

**REQUEST FOR BOARD ACTION**  
**HENDERSON COUNTY**  
**BOARD OF COMMISSIONERS**

**MEETING DATE:** 4 June 2012  
**SUBJECT:** Bent Creek Property Extension  
**PRESENTER:** Charles Russell Burrell  
**ATTACHMENT(S):** Extension

**SUMMARY OF REQUEST:**

An extension of the term of the condition of the property deed for the approximately 137 acres in Buncombe County (“the Bent Creek property”) titled in Henderson County (though subject to a condition that it be conveyed to Metropolitan Sewerage District for use as a regional sewer facility or revert to Asheville) has been obtained. Title to this property, subject to the stated condition, was obtained in 2002. This extension has been approved by the Asheville City Council.

County staff will present further information on this matter.

**BOARD ACTION REQUESTED:**

Approval of the extension.

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

***I move that the Board approve the proposed extension.***

Prepared by: Robert W. Oast, Jr., City Attorney

Return to: Russell Burrell, Henderson County Attorney, 1 Historic Courthouse Square,  
Hendersonville, NC 28792

STATE OF NORTH CAROLINA

EXTENSION OF CONDITION

COUNTY OF BUNCOMBE

THIS EXTENSION made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between **CITY OF ASHEVILLE**, a municipal corporation organized and existing under the laws of the State of North Carolina, having an address of PO Box 7148, Asheville, NC 28802-7148, of Buncombe County and State of North Carolina (hereinafter "Grantor"), and **COUNTY OF HENDERSON**, a North Carolina body politic and corporate, having an address of 100 North King Street, Hendersonville, North Carolina, 28792, of Henderson County and State of North Carolina (hereinafter "Grantee");

WITNESSETH:

WHEREAS, by Special Warranty Deed recorded on July 15, 2002, in Deed Book 2852 at page 775 in the Buncombe County Registry (herein "2002 Deed"), Grantor conveyed to the Grantee certain property located on Brevard Road, consisting of approximately 137 acres, more or less, which property is described in detail in the 2002

Deed and in a plat recorded in Plat Book 50 at page 107 in the Buncombe County Registry (herein "Brevard Road Site"); and

WHEREAS, the 2002 Deed contains the following condition:

SUBJECT, HOWEVER, to the provisions of the First Amended and Restated Regional Water Supply and Water Service Agreement (hereinafter "the Regional Water Agreement") dated November 11, 1995 between COUNTY OF HENDERSON, a body politic and corporate, THE CANE CREEK WATER AND SEWER DISTRICT, a municipal body created pursuant to Chapter 162A-86 et seq. of the North Carolina General Statutes, THE ASHEVILLE/BUNCOMBE WATER AUTHORITY (aka THE REGIONAL WATER AUTHORITY OF ASHEVILLE BUNCOMBE AND HENDERSON), a joint agency created pursuant to Chapter 160A-460 et seq. of the North Carolina General Statutes, the CITY OF ASHEVILLE, a municipal corporation, and the COUNTY OF BUNCOMBE, a body politic and corporate, in particular Paragraph 22.0 which states:

Asheville shall convey the Brevard Road Site to Henderson County to permit Henderson County to negotiate with MSD for sewer services. Henderson County shall either: 1) convey the Brevard Road Site to MSD in fee simple upon condition subsequent that a wastewater treatment plant be constructed on the Brevard Road Site within ten (10) years of the date of such conveyance, or else title shall revert automatically to Asheville; or 2) convey said property to a regional water and sewer authority of which Henderson County, the Authority, and Asheville are a part. In the event that Henderson County shall not perform numbers 1) or 2) above with ten years from the date of conveyance of the Brevard Road Site to Henderson County, Henderson County shall convey the Brevard Road Site back to Asheville in fee simple absolute.

("MSD") refers to the Metropolitan Sewerage District of Buncombe County, a copy of the Regional Water Agreement may be found in Part V, Chapter 503, of the Henderson County Code.)

WHEREAS, Grantor and Grantee now wish to extend the time within which said condition is to be satisfied;

NOW, THEREFORE, in consideration of the sum of \$10.00, and for other good and valuable consideration, the receipt and sufficiency of which is hereby

acknowledged, the parties agree that the language quoted above shall be deemed to be modified, as follows:

That portion of the second indented paragraph, above, beginning with the words "Henderson County shall either . . ." and continuing to the end such paragraph shall be modified by striking the same, and replacing it with the following:

Henderson County shall either: 1) convey the Brevard Road Site to MSD in fee simple upon condition subsequent that a wastewater treatment plant be constructed on the Brevard Road Site within twelve (12) years of the date of such conveyance, or else title shall revert automatically to Asheville; or 2) convey said property to a regional water and sewer authority of which Henderson County, the Authority, and Asheville are a part. In the event that Henderson County shall not perform numbers 1) or 2) above within twelve years from the date of conveyance of the Brevard Road Site to Henderson County, Henderson County shall convey the Brevard Road Site back to Asheville in fee simple absolute.

The date of conveyance is agreed by the parties to be July 15, 2002, the date of recordation of the 2002 Deed. The date by which Henderson County must perform numbers 1) or 2) in the foregoing paragraph is therefore July 15, 2014.

IN WITNESS WHEREOF, the parties have executed this Extension, the Grantor by causing it to be signed in its corporate name by its City Manager and attested by its City Clerk, and sealed with its corporate seal, and the Grantee by causing it to be signed by the Chairman of its Board of Commissioners and attested by the Clerk to the Board of Commissioners and sealed with its seal, on the day and year first above written.

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Attest:

CITY OF ASHEVILLE

\_\_\_\_\_  
Magdalen Burleson, City Clerk  
(official seal)

By: \_\_\_\_\_  
Gary W. Jackson, City Manager

HENDERSON COUNTY BOARD OF  
COMMISSIONERS

Attest:

\_\_\_\_\_  
Teresa Wilson, Clerk to the Board  
(official seal)

By: \_\_\_\_\_  
THOMAS H. THOMPSON, Chairman

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid certify that Magdalen Burleson personally came before me this day and acknowledged that she is the City Clerk of the City of Asheville, a North Carolina municipal corporation, and that by authority given and as the act of the corporation, that foregoing instrument was signed in its name by its City Manager and attested by herself as its City Clerk.

WITNESS my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public  
Print or type name \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid certify that Teresa Wilson personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners of Henderson County, North Carolina, and that by authority given and as the act of the Board, that foregoing instrument was signed in the name of the County by the Chairman of the Board of Commissioners and attested by herself as the Board's Clerk.

WITNESS my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public  
Print or type name \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

