

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 12 August 2008
SUBJECT: Change in easement for Pardee Care Center sale
ATTACHMENT(S): Agreement as to Maintenance; Extension of Easement

SUMMARY OF REQUEST:

The maintenance agreement is a restatement of existing law, namely, that if any party holding an interest in the easement wishes to improve it, they bear the sole cost of doing the same, and neither the underlying property owner (the condominium association, of which the County owns an interest) nor the easement holder (the Community College) can be forced by the other into paying for a part of the same.

The second document modifies slightly the easement for the former Pardee Care Center property.

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

BOARD ACTION REQUESTED:

Approval of the proposed agreements.

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

I move that the Board approve the agreements attached to this agenda item, and authorize the Chairman to execute them on behalf of the Board.

STATE OF NORTH CAROLINA

AGREEMENT AS TO MAINTENANCE

COUNTY OF HENDERSON

PARTNERS IN HEALTH CONDOMINIUM ASSOCIATION, INC., HENDERSON COUNTY, one of the counties of the state of North Carolina, and HOSPICE OF HENDERSON COUNTY, INC., d/b/a Four Seasons Hospice and Palliative Care, herein collectively referred to as Grantor, hereby agrees and covenants with BLUE RIDGE COMMUNITY COLLEGE, herein referred to as “BRCC” as follows:

Statement of Facts and Circumstances Surrounding this Agreement

1. BRCC is the grantee of an easement (“the easement”) from Grantor.
2. Under the terms of the easement, BRCC has the “sole obligation to maintain such easement”
3. This document is intended to state the agreement of the Grantor as to the issue of maintenance, which this Grantor understands is in agreement with BRCC, and to covenant with BRCC that Grantor will take a position consistent with the terms hereof in any matter in which Grantor’s position on this issue is relevant, including but no limited to any vote of any condominium association, including BRCC, of which Grantor is or may be a member having an interest in the easement or the underlying fee.

Statement of Agreement and Covenant

The Grantor agrees and covenants with BRCC as follows:

1. The Grantor and BRCC, among them, are the owners of the fee and the right of use of Access Easement A as depicted on that plat of record at Plat Slide 7439 in the office of the Register of Deeds for Henderson County, North Carolina.
2. Any of the Grantor or BRCC, as their interests may appear, may at any time take any action with regard to the maintenance or improvement of the land subject to the easement, so long as such action is not inconsistent with the rights of the Grantor or BRCC, and so long as such action is undertaken at the sole expense of the Grantor or BRCC taking such action.
3. Any Grantor or BRCC taking action with regard to the maintenance or improvement of the land subject to the easement shall indemnify and hold harmless all other Grantor and BRCC from the costs of the same. Nothing herein shall be construed

so as to preclude any joint venture of any of the Grantor or BRCC with regard to the maintenance or improvement of the land subject to the easement.

4. This agreement and covenant shall be recorded in the Henderson County Registry, and shall run with the interest of the Grantor in the land which is subject to the easement, and shall bind the Grantor and BRCC's successors in interest.

5. The parties agree that neither the Grantor nor BRCC shall have any legal obligation, one to the other, to maintain the above-described easement.

HENDERSON COUNTY

BY: _____ (SEAL)
WILLIAM L. MOYER, CHAIRMAN
HENDERSON COUNTY BOARD OF COMMISSIONERS

HOSPICE OF HENDERSON COUNTY, INC.
d/b/a FOUR SEASONS HOSPICE AND PALLIATIVE CARE

By: _____ (SEAL)
ADAM L. SHEALY, CHAIRMAN
BOARD OF DIRECTORS

PARTNERS IN HEALTH CONDOMINIUM
ASSOCIATION, INC.

BY: _____ (SEAL)
CHUCK McGRADY, CHAIRMAN
BOARD OF DIRECTORS

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that WILLIAM L. MOYER, Chairman of the Henderson County Board of Commissioners personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument on behalf of

HENDERSON COUNTY for the purposes therein stated. Witness my hand and official stamp or seal, this ____ day of July, 2008

Notary Public

My commission expires:

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that ADAM L. SHEALY, Chairman of the Board of Directors for Hospice of Henderson County, Inc., personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument for the purpose stated therein. Witness my hand and official stamp or seal, this day of July, 2008.

Notary Public

My commission expires:

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that CHUCK McGRADY, Chairman of the Board of Directors for Partners In Health Condominium Association, Inc., personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument for the purpose stated therein. Witness my hand and official stamp or seal, this day of July, 2008.

Notary Public

My commission expires:

COPY

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

AGREEMENT

COMES NOW Hendersonville Physicians and Associates, LLC, a North Carolina Limited Liability Company (hereinafter referred to as "Physicians"); Hospice of Henderson County, Inc. (hereinafter referred to as "Hospice"); Henderson County Hospital Corporation (hereinafter referred to as "Hospital") and the parties and each of them agree as follows:

1. Physicians are acquiring Unit 1 and Unit 4 of Partners in Health Condominium located on College Drive and South Allen Road in Henderson County, North Carolina.
2. Prior to the purchase by Physicians of Unit 1 and Unit 4, Blue Ridge Community College is conveying Tract 4 as shown on plat of survey by Hill and Associates Surveyors, P.A. to Henderson County. In return, Henderson County, Hospice and Partners in Health Condominium Association are conveying to Blue Ridge Community College .811 acres and Access Easement A leading from South Allen Road, S.R. 1756, in and to the .811 acre tract being conveyed to Blue Ridge Community College. Access Easement A, the .811 acre parcel being conveyed and Tract 4 are shown on survey by Hill and Associates Surveyors, P.A. dated July 28, 2008 and being entitled "Hendersonville Physicians and Associates, LLC". A copy of the survey is attached hereto as "Exhibit A".
3. Blue Ridge Community College has requested that the access easement shown as Access Easement A on referenced survey be extended to include an access over additional property that is shown on survey referenced above as Access Easement B. Physicians, Hospice and Hospital have agreed to approve the extension of the access easement as shown on Exhibit A.

However, Henderson County as the owner of the real property, must also approve the access easement, and the County Attorney has determined that the vote to extend the access must be at a public meeting of the Henderson County Board of Commissioners. There is no scheduled Board meeting prior to the closing of the sale of Unit 1 and Unit 4 to Physicians.

4. The parties and each of them agree that following an approval vote by the Henderson County Commissioners that Hospice, Physicians and Hospital will exercise their vote at a meeting of the Partners in Health

Condominium Association, Inc. to extend the access granted to Blue Ridge Community College over the area shown on the attached map as "Access Easement B". The vote will occur at the first regularly scheduled meeting of Partners in Health Condominium Association, Inc. following an approval by the Henderson County Commissioners.

5. Physicians, Hospice and/or Hospital agree to be responsible for cost of preparation and recording of any documentation necessary to extend the easement over "Access Easement B".

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this the _____ day of July, 2008.

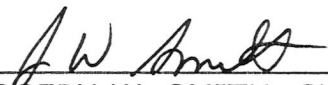
HENDERSONVILLE PHYSICIANS AND
ASSOCIATES, LLC

BY: _____
Manager

HOSPICE OF HENDERSON COUNTY, INC.
d/b/a FOUR SEASONS HOSPICE AND
PALLIATIVE CARE

BY: _____
ADAM L. SHEALY, CHAIRMAN
BOARD OF DIRECTORS

HENDERSON COUNTY HOSPITAL CORPORATION

BY:  _____
JOSEPH W. SMITH, CHAIRMAN
BOARD OF DIRECTORS

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public in and for the above County and State, do hereby certify that _____ Member/Manager of HENDERSONVILLE PHYSICIANS AND ASSOCIATES, LLC, a North Carolina Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and official seal this the _____ day of July, 2008.

Commission expires:

NOTARY PUBLIC

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that ADAM L. SHEALY, Chairman of the Board of Directors for HOSPICE OF HENDERSON COUNTY, INC. personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument on behalf of HOSPICE OF HENDERSON COUNTY, INC. for the purposes therein stated.

WITNESS my hand and official stamp or seal, this the _____ day of July, 2008.

My commission expires:

NOTARY PUBLIC

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that JOSEPH W. SMITH, Chairman of the Board of Directors for HENDERSON COUNTY HOSPITAL CORPORATION personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument on behalf of HENDERSON COUNTY HOSPITAL CORPORATION for the purposes therein stated.

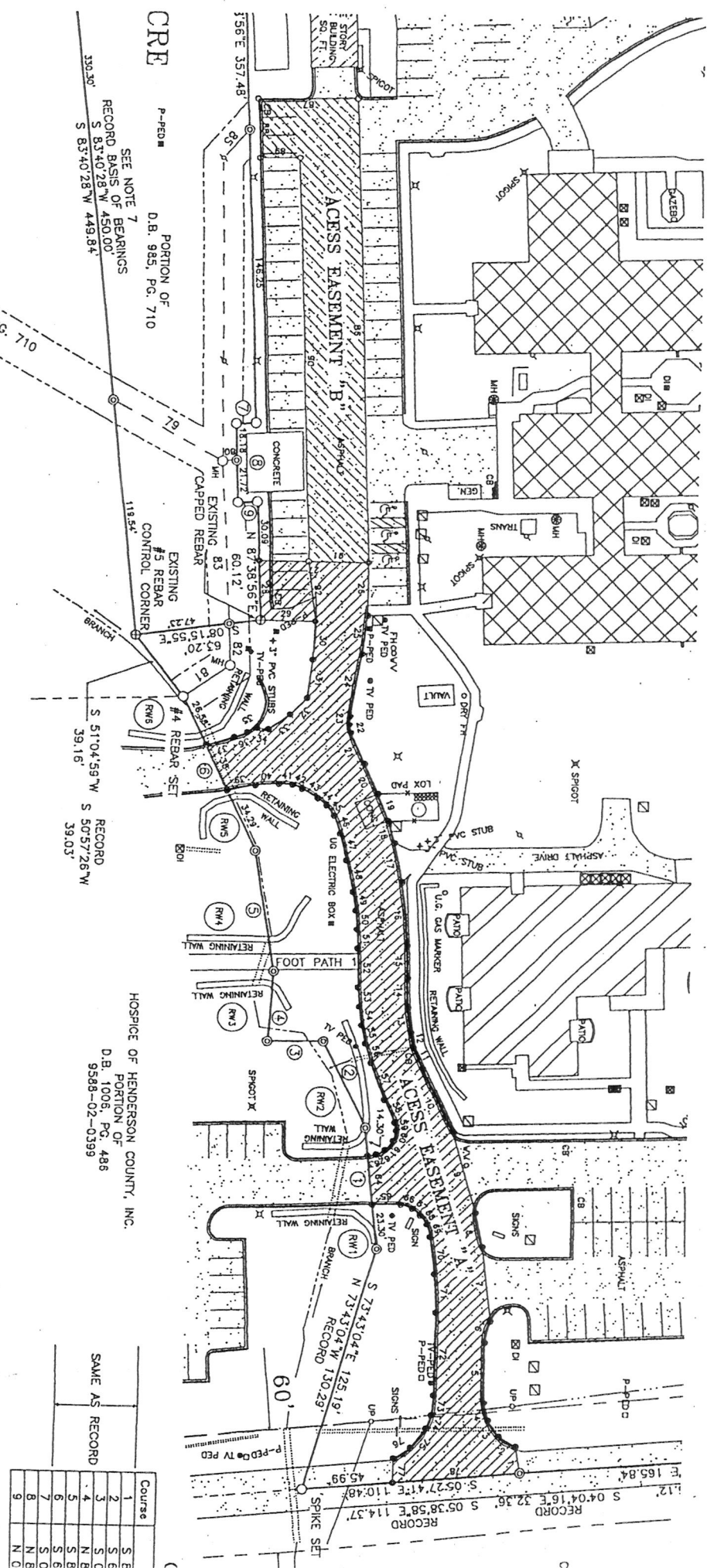
WITNESS my hand and official stamp or seal, this the 30 day of July, 2008.

My commission expires:

10/31/08

Delisrah D. Crowder
NOTARY PUBLIC

EXHIBIT A



CRE
 P-FED #
 D.B. 985, PG. 710
 SEE NOTE 7
 RECORD BASIS OF 450.00'
 S 83°40'28\"/>

20' SEWER EASEMENT D.B. 985, PG. 710
 D.B. 1089, PG. 640
 BLUE RIDGE COMMUNITY COLLEGE
 D.B. 1006, PG. 486
 REMAINING PORTION
 9588-02-0399

HOSPICE OF HENDERSON COUNTY, INC.
 PORTION OF
 D.B. 1006, PG. 486
 9588-02-0399

CALLS ALONG
 ACCESS EASEMENT "A"

Course	Bearing	Distance
1	S 76°58'43\"/>	
2	S 28°11'15\"/>	
3	S 54°08'38\"/>	
4	S 75°31'52\"/>	
5	S 89°29'55\"/>	
6	N 75°40'21\"/>	
7	S 81°29'12\"/>	
8	S 78°06'55\"/>	
9	S 78°14'47\"/>	
10	S 67°40'58\"/>	
11	S 65°22'47\"/>	
12	S 78°50'16\"/>	
13	S 82°03'08\"/>	
14	S 89°01'43\"/>	
15	S 88°37'58\"/>	
16	S 84°23'23\"/>	
17	S 77°40'49\"/>	
18	S 72°27'18\"/>	
19	S 88°50'11\"/>	
20	S 64°34'21\"/>	
21	S 64°07'35\"/>	
22	S 70°10'50\"/>	

Course	Bearing	Distance
32	S 44°37'16\"/>	
33	S 35°37'00\"/>	
34	S 05°48'07\"/>	
35	S 25°48'03\"/>	
36	S 21°31'22\"/>	
37	S 13°38'09\"/>	
38	N 63°48'53\"/>	
39	N 10°48'19\"/>	
40	N 04°48'05\"/>	
41	N 03°02'04\"/>	
42	N 20°27'52\"/>	
43	N 30°49'23\"/>	
44	N 38°30'32\"/>	
45	N 53°44'14\"/>	
46	N 69°30'04\"/>	
47	N 75°01'17\"/>	
48	N 75°47'09\"/>	
49	N 81°16'43\"/>	
50	N 84°40'16\"/>	
51	N 87°08'11\"/>	
52	N 88°47'22\"/>	

Course	Bearing	Distance
63	S 09°58'06\"/>	
64	N 83°31'09\"/>	
65	N 01°52'11\"/>	
66	N 18°46'47\"/>	
67	N 39°54'28\"/>	
68	N 53°07'20\"/>	
69	N 74°32'07\"/>	
70	N 82°55'00\"/>	
71	N 87°18'35\"/>	
72	S 87°28'16\"/>	
73	S 84°35'49\"/>	
74	S 69°52'49\"/>	
75	S 51°21'05\"/>	
76	S 32°14'07\"/>	
77	N 90°00'00\"/>	
78	N 05°27'41\"/>	

Course	Bearing	Distance
1	S E	4.56
2	S E	25.16
3	S O	14.24
4	N B	6.24
5	N B	5.18
6	S O	6.68
7	S O	19.85
8	N B	20.08
9	N O	40.08

DEC THAT MAY DIRECTLY AFFECT ALL AREAS SHOWN.
 MAINTAINANCE

