REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE:

April 4, 2005

SUBJECT:

School Facilities

ATTACHMENTS:

Yes

SUMMARY OF REQUEST:

At the Joint School Facilities Committee meeting of March 23, 2005, the School Board presented its updated school facility plan. This new plan calls for the construction of a new elementary school this fall with the addition and renovations of Mills River and Hillandale to follow. A copy of the updated plans is attached.

They have taken an option on a piece of property on Sugarloaf Road for the new elementary school. This land is approximately 43.45 acres at \$16,000 per acre. Under North Carolina law, the Board of Commissioners must approve land purchases by the school system as to price.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUIRED:

I recommend that the Board take the following actions:

- 1. Approve the attached construction time line as a guide for our capital planning purposes.
- 2. Approve the purchase of the property at the suggested price.
- 3. Authorize staff to develop a request for proposal to receive offers from financial institutions to finance this property. (This financing would be rolled into the construction loan this fall.)

Time Line of Construction

Spring 2005 Dana Sept- 04 thru May-05 Fall 2005 New School April-05 thru Oct05		Construction Ends
1 1 1	Jun-05	Jun-08
1 1		
1 1		
Spring 2006	Nov-05	Jun-07
Spring 2006		
Mills River Sept-05 thru May-06	90-unf	60-usp

Jun-08

Nov-06

April-06 thru Oct-06

Fall 2006 Hillandale

Board of Public Education

Ervin W. Bazzle, Chairperson
Melissa L. Maurer, Vice Chairperson
Kenneth R. Butcher
Betsy J. Copolillo
Mary Louise Corn
Jane S. Orwoll
Deborah D. Reemes



Dr. Stephen L. Page Superintendent

414 Fourth Avenue West Hendersonville, NC 28739-4261 Phone (828) 697-4733 FAX (828) 697-5541 or 697-4738 www.henderson.k12.nc ns

March 9, 2005

CONFIDENTIAL

Mr. David Nicholson Henderson County Manager 100 North King Street Hendersonville, NC 28792

Re: New Elementary School

Dear David:

You will find enclosed copies of the Option to Purchase documentation relative to the above-referenced matter that we briefly discussed by phone earlier today. Thank you for your assistance in bringing this to the attention of the Henderson County Board of Commissioners for consideration as soon as possible.

Sincerely,

Stephen L. Page, Ed. D.

Superintendent

SLP:bcb

Enclosures---Option to Purchase

Memorandum of Option to Purchase

Contract for Sale and Purchase of Real Estate

c: Mr. Ervin W. Bazzle, Chairperson, HCBPE Mr. Chris Campbell, Legal Counsel Prepared by and return after recording to, Christopher Z. Campbell, Attorney at Law, Roberts & Stevens, P.A., Post Office Box 7647, Asheville, NC 28802.

STATE OF NORTH CAROLINA

OPTION TO PURCHASE

COUNTY OF HENDERSON

This agreement is made and entered into as of the _____ day of February, 2005 by and between JERRY A. HUMPHREY and wife, MARY HUMPHREY (hereinafter called "Seller") and the HENDERSON COUNTY BOARD OF PUBLIC EDUCATION (hereinafter called "Buyer").

WITNESSETH

THAT the Seller, for and in consideration of the sum of Five Thousand (\$5,000.00) Dollars paid by the Buyer directly to the Seller, the receipt of which is hereby acknowledged, does hereby give and grant unto the Buyer, its successors and assigns, the exclusive right and option to purchase all of that certain parcel of land, together with all improvements located thereon and all privileges and appurtenances thereto belonging, and together with the personal property, if any located in the County of Henderson, State of North Carolina, described in Exhibit A attached hereto and incorporated herein by reference. The above described real and personal property are hereinafter collectively called "the property".

The terms and conditions of this Option are as follows:

1. TERM. This Option shall be for a period of 90 days and shall exist and continue until 5:00 p.m. on the Situ day of May, 2005.

2. EXERCISE. At any time during the Option period, the Buyer may exercise this Option by hand delivery, or deposit in a United States Postal Service facility of written notice by certified or registered mail, return receipt requested, to Seller at the following address:

Jerry A. Humphrey 1194 Bear Creek Road Leicester, NC 28748

- 3. CONTRACT UPON EXERCISE. Upon exercise, the terms of purchase and sale shall be as set forth in Exhibit B attached hereto and incorporated herein by reference.
- 4. APPLICATION OF OPTION MONEY. The consideration paid for this Option, above set forth, shall be applied on the Purchase Price at closing, if this Option is exercised. If this Option is not exercised, the Option money will be retained by the Seller.
- 5. ACCESS AND TESTS. The Seller hereby grants to the Buyer and its agents, employees, contractors, and assigns, a license during the period of this Option (and if this Option is exercised, during the period between exercise of this Option and closing of the sale of the property) to enter upon the property to inspect the real property and improvements, cause boundary and topographical surveys to be made, conduct surface and subsurface tests and inspections, conduct environmental assessments, conduct studies and tests regarding water and sewer

systems, and conduct such other investigations as the Buyer may require. The Seller agrees to provide the Buyer with such information and documentation as he may have and as reasonably requested by Buyer with regard to the Property and, in particular (but without limitation) the use, storage and disposal of toxic or hazardous substances, wastes, materials, pollutants, or contaminants on the Property.

- 6. COOPERATION AND ZONING, PERMITS, AND LAND USE REGULATIONS. If requested by the Buyer, the Seller will cooperate with the Buyer in its efforts to obtain any applicable or necessary permits, variances, conditional use permits, utility availability assurances, to conduct investigations, inspections, and tests, and to comply with any land use regulations, including, but not limited to, any change of applicable zoning classification, including the execution of applications and appearances in person or through representatives at all hearings related thereto, provided, however, that all expenses in regard to such matters shall be paid by the Buyer.
- 7. The Seller and the Buyer shall execute a Memorandum of this Option simultaneously with the execution of this Option, which Memorandum will be recorded in the office of the Register of Deeds of Henderson County, North Carolina.
- 8. This Option and the Contract upon exercise shall not be assigned by the Seller or the Buyer.
- 9. This Option and the Contract upon exercise shall be binding upon the Seller and the Buyer and their respective successors and assigns.

- 10. This Option and the Contract upon exercise shall be performed and construed under the laws of the State of North Carolina.
- 11. This Option has been executed in five (5) counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Seller and the Buyer have executed and sealed this Option, or, if corporate, have caused this Option to be executed by their duly authorized officers and their corporate seals to be hereunto affixed as of the day and year first above written.

SEI	JL	$\mathbf{E}\mathbf{R}$	S

JERRY A. HYMPHREY (SEAL)

MARY HUMPHREY (SEAL)

BUYER

HENDERSON COUNTY BOARD OF PUBLIC EDUCATION

By: Cudildy G (SEAL)

ATTEST:

SUPERINTENDENT AND EX OFFICIO SECRETARY

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that Stephen L. Page., personally came before me this day and acknowledged that he is the Secretary of the Henderson County Board of Public Education, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal, and attested by her as its Secretary.
WITNESS my hand and official seal, this 18th day of Johnson, 2005.
Notary Public
My Commission Expires: 23, 2007
STATE OF NORTH CAROLINA
COUNTY OF Henderson
I, a Notary Public of said State and County, do hereby certify that Jerry A. Humphrey and wife Mary Humphrey, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.
WITNESS my hand and Notarial Seal, this _ q th day of _ march, 2005.
Genrifum. Com NOTARY PUBLIC
My Commission Expires: September 4, 2006

EXHIBIT A

Being 43.45 acres, more or less, off Sugarloaf Road in Henderson County, North Carolina as described in a deed recorded in Deed Book 988 at Page 725, Henderson County Register of Deeds. The same parcel being identified on the Henderson County tax records as Pin No. 00958955251355.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

CONTRACT FOR SALE AND PURCHASE OF REAL ESTATE

THIS AGREEMENT is made and entered into as of the _____day of _____, 2005 by and between JERRY A. HUMPHREY and wife, MARY HUMPHREY (hereinafter called "Seller") and the HENDERSON COUNTY BOARD OF PUBLIC EDUCATION (hereinafter called "Buyer").

WITNESSETH:

- 1. <u>Sale of Subject Property</u>. The Seller agrees to sell and convey and the Buyer agrees to purchase and take title to the property now owned by Seller which is the subject of this Contract, upon the following terms and conditions, which property is more particularly described as follows and is hereinafter collectively called "The Property":
 - (a) That certain tract or parcel of land located in Henderson County, North Carolina, as described in Exhibit A attached hereto and incorporated herein by reference (hereinafter called the "Land");
 - (b) All rights, privileges, and easements appurtenant to the Land, including all water, mineral and subsurface rights, air space above the surface of the land, rights of way, easements, roadways, roadbeds and reversions or other appurtenances belonging to and used in connection with the beneficial use of the Land.

2. <u>Purchase Price</u>. The total purchase price to be paid by Buyer for the Property shall be #/6,000 per acre subject to survey Mig English

- (a) An earnest money deposit of \$5,000.00 has been paid directly to the seller.
- (b) All of the purchase price shall be paid in cash, official bank check, or wire transfer of funds to Seller's at the time of the closing of the sale. Seller shall notify Buyer's attorney of the payment method selected by Seller. Earnest money of Five Thousand and No/100 Dollars (\$5,000.00) shall be applied to the purchase price paid at the time of closing.
- 3. <u>Closing</u>. The Closing of the sale and purchase of the Property (the "Closing") shall be held in the offices of Roberts & Stevens, P.A., Attorneys-at-Law, BB&T Building, Asheville, North Carolina, on or before <u>July</u>, 2005, at 5:00 p.m.
- 4. <u>Title to the Property</u>. Title to the Property must be delivered by Seller to Buyer at closing by general warranty deed which shall convey to Buyer a good, indefeasible, fee

simple, marketable title to the property. Title to the Property shall be insurable both as to fee and marketability at regular rates without exception except as to those matters specifically enumerated in this contract.

The Property shall be conveyed by Seller to Buyer free and clear of all liens, encumbrances, claims, rights-of-way, easements, leases, subleases, assignments of rents, collateral assignments, purchase options, contracts to convey, security interests, mortgages, deeds of trust, restrictions and restrictive covenants except only:

- (I) public utility easements, of record in customary form to serve the Property;
- (ii) right of way of Sugarloaf Road, also known as State Road 1734;
- (iii) ad valorem taxes for the year of closing.

If in the option of Buyer's counsel, Seller's title fails to meet the requirements of this section, then any such deficiency shall be specified in particularity in writing to Seller, and Seller shall have until Closing, or at Buyer's option a reasonable time thereafter, to cure such deficiency at Seller's sole cost and expense.

At the Closing, Seller shall deliver to Buyer, or its successor or assigns, an affidavit in form satisfactory to the title insurance company issuing title insurance to the Buyer, that there are no unsatisfied liens or encumbrances and no unpaid laborers, materialmen, contractors, subcontractors, or suppliers of services who could claim a lien on the Land, its appurtenances, and the Improvements.

- 5. <u>Closing Costs.</u> Buyer shall pay for the revenue stamps required to be affixed to the deed and all recording fees and costs associated with the cancellation and removal of all security interests, Uniform Commercial Code Financing Statements, mortgages, deeds of trust, and other liens and encumbrances. Seller shall pay only for all settlement adjustments Seller is required to pay under the terms of Section 6 hereof. Buyer shall pay for any examination of title which it may require, the premium for any title insurance which it may obtain, the recording fee for the deed, the expense of any survey which it may require, settlement adjustments it is required to pay under the terms of Section 6 hereof, and shall cause the deed to be prepared at no expense to Seller.
- 6. <u>Settlement Adjustments</u>. The following settlement adjustments shall be made at closing:
 - (a) Rentals. Seller shall be entitled to all rentals paid, if any, with respect to the period through and including the date of Closing, and buyer shall be entitled to all rentals paid, if any, to or accruing after the date of Closing.
 - (b) <u>Taxes</u>. All ad valorem taxes (both real and personal) on the Property due for the year 2005 regardless of the fiscal year of the taxing authorities, shall be prorated on a calendar year basis. Seller shall pay that fraction of such taxes the

denominator of which shall be 365 and the numerator of which shall be the number of days in the current calendar year which shall have passed as of the date upon which the Closing shall occur and Buyer shall pay the remaining portion of such taxes. Such taxes shall be estimated for the year 2005 using the valuation for the Property and the tax rate effective for the fiscal year beginning July 1, 2004, and shall be adjusted in accordance with subparagraph (d) below when year of closing rates and valuations are finally determined. Notwithstanding the foregoing, Seller shall pay all ad valorem taxes estimated to become due for the year of closing on personal property not conveyed to the Buyer and all ad valorem taxes for years prior to 2005 which may become due as a result of the sale of the Property to Buyer, such as deferred taxes based on use.

- (c) <u>Post-Closing Adjustments</u>. To the extent that the amounts of any of the above items shall not be available for exact proration as of the Closing, Seller and Buyer shall meet as soon after the Closing as possible and compute and settle the required closing adjustments between the parties as of the date of Closing.
- 7. <u>Maintenance of the Property Prior to Closing</u>. Between the date of this Contract and the date Seller gives Buyer possession of the Property, Seller shall continue to maintain the Property in the same condition, quantity, and repair it is in as of the date of this Contract, ordinary wear and tear alone excepted, and shall not cause or permit any waste upon the Property. Seller further agrees to not take any action, whatsoever, which would adversely affect the value of or title to the Property.

With prior notice given to Seller prior to entry, it is understood by the parties that the Buyer's agents or representatives shall have access to the property for the purpose of conducting surveys, appraisals, and other examinations necessary for its purposes. The Buyer shall maintain all gates and closures on the Property as they find them and shall be responsible for any damage to the Property.

- 8. Evidences of Certain Matters. Seller shall furnish Buyer with evidence (in the form of affidavits and indemnity agreements or otherwise) as reasonably requested by Buyer's counsel of Seller's non-alien status, authority to sell the Property to Buyer, the absence of liens or laborers, materialmen, contractors, subcontractors or mechanics, Seller's address and tax identification number.
- 9. <u>Assignment.</u> This Contract may be assigned by the Buyer to the County of Henderson to enable purchase for school use only, if necessary. Otherwise, this Contract shall not be assigned by Seller or Buyer without the prior written consent of the other party.
- 10. Representations and Warranties of Seller.
 - (a) Seller (to the best of Seller's knowledge and belief), separately represents and warrants to Buyer that Seller has not entered into any agreement, oral or written,

not referred to herein, with reference to the Property and neither the Seller nor the Property are subject to any claims, demand, suit, unfiled lien, proceeding or litigation of any kind, pending or outstanding, or to the knowledge of the Seller, threatened or likely to be made or instituted which would in any way be binding upon Buyer or its successors or assigns or affect or limit Buyer or its successors or assigns in the full use and enjoyment of the Property or which would limit or restrict in any way the Seller's right or ability to enter into this Contract and consummate the sale and purchase contemplated hereby.

- (b) The Seller (to the best of Seller's knowledge and belief), warrants and represents to Buyer that there are no taxes, charges, or assessments of any nature or description arising out of the Seller's interest in the Property, or out of the conduct of the Seller's business or out of the operation of the Property which would constitute a lien against the Property that will be unpaid at the date of Closing.
- (c) The Seller represents and warrants to the Buyer that no real estate brokers, agents, salesmen, or finders are or shall be entitled to a commission, fee, or other compensation as a result of the sale of the Property.
- (d) The foregoing representations and warranties shall expressly survive the Closing of the sale of the Property.
- 11. <u>Conditions</u>. The obligation of Buyer to purchase the Property from Seller is subject to the satisfaction, as of the Closing, of each of the following conditions (Any of which may be waived in writing in whole or in part by Buyer at or prior to the closing) and in the event any one or more of such conditions is not satisfied or waived, the Buyer shall have the right to terminate the contract and neither the Seller nor the Buyer shall have any further liability or responsibility hereunder:
 - (a) All of the representations and warranties of the Seller set forth in this agreement shall be true at and as of the Closing in all respects;
 - (b) The Seller shall have delivered, performed, observed and complied with all of the items, documents, covenants, agreements, and conditions required by this contract to be delivered, performed, observed, or complied with by the Seller;
 - (c) Surface and subsurface tests and inspections and seismic and noise tests paid for by Buyer shall reveal conditions of the property suitable for the construction and renovation of a school by the Henderson County Board of Public Education including parking lots, access roads, play grounds, playing fields, water and sewer systems and facilities;

- (d) Environmental assessments paid for by Buyer shall reveal the absence of underground storage tanks, asbestos containing materials and toxic or hazardous substances, waste, materials, pollutants or other contaminants under the surface of, and above the surface of and in the soil, rock and ground water of the Property and all improvements and structures thereon; and, as stated above, if any of the above conditions are found, and unless the Buyer chooses to waive, the remedy of the Buyer shall be to terminate the contract and the Seller has no obligation to repair or clean-up the property;
- (e) Approval for construction and operation of a septic tank system of sufficient size for a new school building or renovations and/or additions to an existing school building shall exist at the time of closing or shall be committed by written agreement reasonably satisfactory to Buyer;
- (f) The Buyer's intended use of the property which is to construct a school building including parking lots, access roads, play grounds, and playing fields, shall be permitted by any applicable zoning or land use ordinance, rule, or regulation;
- (g) Electric, natural gas, telephone and similar public utility services at the property shall exist at the time of closing or shall be committed by written agreement reasonably satisfactory to Buyer;
- (h) The Henderson County Board of Commissioners shall have approved the purchase price.

12. Defaults and Remedies.

- (a) If Seller defaults or fails to perform any of the conditions or obligations of Seller under this Contract, Buyer shall, in addition to any other remedies available to it, be entitled to a refund of the earnest money paid to Seller;
- (b) If Buyer defaults or fails to perform any of the conditions or obligations of Buyer under this Contract, Seller shall, in addition to any other remedies available to Seller, be entitled to retain the earnest money paid.

13. Miscellaneous Provisions.

(a) <u>Notices</u>. Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been given when deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

SELLER: Jerry A. Humphrey and Mary Humphrey

1194 Bear Creek Road Leicester, NC 28748 BUYER:

The Henderson County Board of Public Education

Attn: Dr. Steven L. Page, Superintendent

414 Fourth Avenue West

Hendersonville, NC 28739-4261

WITH COPY TO:

Chris Campbell Attorney at Law Roberts & Stevens, P.A. Post Office Box 7647 Asheville, NC 28802

Any party may designate a different address to which notice to it shall be sent by notice to the other party.

- (b) Survey. Buyer shall obtain a complete certified survey of the remaining real property along with real property being purchased to include all calls, distances, and any other details required to legally describe said property. Buyer shall provide Seller with a copy of the survey plat(s).
- (c) <u>Survivability.</u> The foregoing representations and provisions relating to right of way and license to access shall expressly survive the Closing of the sale of the Property.
- (d) <u>Applicable Law</u>. This Contract shall be governed and construed in accordance with the laws of the State of North Carolina.
- (e) Entire Agreement. This instrument and the exhibits hereto contain the entire understanding and agreement by and between the parties and all prior or contemporaneous oral or written agreements or instruments are merged herein and no amendment to this Contract shall be effective unless the same is in writing and signed by the parties hereto.
- (f) <u>Binding Effect</u>. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, devises, legal representatives, successors and assigns.
- (g) <u>Captions and Headings</u>. The captions and headings throughout this Contract are for convenience and reference only and the words contained therein shall in no way be held to define or add to the interpretation, construction or meaning of any provision of this Contract.

- (h) Severability. If any one or more of the terms of this Contract shall be or shall be declared to be unenforceable and if such term or terms are not material in nature, then the remaining terms of this Contract shall continue to be enforceable.
- (i) <u>Duplicate Originals</u>. This Contract has been executed in five originals.

IN WITNESS WHEREOF, the Seller and the Buyer have executed and sealed this contract, or if corporate, have caused this contract to be executed by their duly authorized officers and their corporate seals to be hereunto affixed as of the day and year first above written.

Jerry a. Humphrey	(SEAL)
JEDRY A. HUMPHREY	
Mary M Hamphrey	(SEAL
MARY HUMPHREY	7

THE HENDERSON COUNTY BOARD OF PUBLIC EDUCATION

SUPERINTENDENT AND EX-OFFICIO

SECRETARY

(Corporate Seal)

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE SCHOOL

BUDGET AND FISCAL CONTROL ACT.

TEMPORAL BY:

KERRY L SHANNON, SCHOOL FINANCE OFFICER

EXHIBIT A

Being 43.45 acres, more or less, off Sugarloaf Road in Henderson County, North Carolina as described in a deed recorded in Deed Book 988 at Page 725, Henderson County Registry. The same parcel being identified on the Henderson County tax records as Pin No. 00958955251355.

PREPARED BY AND RETURN AFTER RECORDING TO: CHRISTOPHER Z. CAMPBELL; ATTORNEY AT LAW; ROBERTS & STEVENS, P.A.; POST OFFICE BOX 7647, ASHEVILLE, NORTH CAROLINA 28802.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

MEMORANDUM OF OPTION TO PURCHASE

IN CONSIDERATION of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, JERRY A. HUMPHREY and wife, MARY HUMPHREY (hereinafter called "Seller") hereby grant to THE HENDERSON COUNTY BOARD OF PUBLIC EDUCATION (hereinafter called "Buyer") the right and option to purchase that property located in Henderson County, North Carolina, described as follows:

Being 43.45 acres, more or less, off Sugarloaf Road in Henderson County, North Carolina as described in a deed recorded in Deed Book 988 at Page 725, Henderson County Registry. The same parcel being identified on the Henderson County tax records as Pin No. 00958955251355.

This Option shall expire at 5:00 p.m, May ____, 2005. The MMH

The provisions set forth in a written Option to Purchase between the parties dated as of the Set day of February, 2005, are hereby incorporated in this Memorandum by reference.

JUX. MMH

R&S:423566-1

Superintendent and Ex-Officio Secretary

STATE OF NORTH CAROLINA COUNTY OF Henderson

I, a Notary Public of the County and State aforesaid, certify that <u>Jerry A. Humphrey</u>; many Seller, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this <u>9th</u> day of Exhrustry, 2005.

Jenisfer M. Corr Notary Public

My Commission Expires September 4, 2006

STATE OF NORTH CAROLINA COUNTY OF HENDERSON

STEPHEN

I, a Notary Public of the County and State aforesaid, certify that Dr. Steven L. Page, personally came before me this day and acknowledged that he is Superintendent and Ex-Officio Secretary of the HENDERSON COUNTY BOARD OF PUBLIC EDUCATION, a body corporate and politic, and that by authority duly given and as the act of the body corporate and politic, the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal, and attested by himself as its Superintendent and Ex-Officio Secretary.

Witness my hand and official seal, this 18th day of February, 2005.

My Commission Expires:

R&S:423566-1