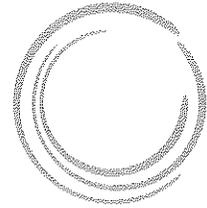


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CAPE COD  
COMMISSION

**Modification to Cape Cod Healthcare, Inc. Development Agreement  
DA-02014**

Date: October 13, 2011

To: Attorney Eliza Cox  
Nutter, McClennen & Fish, LLP  
1471 Iyannough Road  
P.O. Box 1630  
Hyannis, MA 02601-1630

From: Cape Cod Commission

Re: Modification to Cape Cod Healthcare, Inc. Development Agreement

Applicant: Cape Cod Healthcare, Inc.

Property Owner: Cape Cod Hospital

Project: Cape Cod Healthcare Ambulatory Care Complex

Project #: DA 02014

Project Location: 40.6 acres of land in Independence Park  
Accessed off Hadaway Road/Attucks Lane, Hyannis

Map and Parcel: Assessor's Map 296, Parcel 39 and Map 295, Parcel 004-001

Title References: Registry of Deeds Book 18163, Pages 147 and 155

Plan References: Lot A and C in Plan Book 588, Page 40  
Lot 4 in Plan Book 547, Page 1

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**DECISION OF THE CAPE COD COMMISSION**

**Background**

In March, 2003, the Cape Cod Commission (Commission) and Cape Cod Healthcare, Inc. (the Applicant) entered into a Development Agreement for 40.6 acres of land located in Independence Park, off Hadaway Road/Attucks Lane. The Development Agreement envisioned



construction of a 263,100 square foot ambulatory care medical complex offering medical-related services in a campus setting consisting of several buildings. The Development Agreement permits the site to be developed in phases over a 12 year period. The Wilkens Center, which is currently under construction, is on land subject to the Agreement, and is part of the larger ambulatory care complex.

### **Modification Request**

Attorney Eliza Cox of Nutter, McClennen & Fish, representing Cape Cod Healthcare, Inc. submitted a letter to the Commission on August 29, 2011 which outlines a number of requested modifications to the Development Agreement. These include modifying condition T2 to postpone the requirement to set aside a Transportation Demand Management (TDM) parcel, to reduce the required number of bike racks, and to modify condition T5 to adjust the amount of traffic credits applied at this time.

### **Jurisdiction and Modification Types**

Chapter D of the Commission's regulations governs Development Agreements. Chapter D as it existed in 2003, Section 8.0 addresses amendments and rescissions to Development Agreements. Section 8.0 states in part that "*non substantial amendments, as determined by the Commission... may be made without following the public notice and public hearing requirements provided in Sections 5 and 6...*" of the Development Agreement regulations.

### **Consideration by Commission Regulatory Committee**

The Commission's Regulatory Committee considered the Applicant's request to modify the 2003 Development Agreement at a special meeting on October 13, 2011. At this meeting, the Regulatory Committee voted to recommend to the full Commission that the proposed change to the Development Agreement was a non-substantial amendment.

### **Determination on Modification Requests and Changes to Development Agreement**

After consideration of a request by the Applicant to modify the 2003 Cape Cod Healthcare, Inc. Development Agreement, and based on a recommendation by the Commission's Regulatory Committee, the Cape Cod Commission hereby determines the requested changes are *nonsubstantial* amendments in accordance with Section 8.0 of the Development Agreement regulations, as amended.

The following changes are thereby made to the Development Agreement as shown. **Bold** indicates new text and text to be deleted is shown by strike-out.

## **II. Transportation**

T2. Based on the increase in average daily traffic of 4,660 new vehicle trips per day, the trip reduction requirement for the Project is 932 daily trips. To partially address the Project's trip reduction requirements (MPS 4.1.2.1) and prior to receiving a partial Certificate of Compliance for the first building, CCH agrees to implement and maintain an employee based trip reduction program.

The Traffic Impact and Access Study states that the trip reduction measures will remove 128 trips per day (approximately 20% of employee trips) from the roadway system. This plan includes the following ridesharing, transit, bicyclists and pedestrian measures:

1. Assemble information regarding carpooling and its benefits to be distributed to new employees of CCH.

2. Designate the employee area where car-pool information will be posted.
3. In the case of an emergency for registered ridesharers, CCH shall provide a guaranteed ride home via a local taxi service.
4. Designate two preferential parking spaces for employees that carpool.
5. Provide an incentive each day for each employee who commutes to work using alternative methods that reduce automotive trips such as bicycling, walking, carpooling or transit.
6. **CCH shall provide a secure bicycle storage areas to accommodate six (6) 40-bicycles for both employees and patrons within the Wilkens Center sub-part of Phase 1 of the Project. CCH shall provide secure bicycle storage areas to accommodate a total of forty (40) bicycles for both employees and patrons within the Project as development and Phasing proceeds.**
7. Provide on-site services to decrease employee midday trip making. The on-site services shall include a lunchroom, microwave, and refrigerator, and may also include an ATM, and a food court or similar services.
8. Provide a transportation coordinator and an on-site designee. The transportation coordinator shall be responsible for insuring that the complete rideshare program, including ridesharing, accommodating work shifts, promotions, incentives, preferential parking, and the guaranteed ride home program is consistently promoted and provided.
9. Provide an on site bus/trolley stop.
10. Provide subsidized transit fares and purchase multi-ride discount passes, good for 20 rides per month, for interested employees.

CCH shall donate approximately 2.1 acres of vacant developable land off Kidd's Hill Road, as shown on a plan entitled Hadaway Ambulatory Campus TDM Parcel prepared by Vanasse Hangen Brustlin, Inc. and dated 12/4/02 (the "TDM Parcel"), in excess of open space requirements, to a conservation land trust or the Town of Barnstable to be used solely and in perpetuity for conservation purposes in order to meet the remaining trip reduction requirements. The donation of vacant, developable land in excess of open space requirements as an offset to the trip reduction requirements of the Regional Policy Plan is allowable under Other Development Review Policy 4.1.3.2. Based on the proponent's traffic engineer calculations the trip generation for the vacant developable land is 804 Average Daily Trips (ADT). The required trip reduction to comply with MPS 4.1.2.1 of the RPP is 932 ADT. Therefore, the traffic credit associated with the TDM Parcel together with the trip reduction program measures to be implemented as described in Condition T2, meets MPS 4.1.2.1 requirements based upon full build out. Prior to issuance of a partial Certificate of Compliance for the first building **which is part of Phase 2**, CCH shall donate the TDM Parcel to the Town and shall submit proof that the deed has been recorded with the Barnstable County Registry of Deeds. The draft form of the deed of the TDM Parcel is attached hereto as Exhibit 8. The form and content of the deed shall be approved by Cape Cod Commission staff prior to recording. CCH may seek a modification of this Development Agreement in accordance with Section G2 hereof to allow for consideration of the payment by CCH of cash payments to meet the foregoing trip reduction requirements in lieu of the donation of the TDM Parcel.

T5. CCH has complied and submitted to the Commission a fair share cost analysis pursuant to MPS 4.2.3.4 of the RPP and Technical Bulletin 96-003, Part 2 – Fair Share Overview and Methodology Guidelines. The Project, at full build-out, must mitigate 228 weekday, morning vehicle trips to comply with MPS 4.1.1.1 of the RPP. The fair share cost to offset 228 weekday morning peak trips has been calculated at \$268,910.00. It is agreed that CCH may utilize traffic mitigation credits up to \$300,690.00 assigned by Cape Cod Aggregates Corporation to CCH towards the fair share contribution funding. These mitigation credits are available pursuant to Condition TRANS-2 of the Cape Cod Aggregates DRI Decision dated May 21, 1998 (TR#96020) attached as Exhibit 16.

Prior to receiving a partial Certificate of Compliance for the first building, CCH shall apply ~~\$268,910~~ **\$23,589** of the existing traffic mitigation credits **to the Wilkens Center, which works out to \$1.00 per square of development** to address the requirements of MPS 4.1.1.1 of the RPP. **The remainder of the traffic mitigation credits may be applied to further development on the project site as Phasing proceeds. Future development on the site may apply traffic credits at a rate of \$1.00 per square foot of development.**

**SEE NEXT PAGE FOR SIGNATURES**

**Signatures**

Signed this 13<sup>th</sup> day of October, 2011.

For the Cape Cod Commission:

*Peter Graham*  
Peter Graham, Commission Chair

**COMMONWEALTH OF MASSACHUSETTS**

**Barnstable, ss**

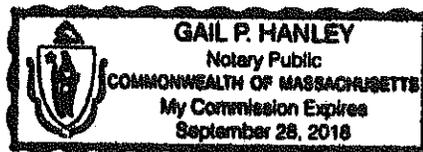
Oct 13, 2011

Before me, the undersigned notary public personally appeared

Peter Graham in his/her capacity as Chair of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness, or  personal knowledge of the undersigned.

Gail P. Hanley  
Notary Public

My Commission Expires: 9-28-18



Cape Cod Healthcare, Inc. and Cape Cod Hospital:

Michael Lauf  
By: Michael Lauf  
President/CEO, Cape Cod Healthcare, Inc. and President/CEO of Cape Cod Hospital

**COMMONWEALTH OF MASSACHUSETTS**

**Barnstable, ss**

Oct 25, 2011

Before me, the undersigned notary public personally appeared

in his/her capacity as President & CEO, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness, or  personal knowledge of the undersigned.

Deborah A. Lauder  
Notary Public

My Commission Expires: October 13, 2017  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
October 13, 2017

