

PREPARED BY: DEAN SHATLEY of CAMPBELL SHATLEY, PLLC; 674 MERRIMON AVENUE, SUITE 210; ASHEVILLE, NORTH CAROLINA 28804.

OFFER TO PURCHASE AND CONTRACT

MILTON AND KELLY TYNCH as Buyer, hereby offers to purchase and **THE TRANSYLVANIA COUNTY BOARD OF EDUCATION**, as Seller, upon acceptance of said Offer, agrees to sell and convey, all of that parcel of land described in Exhibit A, together with all improvements located thereon, hereinafter referred to as "the Property" upon the following terms and conditions:

1. PURCHASE PRICE: The purchase price is \$725 and shall be paid as follows:

- (a). \$ 0 in earnest money paid by cash or certified check with the delivery of this Offer, to be held in an interest bearing escrow account by Roberts & Stevens, P.A.
- (b). \$ 725 the balance of the purchase price in cash or certified check at Closing. The Seller shall give the Buyer a credit of \$ 500 for the Buyer obtained survey.

2. "AS IS" CONDITION:

The Seller does not guarantee or warrant the condition of the Property and the Buyer hereby agrees to waive all express and implied warranties regarding the Property. Further, the Seller makes no representations about the use, or condition, of the property, or the improvements made upon the property. This property will be sold "as is," meaning the condition it is at the time this Contract is executed, and the Seller does not agree to make any improvements on the Property at the request of the Buyer.

3. ACCEPTANCE:

This offer must be accepted by the Seller in a formal called Board Meeting. If the Seller accepts this Offer from the Buyer, the Seller will execute this Offer and the Offer shall become the contract between the Buyer and the Seller for the purchase and sale of the Property subject only to the required statutory upset bid process set forth below. The date of Contract will be the date of written execution by the Seller.

If an upset bid is received within ten (10) days after the date that the public notice is first published as required by law, the deposit made under this Offer shall be returned to the Buyer and the Seller shall conduct an upset sale as required by North Carolina General Statute Section 160A-269.

If the Seller decides to reject this Offer, the deposit made under this Offer shall be returned to the Buyer.

4. CLOSING:

The Closing of the sale and purchase of the Property shall be held at a place designated by the Buyer in Brevard or Asheville, North Carolina, on or before 30 days of the date of this Contract.

5. TITLE TO PROPERTY:

Title will be delivered at Closing by a warranty deed subject to easements and rights of way of record or in use, and ad valorem taxes for the applicable tax year. The title to the Property shall be insurable by a nationally recognized title insurance company insuring that the Buyer has a good, indefeasible, fee simple, marketable title to the Property and its appurtenances and improvements subject to exceptions acceptable to Buyer. If, in the opinion of Buyer's counsel there are title exceptions which are not acceptable to Buyer, then any such unacceptable title exceptions shall be specified in writing and with particularity to the Seller no later than ten (10) days prior to the date of Closing and the Seller shall have until the Closing, or at the Buyer's option, a reasonable time thereafter, to cure or satisfy such unacceptable title exceptions at Seller's sole cost and expense. If the Seller fails to cure such unacceptable title exceptions within the permitted time, the Buyer shall have the option of taking the title "as is" and consummating the Closing or, in the alternative, of terminating the contract and receiving an immediate refund of the earnest money. Seller agrees to execute an affidavit that there are no liens or unpaid bills of contractors, subcontractors, labors or materialmen with regard to the Property, an affidavit of non-foreign status, and a closing statement.

6. CLOSING COSTS:

Buyer shall pay all expenses and costs associated with closing, including the following:

- a. The Buyer shall pay for the preparation of the deed to the Property and the associated attorney's fees. Prior to closing the Buyer's attorney will allow the Seller's attorney to review the deed.
- b. The Buyer shall pay for the recording costs, its attorney's fees, ad valorem taxes for the applicable tax year, and any other costs associated with any financing, title insurance premium, surveying or testing of the Property. To the extent permitted by law, each party shall indemnify and save the other party harmless from and against any claim or expense (including reasonable attorney's fees) for any compensation or commission by any real estate broker or agent.
- c. Buyer shall pay (or reimburse the Seller for) any applicable state or local transfer tax payable by sellers of real property.
- d. Buyer shall pay for any other closing expense or cost typically born by the Seller.

7. POSSESSION OF PROPERTY:

Possession of the Property shall be delivered to the Buyer at closing.

8. INSPECTION PRIVILEGES PRIOR TO CLOSING:

- (a) From the date of the Contract, the Buyer, its authorized agents, representatives or employees shall have the right to go upon the Property to make such inspections, surveys, subsurface investigations, studies and tests as the Buyer deems necessary or advisable, provided, however, that any such party shall not unreasonably interfere with the normal operations of the Seller or the Property or cause any permanent damage to the Property.
- (b) The Buyer shall have the right to have an environmental assessment made of the Property and the improvements located on the Property at Buyer's expense and the Buyer and its authorized agents, contractors, representatives or employees shall have the right to go upon the Property to perform such assessments and tests, provided, however, that no permanent damage to or waste of the Property shall result from said assessments and tests. If an environmental assessment of the Property discloses the presence of material quantities of toxic or hazardous substances, wastes, contaminants, air pollutants or water pollutants upon the Property and its improvements requiring (in the opinion of independent qualified nationally or regionally recognized environmental engineers) remedial action, the Buyer shall notify the Seller in writing with particularity of the same no later than ten (10) days prior to the date of Closing and the Seller shall have until Closing or at the Buyer's option a reasonable time thereafter, to take remedial action or refuse to take remedial action. If the Seller refuses to take such remedial action or is unable to remedy the condition, the Buyer shall have the option of taking title to the Property in its "as is" condition and consummating the Closing or, in the alternative, of terminating the contract and receiving immediate refund of the earnest money. The Buyer shall provide the Seller with a copy of the report or reports of all environmental assessments and tests and, if the Buyer consummates the Closing, the Seller shall have no further obligation or liability to the Buyer, its successors and assigns, with regard to the presence of and the remediation of toxic or hazardous wastes, substances, contaminants, air pollutants, or water pollutants.

9. MAINTENANCE OF PROPERTY:

The Property shall be sold in "as is" condition. Between the date of Buyer's bid and the delivery of possession, the Seller shall continue to maintain the Property in the same condition and repair that presently exists, ordinary wear and tear excepted, and shall not cause or permit any waste upon the Property.

10. RISK OF LOSS:

Risk of loss prior to the Closing shall be on the Seller. If the improvements located on the Property are materially damaged or destroyed by fire, explosion, windstorm or other casualty prior to the Closing, the Buyer shall have the option of taking title to the Property in its "as is" condition and consummating the Closing, or, in the alternative, of terminating the contract and receiving the immediate refund of the earnest money. If after the occurrence of any such casualty this Contract is not so terminated by the Buyer, the Buyer shall have no claim to any sums under any policies of insurance because of damage due to casualty whether collected or uncollected.

11. UTILITIES AND EMINENT DOMAIN:

The Buyer shall, at its own expense, determine that water, gas, sewer, telephone and electricity services are available to the Property in quantities satisfactory to Buyer and that there is no zoning or other governmental regulation that would prevent the reasonable use of the Property. If the Buyer determines that such utilities are not available or that zoning or other governmental regulation would prevent such use, then the Buyer shall notify the Seller in writing and with particularity no later than sixty (60) days after the date of acceptance of Seller's offer and the Buyer shall have the option of taking the Property "as is" and consummating the Closing, or in the alternative, of terminating this Contract and receiving an immediate refund of the earnest money deposit.

If a material portion of the Property is taken by the exercise of the power of eminent domain by any condemning authority prior to the Closing the Buyer shall have the option of taking title to the remaining Property in its "as is" condition and consummating the Closing, or, in the alternative, of terminating the Contract and receiving an immediate refund of the earnest money. If after a taking of any portion of or rights in the Property by eminent domain this Contract is not terminated by the Buyer, the Buyer shall have no claim to any portion of the just compensation paid or recovered as a result of such taking.

12. ASSIGNMENT:

The Contract may be assigned by the Buyer, but if assigned, the Contract shall be binding on the assignee, and its or his respective heirs, successors and assigns.

13. TIME:

Time shall be of the essence of this Contract.

14. BREACH OF CONTRACT:

If the Seller accepts this Offer from the Buyer and the Buyer defaults or fails to perform any of the conditions or obligations of Buyer under the Contract, the Seller shall be entitled to retain the earnest money deposit as liquidated damages and as its sole and exclusive remedy. If the Seller defaults or fails to perform any of the conditions or obligations of Seller under this Contract, the Buyer shall be entitled to an immediate refund of its earnest money deposit as liquidated damages and as its sole and exclusive remedy.

15. MISCELLANEOUS:

a. Survival of Provisions: All the terms, conditions, representations and agreements contained herein shall be deemed to have been satisfied upon consummation of the Closing and shall not survive the Closing, with the exception of the indemnity agreement set forth in paragraph 6 and the release set forth in paragraph 8(b) hereof.

b. Notices: 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: The Transylvania County Board of Education
Dr. Scott Elliott, Director of Secondary Education
225 Rosenwald Lane
Brevard, NC 28712

BUYER: Milton and Kelly Tynch
Memory Lane
Brevard, NC

c. Applicable Law: This Contract shall be governed and construed in accordance with the laws of the State of North Carolina.

d. 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.

e. Binding Effect: This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

f. Captions and Headings: 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.

g. Recording: This Contract shall not be recorded in any public registry.

Date of Offer: _____

Date of Acceptance: _____

BUYER:

SELLER:

**THE TRANSYLVANIA COUNTY
BOARD OF EDUCATION**

By: _____

By: _____
Chair

ATTEST:

By: _____

By: _____
Superintendent and
Ex-Officio Secretary

(CORPORATE SEAL)

EXHIBIT A

The Transylvania County Board of Education agrees to move its eastern boundary line of the property it owns on Memory Lane, Brevard NC (Deed Book 277, Page 254 of the Transylvania County Registry); thereby the Board agrees to convey to the Buyers the resulting parcel of land, as more particularly described in the plat of survey by Gene Parker Land Surveys, dated February 14, 2011, which is attached and incorporated herein.