

# **REQUEST FOR BOARD ACTION**

## **HENDERSON COUNTY**

### **BOARD OF COMMISSIONERS**

**MEETING DATE:** 21 January 2009

**SUBJECT:** Henderson County Hospital Corporation acquisition of land

**ATTACHMENT(S):** Draft contract

**SUMMARY OF REQUEST:**

As a part of Pardee Hospital's acquisition of physician practices, it desires to acquire certain real estate (see attached, paragraph 12). Since the provisions of this agreement would require a variance from the normal procedure of the sale of real property this provision become operative, approval by this Board for the acquisition is required.

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

**BOARD ACTION REQUESTED:**

Approval of the purchase.

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

***I move that the Board approve the purchase as indicated in the draft contract attached to this agenda item.***

STATE OF NORTH CAROLINA

AGREEMENT OF PURCHASE AND SALE

COUNTY OF HENDERSON

THIS Agreement, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008 by and between WILLIAM RONALD MOFFITT and wife, SARAH G. MOFFITT (hereinafter referred to as the "Seller") and HENDERSON COUNTY HOSPITAL CORPORATION d/b/a MARGARET R. PARDEE MEMORIAL HOSPITAL (hereinafter referred to as the "Purchaser");

WITNESSETH:

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) in hand paid by the Purchaser to the Seller, and for other good and valuable considerations, the receipt and sufficiency of which are herewith acknowledged, and in consideration of the mutual covenants contained herein, the parties hereto shall and do hereby agree as follows:

1. **Purchase and Sale.** Subject to the terms of this Agreement, the Seller agrees to sell and the Purchaser agrees to purchase all of the real property in Hendersonville, Henderson County, North Carolina and BEING all of that real property described in deed of record in Deed Book 1012, at page 85 in the office of the Register of Deeds for Henderson County, North Carolina, together with all buildings, structures, improvements, and fixtures thereunto belonging or in any way appertaining. This real property shall be hereinafter referred to as "the Real Property". The Seller also agrees to sell and the Purchaser agrees to purchase all of the personal property located in and upon the Real Property, including but not limited to furniture, furnishings, office equipment, and medical equipment. This personal property is herein referred to as "the Personal Property". The Real Property and the Personal Property are collectively referred to herein as "the Property".

2. **Earnest Money.** Contemporaneously with the execution of this Agreement by the parties hereto, the Purchaser will deliver to Seller the amount of \$5,000.00, said sum to be credited by Seller as earnest money (hereinafter referred to as the "Earnest Money") and applied to the purchase price.

3. **Purchase Price.** The total purchase price shall be \$585,000.00. (hereinafter referred to as the "Purchase Price"). The balance of the Purchase Price, in the amount of \$580,000.00, is payable by the Purchaser at closing in cash.

4. **Seller's Representations, Obligations and Warranties.** The Seller shall and does hereby expressly warrant, represent, and agree as follows:

(A) That all information and documentation heretofore furnished and made available to the Purchaser by the Seller or the Seller's agents with reference to the Property is true and accurate;

(B) That there are no service contracts, management agreements, or other agreements which are in force and will survive the Closing and which relate to the operation, management or maintenance of the Property;

(C) That the Seller has no actual knowledge, nor has the Seller received any notice of, any actual or threatened action, litigation or proceeding (including, but not limited to condemnation) by any organization, person, individual, or governmental agency against either the Seller or the Property, or with respect thereto, nor does the Seller know of any basis for any such action, nor does the Seller know of any proposals to change the location, width or grade of access roads to the Real Property or adjoining streets. The parties acknowledge that the Real Property was the subject of taking by the North Carolina Department of Transportation which was settled by consent prior to the date of this Agreement;

(D) That there are no assessments which have been made against the Property which are unpaid (except ad valorem taxes for the current year), whether or not they have become liens, and if, at the time of Closing, the Property or any part thereof shall be or shall have been affected by any assessment or assessments which are or may become payable in installments, of which the first installment is then a charge or lien, or has been paid, then for purposes of this Agreement, all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the warranty deed referred to in this Agreement, shall be deemed to be due and payable, to be liens against the Property, and shall be paid and discharged by the Seller at Closing;

(E) That the Seller owns unencumbered fee simple and marketable title to the Property free and clear of all restrictions, liens, encumbrances, easements, exceptions, chattel mortgages, conditional bills of sale, title retention contracts, Uniform Commercial Code Financing Statements, security interests of every kind and character, leases and tenant contracts;

(F) That the Seller knows of no title defect which would materially adversely affect the Property;

(G) That, until and through the Closing, the Seller shall, at its sole cost, maintain the Property in its present condition, subject to reasonable wear and tear, and destruction by casualty or other event beyond the control of the Seller, and shall continue to operate the Property as it is now being operated, except as herein specifically provided;

(H) That Hendersonville City water and sewer service is available to immediately serve the Real Property;

(I) That there are no violations of law, municipal or county ordinances, or other legal requirements with respect to the Real Property, and all improvements comply with all applicable legal requirements with respect to the use, occupancy, and construction thereof; that the Seller (including the Seller's agents) has received no notice of violations, or alleged violations, of such legal requirements;

(J) That the lines and corners of the Real Property are clearly identifiable, and there are no disputes concerning the location of such lines and corners; and that all Improvements are located within the boundary lines of the Real Property. Nothing herein shall be construed to require the Seller to obtain a survey of the Real Property;

(K) That all access to the Real Property is by public streets and roads and that all curb cuts and street opening permits or licenses required for vehicular access to and from the Real Property are now, and shall be in full force and effect at Closing;

(L) That there are no special agreements with any utility company which supplies any utility for equipment or facilities furnished by it, except normal charges for consumption of its product;

(M) That the Real Property is not subject to flooding, is not located in a flood zone as such is identified by Federal, State or local government agencies, and is not located where, by law, the Real Property is required to be insured by flood insurance;

(N) That the Property has sustained no damage due to flooding or inadequate drainage, through the date hereof and drainage on the Real Property is sufficient to allow its use without any material interference caused by standing or draining water;

(O) The Real Property is free of all chemical substances, asbestos, oil, ureaformaldehyde, PCBs and all other toxic, radioactive or hazardous wastes, materials, substances or contaminants (collectively referred to hereinafter as "Hazardous materials"); no Hazardous Materials have ever been stored, disposed of or located upon the Real Property, and the Seller hereby agrees to indemnify and hold harmless the Purchaser from and against all liabilities, expenses, demands, damages, costs, losses, causes of action, claims for relief, penalties and charges incurred or assessed before or after Closing in connection with the presence, removal or cleanup of any Hazardous Materials upon, under, associated with or flowing or originating from the Real Property. If requested by the Purchaser, the Seller shall provide the Purchaser with all necessary and reasonable assistance for purposes of determining the existence of Hazardous Materials on the Real Property, including allowing the Purchaser access to the Real Property, and both prior to and following Closing, access to the Seller's employees and agents, having knowledge of, and to files and records within the Seller's control relating to, the existence, storage or discharge of hazardous Materials on the Real Property; and

(P) That the Property is not now, and never has been, in violation of any federal, state or local environmental protection laws or regulations.

The foregoing representations, warranties, indemnities and agreements are true as of the date hereof (unless otherwise provided herein above), and shall be

true as of the date and time of Closing. These provisions shall survive the Closing of this transaction.

5. **Conditions Precedent.** The obligation of the Purchaser to purchase the Property from the Seller is subject to satisfaction on or before the Closing of the following conditions (any of which may be waived in whole or in part by the Purchaser, but only in writing at or prior to Closing), but a failure to discover, or a waiver of, any circumstances made a condition of this Paragraph 5 shall not constitute a waiver of any warranties and representations provided for elsewhere in this Agreement unless any such waiver specifically so states.

(A) The Purchaser shall not have discovered any error, misstatement or omission in the representations or warranties made by the Seller in this Agreement. The Seller shall afford the Purchaser access to the Property and to all of the Seller's books and records relating thereto to permit the Purchaser to verify the representations of the Seller made herein and any other conditions contained in this Agreement;

(B) The Purchaser shall obtain at Closing a Commitment for an Owner's Policy of Title Insurance (ALTA Owner's Policy, Extended Coverage or equivalent) covering the fee title to all of the Real Property in an amount at least equal to the Purchase Price for the Property and issued by such title company as the Purchaser shall approve in writing, with all Standard and General Exceptions deleted so as to afford full "extended form coverage". As a condition precedent to the Closing, the Commitment shall be later-dated to the Closing Date and the recording of the Warranty Deed, and the title company shall deliver the Title Policy (or an endorsed "marked up" binder) to the Purchaser concurrently with the Closing. The Purchaser shall pay for all title insurance charges and premiums.

(C) The Real Property shall be delivered to the Purchaser vacant and free of tenancies on the date of closing;

(D) All warranties and representations made by the Seller herein shall be materially true and correct as of Closing;

(E) This Agreement is subject to the approval by the Board of Directors of Henderson County Hospital Corporation on or before January 23, 2009, and if Board approval is not obtained by said date, this contract shall then be null and void and any and all obligations upon either of the parties shall immediately terminate with the earnest money to be immediately returned to the Purchaser;

(F) All covenants and agreements made by the Seller herein which are to be completed on or before the Closing shall have been performed;

(G) Receipt and approval by the Purchaser of all of the Seller's "Closing Documents" as defined and described in Subparagraph 6.(D) below; and

(H) The Purchaser's obligation to purchase any portion the Property is subject to the Purchaser's ability to obtain marketable fee simple title to all of the Real Property. If for any reason the Purchaser is unable to obtain unencumbered fee simple title to all of the Real Property at closing, the Purchaser may, in its sole discretion, terminate this agreement and all of the obligations created herein and obtain refund of 100% of the earnest money; delay closing of this transaction for a period of up to ninety (90) days to enable the Purchaser to acquire unencumbered fee simple title to all of the Real Property to waive this condition and purchase that portion of the Property to which the Purchaser can obtain marketable fee simple title without regard to the status of the balance of the Property.

6. **Closing.**

(A) Unless extended as otherwise provided in this Agreement, the Purchaser and the Seller shall consummate and close the sale contemplated by this Agreement on or before February 2, 2009, the offices of Prince, Youngblood & Massagee at 240 Third Avenue West, Hendersonville, North Carolina, at a time and on a date designated by the Purchaser, with not less than three (3) days prior notice to the Seller.

(B) At Closing, the Seller shall pay the North Carolina (1) transfer tax incident to the sale and conveyance of title to the Property; (2) the Seller's attorney fees; and (3) all other costs and expenses incurred by Seller in closing and consummating the purchase and sale of the Property pursuant hereto.

(C) At Closing, the Purchaser shall pay (1) the cost of recording the Warranty Deed; (2) the Purchaser's attorney fees; and (3) all other costs and expenses incurred directly by the Purchaser in closing and consummating the purchase and sale of the Property pursuant hereto.

(D) At Closing, the Seller will deliver to the Purchaser the following documents ("the Seller's Closing Documents"), all of which shall be duly executed and acknowledged where required:

(1) General Warranty Deed from the Seller conveying to the Purchaser good and marketable fee simple title to the Real Property;

(2) An Owner's Affidavit executed by the Seller and containing such representations as the title insurer shall reasonably require;

(3) Such other documents as shall be required by the title insurance company as a condition to insuring the Purchaser's title to the Property free of exceptions;

(4) Reaffirmation of the truth and accuracy of the Seller's representations and warranties set forth in this Agreement, and a representation that all of the Seller's agreements contained in this Agreement are completely satisfied and discharged. Such Reaffirmation shall contain provisions confirming that each of such representations, warranties or agreements shall survive closing.

(5) Such other documents as may be reasonable and necessary in the opinion of the Purchaser's counsel for the Seller and the Purchaser to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions hereof.

(6) Such documents as are necessary to insure that the Seller's right to possession and the terms and conditions of such possession survive the closing.

(7) A bill of sale, conveying unencumbered title to all of the Personal Property.

(E) The following items (hereinafter referred to as the "Apportioned Items") shall be adjusted and prorated between the Seller and the Purchaser as of midnight the date of Closing:

Hendersonville and Henderson County ad valorem taxes for the calendar year of closing.

All of the Apportioned Items, together with any and all credits which the Purchaser may receive pursuant to this Agreement, shall adjust the cash sum otherwise payable by the Purchaser to the Seller pursuant to Paragraph 3 hereof.

(F) At Closing, the Purchaser will deliver to the Seller all sums payable pursuant to the provisions of Paragraph 3.

7. **Default.** If, by the date and time of Closing or such earlier date as provided herein, any of the requirements, conditions, covenants or agreements of the Seller as provided in Paragraphs 4 and 5, or otherwise in this Agreement, are not fully performed or satisfied, or in the event any material warranties and representations of the Seller are inaccurate or untrue, then Seller shall have the option of (a) resolving, satisfying and/or correcting the defect, covenant, or representation or (b) refusing to resolve, satisfy or correct the defect, covenant or representation. If the Seller elects to resolve, satisfy and/or correct the defect it must do so within thirty (30) days from the date it is served with written notice of the defect. If Seller elects not to resolve, satisfy or correct the defect, then Purchaser shall have the option of (a) accepting the property in its present condition or (b) terminating this Agreement and receiving 100% of the earnest monies paid.

8. **Assignment.** The Purchaser shall have the right to assign this Agreement, and its rights hereunder, in whole or in part, at any time and from time to time, to Henderson County and such nominee or assignee shall assume all obligations of the Purchaser hereunder, and shall agree to execute all necessary documents which the Purchaser is obligated to execute pursuant to the terms and provisions of this Agreement. Upon such assignment as herein authorized and permitted, the Purchaser shall thereby be fully and completely discharged of all the Purchaser's duties, obligations, and liabilities hereunder to the extend of such assignment.

9. **Possession.** The Seller shall deliver exclusive possession of the Property to the Purchaser on the date of closing.

10. **Brokerage.** The Seller warrants to the Purchaser that no person, firm or individual is entitled to or has a claim for a commission or fee arising out of the purchase and sale of the Property and that the Seller is solely responsible for payment of any and all commission or fee arising out of such purchase and sale. Accordingly, the Seller shall and does hereby indemnify and hold harmless the Purchaser from and against any claim for any consulting fee, finder's fee, commission, or like compensation, including reasonable attorney's fees in defense thereof, payable in connection with any transaction contemplated hereby and asserted by any party arising out of any act or agreement by the Seller, excluding any such claim for any consulting fee, finder's fee, commission, or like compensation including reasonable attorney's fees in defense thereof, payable in connection with any transaction contemplated hereby and asserted by any party arising out of any act or agreement by the Purchaser.

11. **Condemnation.** If, prior to Closing, all or a part of the Real Property is subjected to a bona fide threat of condemnation by a body having the power of eminent domain, or is taken by eminent domain or condemnation (or sale in lieu thereof), the Purchaser may by notice to the Seller, given within thirty (30) days of the Purchaser's receiving actual notice of such condemnation, damage, or destruction, elect to terminate this Agreement, and, upon such termination, the Earnest Money shall be returned to the Purchaser, whereupon neither of the parties shall thereafter have any rights, duties, obligations, or liabilities hereunder whatsoever (the date of Closing shall be extended, if necessary, to grant the Purchaser the aforesaid thirty (30) day period). If the Purchaser does not so elect to terminate this Agreement, this Agreement shall remain in full force and effect, and the purchase and sale contemplated herein, less any interest taken by eminent domain or condemnation, shall be effected with no further adjustments and, at Closing, the Seller shall assign, transfer, and set over to the Purchaser all of the Seller's right, title and interest in and to any awards that may have been or that may thereafter be made for such taking. At such time as all or a part of the Real Property is subjected to a bona fide threat of condemnation as herein above provided, or if all or a portion of the Property is damaged or destroyed as herein above provided, as long as this Agreement is in full force and effect, the Purchaser shall be permitted to participate in the proceedings as if the Purchaser were a party to the action and negotiations.



12. **Option to Re-purchase.** Seller shall have the option to purchase the Real Property from the Purchaser pursuant to the terms and conditions contained in this paragraph which shall be referred to as "the Option". The Seller may exercise the Option by delivering to the Purchaser written notice of such exercise within thirty (30) days from the termination of William Ronald Moffitt's employment with Purchaser pursuant to that Employment Agreement dated \_\_\_\_\_, 2008. Said notice of exercise of the Option shall be effective if delivered by hand, Federal Express or certified mail, return receipt requested, to the attention of \_\_\_\_\_ at 800 North Justice Street; Hendersonville, North Carolina 28791. Upon exercise by the Seller of the option, this Option shall become a contract for the Sellers' purchase of the Real Property.

In the event the Seller exercises the Option, the total purchase price (herein referred to as "the Option Purchase Price") for the Real Property shall be Five hundred eighty-five thousand Dollars (\$585,000.00), payable in cash at the time of closing on the Seller's purchase. Closing on the Sellers' purchase shall take place no later than thirty (30) days following the date of Sellers' exercise of the Option at such place as the parties agree. At closing on the Sellers' purchase, Seller shall tender to the Purchaser the Option Purchase Price, and the Purchaser shall deliver to the Purchaser a Warranty Deed, prepared at the Seller's expense, with full warranties conveying to the Seller an indefeasible fee simple title, free and clear of all liens and encumbrances, claims, easements, leases or restriction created by the Purchaser.

Time shall be of the essence in regard to all events related to the Option.

13. **Miscellaneous.**

(A) This Agreement shall be construed and interpreted under the laws of the State of North Carolina.

(B) Except as otherwise provided herein, all rights, powers and privileges conferred hereunder upon the parties shall be cumulative but not restricted to those given by law.

(C) The failure of either party to execute any power given either party hereunder or to insist upon strict compliance by either party of its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with terms hereof.

(D) The proration date shall be the date of closing.

(E) This Agreement contains the entire agreement of the parties related to the Property, and no representation, inducements, negotiations, promises or agreements, oral or otherwise, between the parties not expressly embodied herein shall be of any force or effect. This Agreement cannot be amended modified or waived except

by written instrument executed by all of the parties to this Agreement.

(F) This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs devisees, executors, administrators, personal representatives, successors and assigns.

(G) Time is of the essence in this Agreement.

(I) This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

(J) All representations, warranties and agreements which are contained in this Agreement shall survive the Closing.

(K) The captions and headings throughout this Agreement are for convenience and reference only, and they shall not define, limit, modify or add to the interpretation or meaning or any provisions of this Agreement or in any way affect the scope, intent or effect of this Agreement.

(L) The parties hereto shall execute and deliver any and all such additional documents, certifications or other instruments, and perform any and all additional actions as may be necessary to give full effect and complete the purchase and intent of this Agreement.

(M) The County of Henderson executes this Agreement for the sole purpose of binding itself to the Option as set out herein above in paragraph 12.

WITNESS our hands and seals this the day and year first above written.

\_\_\_\_\_(SEAL)  
WILLIAM RONALD MOFFITT

\_\_\_\_\_(SEAL)  
SALLY G. MOFFITT

HENDERSON COUNTY HOSPITAL CORPORATION

BY: \_\_\_\_\_(SEAL)  
N. KRISTOPHER HOCE, CEO

Approved by the Board of Directors of Henderson County Hospital Corporation.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_(SEAL)  
President

COUNTY OF HENDERSON

BY: \_\_\_\_\_(SEAL)