

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 20 June 2012
SUBJECT: Approval of land lease/purchase
PRESENTER: Charles Russell Burrell
ATTACHMENT(S): Proposed contract

SUMMARY OF REQUEST:

Attached is a proposed contract for the lease and later purchase of a parcel adjacent to the former landfill.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the contract

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the contract for the lease and purchase of the parcel identified in this agenda item.

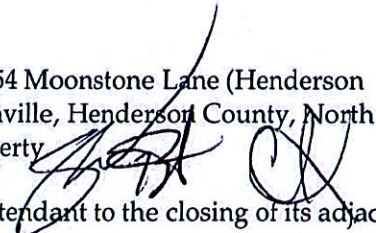
STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

OFFER TO PURCHASE & LEASE AGREEMENT

This Offer to Purchase & Option Agreement is between the County of Henderson, North Carolina, a body corporate and politic ("the County"), and Bobby Carroll Austin, and wife, Christy Ann Austin ("Austin"). This agreement is contingent only upon the approval of the Board of Commissioners of Henderson County.

Background Facts:

- A. Austin is the owner in fee simple of real property located at 54 Moonstone Lane (Henderson County PIN 9650719088), within the Township of Hendersonville, Henderson County, North Carolina ("the Property"). Austin wishes to convey the Property *AND PIN# 9650811005* 
- B. The County desires to acquire the Property for procedures attendant to the closing of its adjacent former landfill.
- C. The Property is subject to a mortgage ("the loan") serviced by Ocwen Loan Servicing, LLC ("Ocwen"). The principal due on the loan is substantially more than the worth of the Property.
- D. Ocwen has made an offer to Austin to modify the loan, lowering the loan principal to \$165,300, and lowering the interest rate to 2.00%, on terms of monthly amortized payments of \$634.49 (plus escrow of \$227.75 per month, for a total monthly payment of \$862.24). Under the terms of this modification, Austin may not resell the property for twelve months without triggering the option in Ocwen to void the modification agreement.
- E. The parties have agreed to the terms stated below, subject only to the approval by the Board of Commissioners of Henderson County.

Terms of Option and Agreement:

1. Austin will execute the modification agreement with Ocwen, and comply with all provisions of the same. Austin will provide a copy of the modification agreement executed by both Austin and Ocwen to the County.
2. The County will upon the receipt of a copy of the agreement with Ocwen lease the Property from Austin for a period of thirteen (13) months from the date of the modification agreement.
3. The monthly lease payments will be \$862.24, and will be paid from the County directly to Ocwen.
4. At the end of the thirteen month from the date of the modification agreement, Henderson County will purchase the Property from Austin. The purchase price will be the remaining amount owed

under the loan, as modified, and will be paid by the County directly to Ocwen. Austin will cooperate in all ways with the County in obtaining payoff information and mortgage cancellation from Ocwen.

5. Upon the payment in full of the loan by the County as stated in 4, above, on the date of final closing, Austin will execute a North Carolina General Warranty Deed in favor of the County, in a form substantially similar to the North Carolina Bar Association's Real Property Section General Warranty Deed.
6. The County shall have the exclusive right of the use of the property beginning with the date of its first monthly lease payment.
7. The following provisions, all taken in substance from NC Bar Form 13, shall apply:
 - a. **Evidence of Title:** Austin agrees to convey fee simple marketable and insurable title to the Property free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) matters of record existing at the approval date that are not objected to by the County prior to the expiration of the examination period ("Permitted Exceptions"); provided that Austin shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens, no including the Loan serviced by Ocwen, referenced above. Austin shall not enter into or record any instrument that affects the Property after the approval date without the prior written consent of the County, which consent shall not be unreasonably withheld, conditioned or delayed and (c) easements of rights of way of record and city and county *ad valorem* tax(es) for the year of final closing for such portion thereof after the date of final closing.
 - b. **Entire Agreement:** This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.
 - c. **Enforceability:** This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.
 - d. **Survival of Representations and Warranties:** All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Austin shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to the County such other documents and instruments, and take such other action as the County may reasonably request or as may be necessary to more effectively transfer to County the Property described herein in accordance with this Agreement.
 - e. **Entire Agreement; No Third Party Beneficiaries:** This Agreement is the entire agreement between the Parties concerning its subject matter, supersedes all prior agreements and understandings, whether or not written, and is not intended to confer upon any person other than the Parties any rights or remedies hereunder.
 - f. **Interpretation:** No provision of this agreement shall be interpreted for or against any party because that party or that party's agent or legal representative drafted the agreement or a particular provision, and the parties hereby unconditionally waive such defense or claim regarding this agreement. This stipulation may be used in court regarding any claims or defenses based on this agreement.

- g. **Representation by the Signors hereof:** All persons executing this Agreement represent that each has been duly authorized to sign this Agreement in the capacity indicated, and that this Agreement shall be final and binding once approved by the Board of Commissioners.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Signed, this the _____ day of June, 2012.

Sellers:


BOBBY CARROLL AUSTIN


CHRISTY ANN AUSTIN

Buyer:

COUNTY OF HENDERSON

By: 
County Manager

APPROVAL BY BOARD OF COMMISSIONERS


This is to certify that the foregoing Agreement has been approved, adopted and ratified by the Board of Commissioners of Henderson County, the date and year shown below.

This the 7th day of June, 2012.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: 
THOMAS H. THOMPSON, Chairman

Attest:


TERESA L. WILSON, Clerk to the Board