in default and is in full compliance with all of the terms and provisions of the Note, this Deed of Trust, and any other instrument that may be securing said Note.

5. WASTE. The Grantor covenants that he will keep the Premises herein conveyed in as good order, repair and condition as they are now, reasonable wear and tear excepted, and will comply with all governmental requirements respecting the Premises or their use, and that he will not commit or permit any waste.

6. CONDEMNATION. In the event that any or all of the Premises shall be condemned and taken under the power of eminent domain, Grantor shall give immediate written notice to Beneficiary and Beneficiary shall have the right to receive and collect all damages awarded by reason of such taking, and the right to such damages hereby is assigned to Beneficiary who shall have the discretion to apply the amount so received, or any part thereof, to the indebtedness due hereunder and if payable in installments, applied in the inverse order of maturity of such installments, or to any alteration, repair or restoration of the Premises by Grantor.

7. WARRANTIES. Grantor covenants with Trustee and Beneficiary that he is seized of the Premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that he will warrant and defend the title against the lawful claims of all persons whomsoever, except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

8. SUBSTITUTION OF TRUSTEE. Grantor and Trustee covenant and agree to and with Beneficiary that in case the said Trustee, or any successor trustee, shall die, become incapable of acting, renounce his trust, or for any reason the holder of the Note desires to replace said Trustee, then the holder may appoint, in writing, a trustee to take the place of the Trustee; and upon the probate and registration of the same, the trustee thus appointed shall succeed to all rights, powers and duties of the Trustee.

[X] **THE FOLLOWING PARAGRAPH, 9. SALE OF PREMISES, SHALL NOT APPLY UNLESS THE BLOCK TO THE LEFT MARGIN OF THIS SENTENCE IS MARKED AND/OR INITIALED.**

9. SALE OF PREMISES. Grantor agrees that if the Premises or any part thereof or interest therein is sold, assigned, transferred, conveyed or otherwise alienated by Grantor, whether voluntarily or involuntarily or by operation of law [other than: (i) the creation of a lien or other encumbrance subordinate to this Deed of Trust which does not relate to a transfer of rights of occupancy in the Premises; (ii) the creation of a purchase money security interest for household appliances; (iii) a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety; (iv) the grant of a leasehold interest of three (3) years or less not containing an option to purchase; (v) a transfer to a relative resulting from the death of a Grantor; (vi) a transfer where the spouse or children of the Grantor become the owner of the Premises; (vii) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the Grantor becomes an owner of the Premises; (viii) a transfer into an inter vivos trust in which the Grantor is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the Premises], without the prior written consent of Beneficiary, Beneficiary, at its own option, may declare the Note secured hereby and all other obligations hereunder to be forthwith due and payable. Any change in the legal or equitable title of the Premises or in the beneficial ownership of the Premises, including the sale, conveyance or disposition of a majority interest in the Grantor if a corporation or partnership, whether or not of record and whether or not for consideration, shall be deemed to be the transfer of an interest in the Premises.

10. ADVANCEMENTS. If Grantor shall fail to perform any of the covenants or obligations contained herein or in any other instrument given as additional security for the Note secured hereby, the Beneficiary may, but without obligation, make advances to perform such covenants or obligations, and all such sums so advanced shall be added to the principal sum, shall bear interest at the rate provided in the Note secured hereby for sums due after default and shall be due from Grantor on demand of the Beneficiary. No advancement or anything contained in this paragraph shall constitute a waiver by Beneficiary or prevent such failure to perform from constituting an event of default.

11. INDEMNITY. If any suit or proceeding be brought against the Trustee or Beneficiary or if any suit or proceeding be brought which may affect the value or title of the Premises, Grantor shall defend, indemnify and hold harmless and on demand reimburse Trustee or Beneficiary from any loss, cost, damage or expense and any sums expended by Trustee or Beneficiary shall bear interest as provided in the Note secured hereby for sums due after default and shall be due and payable on demand.

12. WAIVERS. Grantor waives all rights to require marshaling of assets by the Trustee or Beneficiary. No delay or omission of the Trustee or Beneficiary in the exercise of any right, power or remedy arising under the Note or this Deed of Trust shall be deemed a waiver of any default or acquiescence therein or shall impair or waive the exercise of such right, power or remedy by Trustee or Beneficiary at any other time.

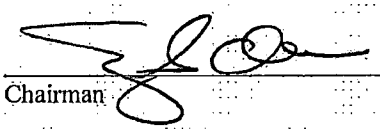
13. CIVIL ACTION. In the event that the Trustee is named as a party to any civil action as Trustee in this Deed of Trust, the Trustee shall be entitled to employ an attorney at law, including himself if he is a licensed attorney, to represent him in said action and the reasonable attorney's fee of the Trustee in such action shall be paid by the Beneficiary and added to the principal of the Note secured by this Deed of Trust and bear interest at the rate provided in the Note for sums due after default.

14. PRIOR LIENS. Default under the terms of any instrument secured by a lien to which this Deed of Trust is subordinate shall constitute default hereunder.

15. OTHER TERMS. This is a purchase money Deed of Trust.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

TRANSYLVANIA PARTNERSHIP, INC.
Doing business as the TRANSYLVANIA ECONOMIC ALLIANCE



Chairman

State of North Carolina - County of Transylvania

I, Donald E. Jordan, the undersigned Notary Public of the referenced County and State, certify that Jeremy Owen personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed as Chairman of Transylvania Partnership, Inc., doing business as the Transylvania Economic Alliance.

Witness my hand and Notarial stamp or seal this 14th day of November, 2017.

My Commission Expires: August 30, 2019

Notary Public

DONALD E. JORDAN NOTARY PUBLIC TRANSYLVANIA COUNTY, N.C.

EXHIBIT "A

TRACT I:

Being Tract 1-K, containing 6.43 acres, more or less, as shown on a plat thereof recorded in Plat File 6, Slide 240, Records of Plats for Transylvania County.

AND being a part of the same land described in a deed from P. H. Glatfelter Company, to the City of Brevard , recorded on November 28, 1995, in Deed Book 395, Page 378, of the Transylvania County Registry.

TRACT II:

Being all of the same land described in a deed from Harold Siniard and wife, Thelma Siniard, to City of Brevard recorded on November 9, 2016, in Document Book 784, Page 16, of the Transylvania County Registry.

AND being all of the same land described in a deed from Charles Dimmit Purnell and wife, Patricia Ann Purnell, to Harold Siniard and wife, Thelma Siniard, dated September 8, 1977, and recorded in Deed Book 225, Page 750, of the Transylvania County Registry.

And being all of the same land as shown on a plat thereof recorded in Plat File 16, Slide 922, Records of Plats for Transylvania County.

This conveyance is made subject to all easements and other matters which may be shown on the recorded plat referred to herein above.
The following matters also apply to this conveyance:

A. The City Council of the City of Brevard duly enacted a Resolution approving this sale on May 15, 2017.

B. The City of Brevard has duly published a Public Notice of this sale in the Transylvania Times on May 22, 2017, as required by law.

EXHIBIT E

Golden LEAF Performance Agreement

EXHIBIT E

The Golden LEAF Foundation

GRANTEE ACKNOWLEDGMENT AND AGREEMENT

1. Grantee: Transylvania County

2. Project File Number & Title: FY2016-046 / Growing Transylvania County with STEM

3. Purpose of Grant: The purpose of this grant is to provide funding to Transylvania County for a collaborative effort to support STEM education and facilitate the creation of advanced manufacturing jobs at a single facility. The manufacturer will employ at least twenty (20) new people. Golden LEAF funds will be used for facility construction and pre-engineering kits for use by the middle and high school students.

4. Amount of Grant: $1,100,000.00

5. Award Date: 4/6/2016 Start Date: 9/1/2016

6. Special Terms and Conditions Applicable to Grant:
   a) The term of the grant is 36 months, commencing on the Award Date unless the Grantee proposes a later Start Date that is accepted by Golden LEAF. Golden LEAF may extend the term of the Grant. All project-related expenses must be incurred during the term of the grant. The provisions of this agreement that by their nature extend beyond the term of the grant will survive the end of the term of the grant.
   b) Prior to the release of Golden LEAF funds, Grantee must secure sufficient funds to complete the project.
   c) Prior to the release of funds, Grantee must provide a lease structure for the building for review and approval by Golden LEAF. The lease structure must require tenants that are not governmental entities or 501(c)(3) charitable nonprofits to pay a fair market rent for space improved or constructed with Golden LEAF funds.
   d) Prior to the release of funds, Grantee must provide evidence that the building is owned by 501(c)(3) or governmental entity. Rent paid for occupancy of space improved or constructed with Golden LEAF funds must be used to pay debt incurred in relation to the project or for charitable economic development purposes.

7. Standard conditions on the release of grant funds:
   a) Release of grant funds is contingent on Grantee attending a Golden LEAF grants management workshop or participating in satisfactory discussions with Golden LEAF staff to gain training in the management of Golden LEAF grants and reporting requirements.
   b) For non-governmental grantees, release of funds is contingent on Grantee providing the Foundation with a copy of the Grantee's policy regarding conflicts of interest with evidence that the policy has been adopted by the Grantee's board of directors.
   c) Release of funds is contingent on Grantee returning a fully executed original of this Grantee Acknowledgment and Agreement no later than three months after the Award Date, unless the Foundation agrees to extend the deadline for its submission.
   d) Release of funds is contingent on Grantee submitting a project management plan ("PMP") that Golden LEAF has approved. The PMP must be submitted within three months of the Award Date, unless the Foundation agrees to extend the deadline. Unless otherwise approved, the PMP must be submitted on the Golden LEAF PMP form. The Grantee agrees to work with Golden LEAF staff to identify key activities and milestones that are critical to successful implementation of the grant, outcomes that will be used to assess the success and effectiveness of the project, baseline data from which progress can be measured, individuals responsible for implementing identified tasks,

deadlines for each activity and milestone, and an overall project time line. Grantee must submit documentation to verify the baseline data with the PMP. The Grantee may be required to report results and accomplishments to Golden LEAF for a period beyond the grant term that is reasonably necessary to evaluate the outcomes of the grant.

e) Release of funds is contingent on the Grantee submitting a project budget that Golden LEAF has approved. The project budget must be submitted within three months of the Award Date unless the Foundation agrees to extend the deadline. Unless otherwise approved, the project budget must be submitted on the Golden LEAF Budget and Expense Tracking Form.

f) If the Grantee fails to comply with its obligations under this Agreement, no further grant funds will be released unless such noncompliance is resolved to the satisfaction of Golden LEAF.

8. Confirmation of Eligibility/Permissible use of Funds: The Grantee confirms: (1) that the Internal Revenue Service has determined that the Grantee is an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and that such determination has not been revoked, or (2) that the Grantee is a federal, state or local governmental unit. Grantee agrees to notify the Foundation promptly if the Grantee's tax-exempt status is revoked or modified in any way. The Grantee agrees that it will use the funds from this grant only for charitable, educational, or scientific purposes within the meaning of Section 501(c)(3) of the Code, and that it will not use the funds from this grant in any way that would result in or give rise to private inurement or impermissible private benefit. The Grantee agrees that no funds from this grant will be used to carry on propaganda or otherwise to attempt to influence legislation, to influence the outcome of any public election, or to carry on directly or indirectly any voter registration drive. The Grantee agrees that it will not use any of these grant funds to make any expenditure or grant that does not comply with the requirements of Section 4945(d)(3) or (4) of the Code or to undertake any activity for any purpose other than one specified in Section 170(c)(1) or Section 170(c)(2)(B) of the Code. If grant funds are used to pay for sales tax for which the Grantee receives a refund, Grantee will use the refund for expenses that are consistent with the purpose of the grant and permissible under this Agreement. Unless otherwise agreed by the Foundation in writing, no portion of the Grantee's rights or obligations under this Agreement may be transferred or assigned to any other entity.

9. Compliance with laws/liens: The Grantee is in material compliance with all federal, state, county, and local laws, regulations, and orders that are applicable to the Grantee, and the Grantee has timely filed with the proper governmental authorities all statements and reports required by the laws, regulations, and orders to which the Grantee is subject. There is no litigation, claim, action, suit, proceeding or governmental investigation pending against the Grantee, and there is no pending or (to the Grantee's knowledge) threatened litigation, claim, action, suit, proceeding or governmental investigation against the Grantee that could reasonably be expected to have a material adverse effect upon the Grantee's ability to carry out this grant in accordance with its terms. The Grantee has timely paid all judgments, claims, and federal, state, and local taxes payable by the Grantee the non-payment of which might result in a lien on any of the Grantee's assets or might otherwise adversely affect the Grantee's ability to carry out this grant in accordance with its terms.

10. Project and budget modification: The Grantee agrees to immediately notify the Foundation of anything that may materially affect the Grantee's ability to perform the project funded. **If the Grantee proposes to modify the budget, the objectives, or any other feature of the project funded, the Grantee shall not encumber or expend any funds from this grant for such purposes unless and until the Foundation has approved such proposed modifications in writing.** Moreover, no further payments shall be made to the Grantee in connection with the project funded unless and until the Foundation has approved such proposed modifications in writing.

11. Use of grant funds/rescission and termination of grants: The Grantee accepts and will retain full control of the disposition of funds awarded to the Grantee by the Foundation under this grant, and accepts and will retain full responsibility for compliance with the terms and conditions of the grant. Grant funds shall be utilized exclusively for the purposes set forth above. If the Grantee breaches any of the covenants or agreements contained in this Agreement, uses grant funds for purposes other than those set out above, or any of the

representations and warranties made by the Grantee are untrue as to a material fact, the Grantee agrees to repay to the Foundation the full amount of this grant. Any condition, purpose, term or provision in the Foundation's resolution approving funding or in this Agreement shall take precedence over any conflicting provision in the Grantee's application.

The Grantee acknowledges receipt of the following policy regarding termination and rescission of grants, which is intended to supplement but not replace or limit the rights and remedies of the Foundation set forth elsewhere in this Agreement. The Grantee acknowledges that the Foundation may, from time to time, amend its policy regarding termination and rescission of grants, and the Grantee acknowledges that the Grantee will be subject to the policy as amended.

Policy Regarding Rescission and Termination of Grants. Rescission of a grant revokes the grant award. When funds have been disbursed to a Grantee by the Foundation and a grant is rescinded, the Grantee may be liable for repayment to the Foundation for an amount up to the total of grant funds received by the Grantee. Termination of a grant ends the grant on a going-forward basis, and the Grantee is responsible for repayment to the Foundation of only that portion of the grant funds that has been disbursed but not expended by the Grantee in accordance with the terms of the grant.

A grant may be rescinded or terminated at any time in the discretion of the Foundation for the Grantee's failure to comply with its obligations under this Agreement or if any of the Grantee's representations and warranties in this Agreement are or become untrue as to a material fact. Reasons for rescission or termination of a grant include but are not limited to the following:

a. The Grantee has not signed and delivered to the Foundation the Grantee Acknowledgment and Agreement within three (3) months of the Award Date set out in Section 5, above.
b. The Grantee has failed to complete the project within the grant term established by this Agreement or any extensions thereof.
c. The Grantee's tax-exempt status has been modified or revoked.
d. The Grantee is unable, or has failed or refused, to comply with a material term or condition of the grant.
e. The Grantee has experienced a change in circumstances that is likely to have a material adverse effect upon the Grantee's ability to accomplish fully the purposes of the grant (e.g., loss of collateral funding, loss of key personnel, etc.).
f. The Grantee has failed or refused to submit a report, statement, accounting or return required by this Agreement or applicable law.
g. The Grantee has materially modified its budget for the project, and such material modification has not been approved by the Foundation.
h. The Grantee commits a material violation of the Internal Revenue Code, or uses grant funds for some purpose not permitted by the Internal Revenue Code or for some purpose not contemplated by the grant.
i. The Grantee breaches any of the covenants or agreements contained in this Grantee Acknowledgment and Agreement.
j. The Grantee requests that the grant be rescinded or terminated.

It is anticipated that a grant will be rescinded in situations in which no grant funds have been disbursed. Where grant funds have been disbursed, it is anticipated that a grant will be rescinded in the case of more serious violations (including, without limitation, use of grant funds for some purpose not contemplated by the grant or in violation of the Internal Revenue Code, or upon other affirmative misconduct of the Grantee), and that termination of a grant will occur in the case of the less serious instances of non-compliance or where the circumstance giving rise to termination is not the result of misconduct of the Grantee.

If the Board of Directors of the Foundation determines that a grant should be rescinded or terminated, the Foundation will notify the Grantee of that decision. The Foundation may choose to notify the Grantee that the

grant is subject to rescission or termination unless the Grantee remedies the noncompliance and establish deadlines or other limitations on the Grantee's opportunity to remedy the noncompliance. If the Foundation allows the Grantee the opportunity to correct the noncompliance, no further grant funds shall be advanced until the noncompliance is remedied.

12. Release of Funds: Unless otherwise agreed by the Foundation, up to twenty percent (20%) of funds may be released in advance after all conditions on the release of funds are satisfied. Funds may be released in additional advances of up to twenty percent (20%) of the grant amount upon receipt of evidence satisfactory to the Foundation that funds previously released have been properly expended and accounted for. Funds may instead be released on a reimbursement basis, in which case payments may be made in an amount equal to or up to eighty percent (80%) of the grant amount upon receipt of evidence satisfactory to the Foundation that funds have been properly expended and accounted for. Unless otherwise approved by the President of the Foundation, a sum equal to twenty percent (20%) of the total amount of the grant will be retained by the Foundation until the Grantee completes its obligations under this grant, including submission of a satisfactory final report on the project funded. This final twenty percent (20%) retained by the Foundation shall be paid to the Grantee on a reimbursement basis. If the grant is conditional or contingent, all conditions and contingencies must be met before any payment will be made. Sales and use taxes for which the Grantee will be reimbursed from the NC Department of Revenue are not eligible Golden LEAF expenses. Each request for payment shall be in writing and shall certify that the Grantee has performed in accordance with the terms and provisions of its Grantee Acknowledgment and Agreement, and that such Grantee is entitled under the terms of such Agreement to receive the amount so requested. Each request should be made to Mr. Dan Gerlach, President, The Golden LEAF Foundation, 301 N. Winstead Avenue, Rocky Mount, NC 27804. Payment should not be requested until the Grantee has need for actual expenditures of the funds. The Grantee should request payment at least thirty (30) days prior to its desired payment date.

13. Reporting: The Grantee agrees to submit a Progress Report to the Foundation biannually, to be received by the Foundation six months from the date of award and every six months thereafter. The Grantee agrees to submit a final Progress Report for receipt by the Foundation within sixty (60) days after the completion of all obligations for the project funded or the end date, whichever comes first. Report forms may be found on the Foundation's website, www.goldenleaf.org. The Grantee will furnish additional or further reports if so requested by the Foundation on forms prescribed by the Foundation.

14. Records: The Grantee agrees to maintain full, accurate and verifiable financial records, supporting documents, and all other pertinent data for the project funded in such a manner so as to identify and document clearly the activities and outcomes of the project funded and the expenditure of Foundation funds. Financial records regarding the Foundation's grant shall be kept separate from accounts for other awards, monetary contributions, or other revenue sources for the project funded. The Grantee agrees to retain all financial and programmatic records, supporting documents, and all other pertinent records related to the project funded for a period of five (5) years from the end of the grant funding period. In the event such records are audited, all project records shall be retained beyond such five-year period until all audit findings have been resolved. The Grantee shall provide to the Foundation copies of all financial and other records requested by the Foundation and shall make available to the Foundation, or the Foundation's designated representative, all of the Grantee's records that relate to the project funded, and shall allow the Foundation or the Foundation's representative to audit, examine and copy any data, documents, proceedings, records and notes of activity relating to the project. Access to these records shall be allowed upon request at any time during normal business hours and as often as the Foundation or its representative may deem necessary. The Grantee may be subject to audit by the State Auditor.

15. This Section 15 is applicable if the following blank is marked: _____ Staff Initials & date:_____

_____

Intellectual property/New Developments: In consideration of its receipt of funds granted by the Foundation, the Grantee agrees that during the course of the project funded by the grant, the Grantee, and any recipient of grant

funds, will promptly disclose to the Foundation any improvements, inventions, developments, discoveries, innovations, systems, techniques, ideas, processes, programs, and other things, whether patentable or unpatentable, that result from any work performed by or for the Grantee in connection with the project funded, or by individuals whose work is funded by the grant (the "New Developments"). If the Grantee provides to the Foundation a copy of any Invention Disclosure Reports it receives from Grantee employees that report making inventions under this Agreement, then the Grantee will be deemed to have satisfied the disclosure requirement in the preceding sentence.

The Grantee agrees that it, and any recipient of grant funds, shall take all reasonably appropriate actions to assure that the New Developments shall be and remain the sole and exclusive property of the Grantee. In the event that the interests of the public would be served by commercialization of the New Developments, the Grantee agrees to use its best reasonable efforts to pursue the commercialization of any such New Developments in a manner that will serve the interests of the public, including but not limited to the transfer, assignment or licensing of such New Developments; provided, however, that the Grantee, and any recipient of grant funds, shall not transfer, assign or license such New Developments in part or in whole without first having obtained the written consent of the Foundation.

Any revenue generated as a result of transferring, assigning, or licensing New Developments will be managed by the Grantee in accordance with its published patent, copyright and technology transfer procedures, if any, and in the absence of such procedures such revenue will be managed by the Grantee in accordance with procedures approved by the Foundation. Such procedures typically will prioritize the distribution of revenues to insure that the Grantee first honors its obligation to its inventors and then to cover its own out-of-pocket expenses as necessary to protect its intellectual property.

The Grantee and Foundation further agree that should there be any revenue generated greater than that necessary to meet the obligations of the preceding paragraph ("Net Revenue"), the Net Revenue shall be managed by the Grantee as follows:

a) 15% of the Net Revenue will be retained by the Grantee as a fee for the management and distribution of funds as required under this Agreement.
b) 30% of the remaining Net Revenue will be paid to the Foundation.
c) 70% of the remaining Net Revenue will be retained by the Grantee and used in accordance with the procedures referenced in the preceding paragraph above.

The Grantee's obligations pursuant to this Section will continue beyond the expiration of the funding period.

16. Independent entity: The Grantee acknowledges and agrees that the Grantee is an entity independent from the Foundation, is not an agent of the Foundation, and is not authorized to bind the Foundation to any agreement of payment for goods or services. The Grantee is responsible for payment of all its expenses, including rent, office expenses and all forms of compensation to employees. It shall provide workers compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment compensation, social security, income taxes and any other charges, taxes or payroll deductions required by law in connection with its operations, for itself and its employees. All expenses incurred by the Grantee are the sole responsibility of the Grantee, and the Foundation shall not be liable for the payment of any obligations incurred in the performance of the project funded.

17. Non-discrimination: The Grantee shall not discriminate by reason of age, race, ethnicity, religion, color, sex, national origin, or handicap related to the activities of a project funded by the Foundation.

18. Publicity: All publicity and printed materials regarding projects or activities supported in whole or in part by this grant should contain the following language: **"This project received support from The Golden LEAF Foundation."** The Golden LEAF logo is to be displayed in all of the Grantee's publicity and printed materials

EXHIBIT E

relating to this grant. Please contact Jenny Tinklepaugh (jtinklepaugh@goldenleaf.org) for digital versions of the logo.

19. Authority to execute/Necessary Approvals Obtained: The individual signing below certifies his or her authority to execute this Agreement on behalf of the Grantee and that the Grantee has received any third party approval that may be required prior to entering this Agreement. By executing this Agreement, the Grantee, to induce the Foundation to make this grant, makes each of the representations set forth hereinabove and certifies that each of such representations is true, accurate and complete as of the date hereof.

IN WITNESS WHEREOF, the Grantee has executed this Agreement as of the date below:

Name of Grantee Organization (print): Transylvania County

Signature: Mike Hawkins

Name of Person Signing (print): Mike Hawkins

Title of Person Signing (print): Chair, Board of Commissioners

Date: 8/25/16

EXHIBIT F

PROMISSORY NOTE TO THE COUNTY

EXHIBIT F

PROMISSORY NOTE

Brevard, North Carolina

$4,900,000 Date: **November 14, 2017**

FOR VALUE RECEIVED the undersigned promises to pay to **Transylvania County** or order, the principal sum of **FOUR MILLION SEVEN HUNDRED THOUSAND DOLLARS ($4,700,000)**, with no interest payable in lawful money of the United States of America, at the office of HOLDER or at such place as the legal holder hereof may designate in writing. The principal shall be either paid or forgiven as follows:

1. During final site preparation and construction of a building on the Property, draws shall be made from the principal balance to pay for those costs. The County shall be provided with an opportunity to review and approve contracts and plans in advance of signing by Maker, and the County shall have a right inspect and approve work before draw payments are made. The final principal balance upon completion of the building may be less than $4,700,000.

2. Upon completion of the building, payments toward principal may be made in part through the funding of economic development grants, in part from leasing space in the building, and in part from a sale of all or portions of the building. The terms of repayment are set forth in detail in the Development Agreement signed on this date.

If not sooner paid, the entire remaining indebtedness shall be due and payable on November 14, 2037.

If payable in installments, each such installment shall, unless otherwise provided, be applied first to payment of interest then accrued and due on the unpaid principal balance, with the remainder applied to the unpaid principal.

Unless otherwise provided, this Note may be prepaid in full or in part at any time without penalty or premium. Partial prepayments shall be applied to installments due in reverse order of their maturity.

In the event of (a) default in payment of any installment of principal or interest hereof as the same becomes due and such default is not cured within (10) days from the due date, or (b) default under the terms of any instrument securing this Note, and such default is not cured within fifteen (15) days after written notice to maker, then in either such event the holder may without further notice, declare the remainder of the principal sum, together with all interest accrued thereon and, the prepayment premium, if any, at once due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any other time. The unpaid principal of this Note and any part thereof, accrued interest and all other sums due under this Note and the Deed of Trust, if any, shall bear interest at the rate of **six percent (6%)** per annum after default until paid.

The maker waives protest, presentment, notice of dishonor, and notice of acceleration of maturity and agree to continue to remain bound for the payment of principal, interest and all other sums due under this Note and the Deed of Trust notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Note or by way of any extension or extensions of time for the payment of principal and interest.

Upon default the holder of this Note may employ an attorney to enforce the holder's rights and remedies and the maker of this Note hereby agrees to pay to the holder reasonable attorneys fees not exceeding a sum equal to fifteen percent (15%) of the outstanding balance owing on said Note, plus all other reasonable expenses incurred by the holder in exercising any of the holder's rights and remedies upon default. The rights and remedies of the holder as provided in this Note and any instrument securing this Note shall be cumulative and may be pursued singly, successively, or together against the property described in the Deed of Trust or any other funds, property or security held by the holder for payment or security, in the sole discretion of the holder. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

This Note is to be governed and construed in accordance with the laws of the State of North Carolina.

This Note is given AS A CONSTRUCTION/PERMANENT NOTE and is secured by a DEED OF TRUST which is a FIRST lien upon the property therein described.

Transylvania Partnership, Inc.
Doing business as the Transylvania Economic Alliance

President

EXHIBIT G

INTERLOCAL AGREEMENT

STATE OF NORTH CAROLINA TRANSYLVANIA COUNTY

INTERLOCAL AGREEMENT

Now come Transylvania County (the "County") and the City of Brevard (the "City), and agree and say as follows:

Whereas, the County and the City are entering into an Economic Development Agreement with Transylvania Partnership, Inc., d/b/a the Transylvania Economic Alliance (the "Alliance") for the development of a certain piece of property located on Ecusta Road within the City of Brevard, to be developed into a center for small industry;

Whereas, the City is contributing the land to the venture, which is valued for purposes of this agreement at $1,000,000.00, and the County is contributing approximately $4,700,000.00 (which includes a direct County contribution of approximately $3,700,000.00 and a grants obtained through the Golden LEAF Foundation, for a total of $1,000,000.00 toward development;

Whereas, the Alliance is signing two separate promissory notes, one to the City and one to the County, which notes will be secured by a single deed of trust describing the property;

Whereas, copies of the Deed from the City, the two promissory notes and the single Deed of Trust are attached hereto as a part of this Agreement;

Whereas, the County and the City now desire to set down and memorialize their agreement as to each party's rights and responsibilities in the event of default by the Alliance on either note or foreclosure against the Alliance on the deed of trust.

Now, therefore, it is hereby agreed as follows:

1. **Consideration.** Each party hereby acknowledges receipt of a good and valuable consideration supporting the terms of this Agreement, which consideration includes, but is not limited to, a mutual reliance on such terms.

2. **Parties' Respective Interests.** The parties' separate interests in the subject property are equal to the value of their respective contributions to the project, as projected

above, less any amount repaid, released by deed of release or deemed forgiven or satisfied by the terms of their individual promissory notes. The County's interest shall not be reduced in the event of a default by the Alliance which may require the County to repay or partially repay grant monies previously received and spent on improvements to the subject property.

3. **Default by Alliance.** In the event of default on either promissory note, the respective owner of that note shall be entitled to declare the Alliance to be in default.

4. **Right to Complete the Project.** In such event, prior to foreclosure, the parties shall have the right to complete the construction consistent with the construction plans as they may exist at that time. However, the County shall have the first right to do so, and only if it chooses not to do so, shall the City then have the right to do so. Prior to foreclosure, the right to complete the construction is conditioned upon the following terms and conditions:

   (a) After default by the Alliance is declared by either party, such default must be confirmed by written acknowledgment thereof by the Alliance, by order of the Court or by such other means as may be acceptable to the party seeking to complete construction.

   (b) The Alliance must return the subject property to the parties by Deed in Lieu of Foreclosure, free of all liens and encumbrances, or make such other arrangements as are acceptable to the party seeking to complete construction.

   (c) Within sixty (60) days following the completion of the precedent conditions stated in subsections (a) and (b) above, the party seeking to complete construction shall provide to the other party a written Notice that it will complete construction in a timely manner, as reasonably determined in writing by a Construction Manager designated by the party seeking to complete construction, which shall be the (County or City) Manager or his/her designee. If it does not issue such written Notice within the sixty (60) day deadline, then it thereby waives the right to complete construction.

   (d) As stated above, the County shall have the first right to complete construction, and only if it does not choose to provide Notice of its intent to complete construction and thereby waives such right pursuant to subsection (c) above, shall the City have the right to complete construction. In that event, the same

precedent conditions stated in subparagraphs (a) and (b) shall apply, and the City shall comply with the provisions of subsection (c) within the next sixty days following the City's determination that the precedent conditions stated in subsections (a) and (b) have been completed.

5. **Foreclosure.** Notwithstanding the provisions of Section 4, upon default by the Alliance, the parties may agree to proceed to foreclosure at any time. At foreclosure, either party may bid but is not required to do so. Upon completion of foreclosure, the net proceeds (after payment of attorney's fees, foreclosure related expenses and other costs related to default and foreclosure) will be divided by the parties based upon the fractional ownership determined according to the provisions contained in Section 2 hereof. The monies received from foreclosure will be dedicated by the respective parties as follows:

   (a) Fifty percent (50%) of the County's funds from foreclosure shall go into the County's General Fund, or may be designated by the County Commissioners for any purpose.

   (b) Fifty percent (50%) of the County's funds from foreclosure shall go into those two funds (25% of the County's funds into each fund) enumerated in Section 4.01(c)(2) and Section 4.01(c)(3) of the Economic Development Agreement of even date herewith, and the third fund mentioned in Section 4.01(c)(4), being the fund for the Alliance, will not be funded.

   (c) All of the City's funds shall go into a fund dedicated to economic development.

6. **Joint Statement of Intent.** It is the parties' Joint Statement of Intent to then use such funds as are received through a foreclosure, to continue to work together to encourage job development and other economic development within the City of Brevard and Transylvania County.

7. **Interpretation of This Agreement.** Nothing in this Agreement will be construed to change the terms of the respective parties' promissory notes or the Deed of Trust, and any conflict between this Agreement and any of those documents will be resolved in light of the absolute control of those documents. This Agreement shall be construed pursuant to the laws of the State of North Carolina.

8. **Binding Agreement.** This Agreement hereby binds the parties, their successors and assigns, forever.

9. **Authorization to Execute This Agreement.** By authorization made and recorded in the Minutes of the Special Joint Meeting of the Transylvania County Commissioners, the Brevard City Council and the Transylvania Partnership, Inc. (the "Alliance") held on November 14, 2017, the County Commissioners and City Council have authorized their respective Managers to execute this Agreement on their behalf.

Whereupon, this Agreement is hereby executed in duplicate originals, effective November, 14, 2017, by the undersigned.

TRANSYLVANIA COUNTY COMMISSIONERS

_____ By: _____

Date Signed Jaime Laughter, County Manager

CITY OF BREVARD

_____ By: _____

Date Signed Jim Fatland, City Manager

c:\city\contracts\ecusta road economic development interlocal agreement

EXHIBIT D

Minutes – Brevard City Council Special Called Meeting – November 14, 2017

Transylvania County Agenda Memo

Agenda Item:

Meeting Date: 11/14/17

From: Josh Hallingse, Executive Director, Transylvania Economic Alliance

Date: October 13, 2017

Subject: Golden Leaf Foundation: Light Industrial Building

Department: Transylvania Economic Alliance

Public Hearing :(type Yes or No) No

Contact Information: Josh Hallingse, 828-393-4130

Attachment: Signed bid tab, building design rendering and proposed budget and capital projects ordinance, development agreement, various legal documents

Purpose: To approve legal agreements pertaining to the Ecusta Road Light Industrial Building

Background: Transylvania County in collaboration with the City of Brevard, Transylvania Economic Alliance and Golden Leaf Foundation have pursued design and construction of a 60,750 square foot, multi-tenant building to be located on a +/- 7 acre site on Ecusta Road. The property has been assembled, rezoned and the necessary site remediation and due diligence completed. This process has included demolition of an unsafe structure previously located on the road frontage, closure of a well system on site, removal of decommissioned electrical utility poles and underground storage tanks. Appropriate regulatory agencies have been engaged throughout the process and the project site has been issued the necessary approvals.

To initiate the construction phase of this project, staff from Transylvania County and the Transylvania Economic Alliance issued an advertisement seeking bids for the construction of the designed industrial building in the Transylvania Times on August 31, 2017. Bids were received on September 21, 2017 with five (5) companies bidding on the project. The

bids ranged from a low bid of $4,433,000 to a high bid of $4,773,000. The lowest responsible bidder per the bid documents was Harper Corporation at $4,433,000.

The budget attachment outlines a total project budget of $4,918,300. Significant components in the project budget include soft and hard project construction costs and a 10% construction contingency line item. A 10% contingency line item is requested for this project based on recommendations from architectural and civil engineering professionals. The recommendation is based on knowledge gathered through subsurface reports for the project site which indicate varied soil conditions. Initial site excavation and demolition may reveal pockets of unsuitable soils which may need to be addressed as well as storm water measures in the area. Other project specific expenditures included in the overall project budget include funds for soil and material testing services, and fees associated with securing NC Department of Environmental Quality and City of Brevard utility tap fees and permits. Collectively these required project expenses represent $42,000.

The attached legal agreements set up a Deed of Trust from both the City and County to the Alliance along with two separate promissory notes. The Alliance will manage the building once complete and use lease payments to repay the promissory notes. The County and Alliance have a performance agreement with terms and the County and City have an interlocal agreement with terms as well to govern the project and operations moving forward.

Once legal agreements are adopted between the City, County and Alliance at the joint meeting on November 14, a public hearing will be scheduled for November 27 to:

1. Award the bid for construction to Harper Corporation for $4,433,000.
2. Approve the project budget of $4,918,300 for the entire project including a 10% contingency budget.
3. Authorize the use of funds as follows:
    a. Approve a budget amendment transferring $3,000,000 from the General Fund's assigned fund balance, $718,300 from unassigned fund balance, and $1,000,000 in Golden Leaf Foundation grant funds from General Fund revenues to a capital project fund established through a Project Ordinance for the Golden Leaf Foundation: Light Industrial Facility. (This assumes the $200,000 from the NC Department of Commerce will be paid directly to TEA.)

Financial Impact: The total project cost is $4,918,300 including a 10% contingency. In an effort to offset a portion of the local funding attributed to this project, grant funds have been secured. Funds include a $1,000,000 Golden Leaf Foundation grant and a $200,000 NC Department of Commerce grant which will be issued to the Transylvania Economic Alliance, per State regulatory guidelines. All grant funds will be directly applied to the

construction costs of this project. The net project cost attributed to Transylvania County, when factoring outside grant funds, is $3,718,300.

Strategic Plan Goal & Strategy: 1B

Recommendation(s):

a. Adopt the legal agreements as presented including the performance agreement, interlocal agreement, deed of trust and promissory note on behalf of the County.

b. Authorize the County Manager to oversee the capital project for the Golden Leaf Foundation: Light Industrial Facility and approve all change orders as long as the total costs stays with the approved overall budget costs. All change orders will be reported to the Board of Commissioners on a monthly basis.