



COMMENTS REGARDING CERTIFICATE OF NEED APPLICATIONS FILED FOR NURSING FACILITY BEDS IN WAKE COUNTY

**Submitted by: Hillcrest Convalescent Center
September 30, 2011**

Pursuant to N.C.G.S. § 131E-185, Hillcrest Convalescent Center, Inc. ("Hillcrest") submits these comments in opposition to the following CON applications for nursing facility beds in Wake County. Due to the number of applications that have been submitted during this review period, Hillcrest has chosen to simply highlight certain significant issues identified for certain applications.

I. J-8712-11/Wake County H & R Re, Limited Partnership, Lessor, Wake County H & R Ops, Limited Partnership, Lessee, Medical Facilities of NC, Inc. & Medical Facilities of America

Develop a 120-bed nursing facility in Cary

Criterion 1

The applicant notes that it will submit a plan to address Policy Gen-4 if awarded the CON. Failure to submit the plan renders the application non-conforming with Criterion 1.

Criterion 5

The applicant provides letters from Medical Facilities of NC and Medical Facilities of America to commit the funds for the working capital required to initially operate the proposed facility. However, although the applicant provides a letter from Lancaster Pollard for a \$13.65 million commercial loan, the applicant does not provide any funding letter "obligating and committing" the Lancaster Pollard funds to the development of the project. This failure cannot be cured by review of any publicly available information, and the application should be found non-conforming with Criterion 5.

Criterion 6

The applicant does not propose to have an assistant Director of Nursing for the building. As such, Hillcrest, which will have an Assistant Director of Nursing, is comparatively superior with regard to staffing.

II. J-8713-11/Wake County Health & Rehab Center/Britthaven, Inc. (lessor) and Spruce LTC Group, LLC

Develop a 120-bed nursing facility

Criterion 5

Britthaven's Cedar Fork Township Application is non-conforming with Criterion 5 based on the following facts:

(a) Britthaven provides a letter from RBC Bank indicating a \$7.5 million commercial loan, but Britthaven does not provide a funding letter stating that the funds from the RBC Bank loan will be used for the construction of the proposed facility.

(b) Britthaven will fund \$3.2 million from current assets, but only has \$1.4 million in cash and cash equivalents available and has committed \$2.54 million in its St. Mary CON application.

(c) Spruce LTC Group will fund \$1.48 million from current assets, but only has \$208,000 in cash and cash equivalents available.

(d) Principle Long Term Care will fund \$367,000 from current assets, but only has \$362,000 in cash and cash equivalents available and has committed \$29,000 in its St. Mary CON application.

Criterion 12

The applicant provides construction cost estimates for a facility proposed to be built in a different location than proposed in Section I. Specifically, Section I of the application identifies a location on Brier Creek Lane in Cedar Fork Township, which is in the western portion of Wake County. However, the applicant provides construction cost estimates for a facility to be constructed in St. Mary's Township which is located in the eastern portion of Wake County.

Criterion 20

Pursuant to the CMS Nursing Home Compare website, multiple Britthaven facilities have been cited for serious immediate jeopardy deficiencies in the past eighteen months. Specifically,

(a) The Britthaven Charlotte facility, now named University Place, had an immediate jeopardy citation in the pharmacy area in June 2010 and an immediate jeopardy for failing to make sure the nursing home area was free of dangers that cause accidents in December 2010.

(b) The Britthaven Chowan River facility had an immediate jeopardy for failing to protect residents from abuse in September 2010.

(c) The Britthaven Chapel Hill facility has had numerous immediate jeopardy citations and has been designated as a special focus facility.

(d) The Britthaven Premier facility in Jacksonville had two immediate jeopardy citations related to pharmacy issues in July 2011.

(e) The Britthaven Smithfield facility had three immediate jeopardy citations in February 2011 related to dehydration, notification of change in condition, and need for catheter.

From a comparative standpoint, Hillcrest should be deemed the superior application because it has a record of deficiency free or minimum deficiency surveys.

**III. J-8714-11/Universal Properties/ North Raleigh, LLC d/b/a Universal Health Care/
North Raleigh, Inc.**

**Proposal to add 20 NF beds to Universal Healthcare/North Raleigh to increase the
licensed number of SNF beds to 132 and 20 ACH beds**

Criterion 1

The Application contains no discussion regarding Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities, and as such is non-conforming with Criterion 1.

Criterion 5

The Applicant provides letters stating that personal financial statements have been "examined." However, the applicant is required to provide the actual "personal financial statements" in the application. The personal financial statements are not available to the Agency for review and the failure to include this documentation renders the Application non-conforming with Criterion 5.

Criterion 20

Pursuant to the CMS Nursing Home Compare website, multiple Universal facilities have been cited for immediate jeopardy deficiencies in the past year. Specifically, Universal's Fletcher facility had two immediate jeopardy findings in February 2011 regarding care plans and failing to keep area free of dangers. The Universal Charlotte facility had one immediate jeopardy in April 2011 regarding providing residents with the highest quality of service possible. From a comparative standpoint, Hillcrest should be deemed the superior application because it has a record of deficiency free or minimum deficiency surveys.

**IV. J-8715-11/St. Mary's Health and Rehab Center/Britthaven, Inc. (Lessor), Redwood
LTC, Group, LLC**

Develop a 100-bed nursing facility

Criterion 5

Britthaven's Application is non-conforming with Criterion 5 based on the following facts:

(a) Britthaven provides a letter from RBC Bank indicating a \$6.5 million commercial loan, but Britthaven does not provide a funding letter stating that the funds from the RBC Bank loan will be used for the construction of the proposed facility.

(b) Furthermore, Britthaven will fund \$2.54 million from current assets, but only has \$1.4 million in cash and cash equivalents available.

(c) Additionally, Redwood LTC Group will fund \$1.28 million from current assets, but only has \$2,000 in cash and cash equivalents available.

Criterion 12

Based on the information provided in the application, it cannot be determined whether a nursing home facility can be built on the proposed site pursuant to the current zoning provisions. Raleigh Property 10400 and 10450 Little Briar Creek Lane consists of two parcels totaling 9.102±. The property is zoned Thoroughfare District Conditional Use. A conditional use zoning district is one that allows for imposition of limitations above and beyond the requirements of the Raleigh zoning ordinance. The zoning limits the number of dwelling units permitted in Land Bay B where this property is located. Based on the information provided in the application, it cannot be determined whether the permitted number of units (3,550) has been exceeded for this bay. The Thoroughfare District Conditional Use also provides that to develop a Life Care Community the property must be at least 10 acres.

The alternative site is also not an option based on the information in the application. Specifically, Britthaven's second option, the Morrisville Property located in the Southern Quadrant of the Intersection of NW Cary Parkway and Wilson Drive, requires the issuance of two special use permits by two town boards. This property is comprised of two parcels totaling 10.98± acres. The parcel closest to Cary Parkway is 4.02± acres and is zoned General Business. The rear parcel is 6.96± acres and is zoned Residential-12. A "nursing home" is not a permitted use in either district but instead requires special use permit approval from the Town Board in the GB zoning district and special use permit approval from the Board of Adjustment in the R-12 zoning district. The application contains no demonstration that a request has been made or that a special use permit has been considered or granted.

Given the fact that the application does not contain sufficient documentation to confirm that the facility can be developed on those proposed sites, the application is non-conforming with Criterion 12.

Criterion 20

Pursuant to the CMS Nursing Home Compare website, multiple Britthaven facilities have been cited for serious immediate jeopardy deficiencies in the past eighteen months. Specifically,

a) The Britthaven Charlotte facility, now named University Place, had an immediate jeopardy citation in the pharmacy area in June 2010 and an immediate jeopardy for failing to make sure the nursing home area was free of dangers that cause accidents In December 2010.

(b) The Britthaven Chowan River facility had an immediate jeopardy for failing to protect residents from abuse in September 2010.

(c) The Britthaven Chapel Hill facility has had numerous immediate jeopardy citations and has been designated as a special focus facility.

(d) The Britthaven Premier facility in Jacksonville had two immediate jeopardy citations related to pharmacy issues in July 2011.

(e) The Britthaven Smithfield facility had three immediate jeopardy citations in February 2011 related to dehydration, notification of change in condition, and need for catheter.

From a comparative standpoint, Hillcrest should be deemed the superior application because it has a record of deficiency free or minimum deficiency surveys.

V. J-8719-11/UHS Pruitt/Uni- Health Post Acute Care-Raleigh, LLC and Wake Health Properties, Inc.

Add 20 Alzheimer's Bed to Uni-Health Post Acute Care Raleigh

Criterion 20

Pursuant to the CMS Nursing Home Compare website, multiple UniHealth facilities have been cited for serious immediate jeopardy deficiencies in the past eighteen months. Specifically,

(a) The UniHealth High Point facility had two immediate jeopardy citations in December of 2010 based on failure to ensure highest level of care possible and making sure home is free of dangers that cause accidents.

(b) The UniHealth, Aiken, SC facility had 8 immediate jeopardy citations less than six months ago, in April 2011.

From a comparative standpoint, Hillcrest should be deemed the superior application because it has a record of deficiency free or minimum deficiency surveys.

VI. J-8720-11/UHS Pruitt/Uni- Health Post Acute Care-Cary, LLC and Cary Health Properties, Inc.

Build a 100 bed facility in Cary

Criterion 20

Pursuant to the CMS Nursing Home Compare website, multiple UniHealth facilities have been cited for serious immediate jeopardy deficiencies in the past eighteen months. Specifically,

(a) The UniHealth High Point facility had two immediate jeopardy citations in December of 2010 based on failure to ensure highest level of care possible and making sure home is free of dangers that cause accidents.

(b) The UniHealth, Aiken, SC facility had 8 immediate jeopardy citations less than six months ago, in April 2011.

From a comparative standpoint, Hillcrest should be deemed the superior application because it has a record of deficiency free or minimum deficiency surveys.

VII. J-8721-11/UVarina, Inc. Universal Properties / Fuquay Varina, LLC

Proposal to add 60 NF beds to existing facility for a total of 109 NF beds and 31 ACH beds

Criterion 1

The Application contains no discussion of Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities, and as such is non-conforming with Criterion 1.

Criterion 5

The Applicant provides letters stating that personal financial statements have been examined; however, the applicant is required to provide the actual "personal financial statements" in the application. The personal financial statements are not available to the Agency for review and the failure to include this documentation renders the Application non-conforming with Criterion 5.

Criterion 20

Pursuant to the CMS Nursing Home Compare website, multiple Universal facilities have been cited for immediate jeopardy deficiencies in the past year. Specifically, Universal's Fletcher facility had two immediate jeopardy findings in February 2011, regarding care plans and failing to keep area free of dangers. The Universal Charlotte facility had one immediate jeopardy in April 2011 regarding providing residents with highest quality of service possible. From a comparative standpoint, Hillcrest should be deemed the superior application because it has a record of deficiency free or minimum deficiency surveys.

VII. J-8723-11//Liberty Healthcare Properties of W. Wake County, LLC d/b/a Liberty Properties AND Liberty Commons Nursing & Rehab CNTR. of W. Wake Co

Develop 130 bed nursing facility in Garner by relocating 10 NF beds from Capital Nursing and developing 120 additional beds

IX. J-8726-11/Liberty Healthcare Properties of W. Wake County, LLC d/b/a Liberty Properties AND Liberty Commons Nursing & Rehab CNTR of W. Wake

Develop a 130-bed nursing facility in Morrisville by relocating 10 NF beds from Capital Nursing and developing 120 additional beds

X. J-8727-11/Liberty Healthcare Properties of W. Wake County, LLC d/b/a Liberty Properties AND Liberty Commons Nursing & Rehab CNTR. of W. Wake

Develop 130 bed nursing facility in North Raleigh by relocating 10 NF beds from Capital Nursing and developing 120 additional beds

The issues and grounds for non-conformity of the above three Liberty applications apply to each application, and the discussions are consolidated below.

Criterion 1

There is no discussion of Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities in any of the applications. This failure renders the applications non-conforming with Criterion 1.

Criterion 4

The applicant, Liberty Healthcare Properties, submitted three CON applications with each application proposing 120 new nursing facility beds and 10 relocated nursing facility beds. The applicant must propose the most cost effective alternative to the Agency. By submitting applications totaling 360 new nursing facility beds, the applicant has submitted competing applications, one or more of which is not the most effective alternative as compared to the other applications it submitted.

Criterion 5

The Applicant provides a letter committing to “personally fund” the development of the project. A letter from Cherry Bekaert & Holland CPA states that this commitment was “in lieu of submitting financial statement.” However, the applicant is required to provide actual “personal financial statements” in the application.

Furthermore, the applicant has submitted three CON applications with the total project costs:

	J-8727-11	J-8723-11	J-8726-11
Capital Costs	\$15,667,836	\$14,719,180	\$13,850,714
Working Capital	\$1,597,250	\$1,600,412	\$1,585,103
Total Project Costs	\$17,265,086	\$16,319,592	\$15,435,817

A letter from Cherry Bekaert & Holland CPA states that “John A. McNeill Jr. and Ronald B. McNeill each have in excess of \$10,000,000 in cash, stocks, or short term investments in order to fund the construction and operation of the proposed skilled nursing facility...”

The letter indicates that the two proposed owners combined have in excess of \$20,000,000, but without the required personal financial statements, the Agency cannot determine how much in excess of that amount the owners have. As such, the owners are only capable of funding one of the proposed projects, not two.

Additionally, the applicants did not provide a letter from an appropriate financial official to verify that the stocks and short term investments can be liquidated at the time funds are needed for the project.

Given the above facts, all three applications should be found non-conforming with Criterion 5.

Criterion 20

Pursuant to the CMS Nursing Home Compare website, multiple Liberty facilities have been cited for serious immediate jeopardy deficiencies in the past eighteen months. Specifically,

(a) The Liberty Salisbury facility had two immediate jeopardy citations in February 2011 (regarding care plans and provision of drugs).

(b) The Liberty Raleigh facility had three immediate jeopardy citations in January 2011 (regarding meeting professional standards, provision of drugs and pharmacy issues).

(c) The Liberty Clinton facility had an immediate jeopardy in March 2011 related to failure to keep area free of dangers.

(d) The Liberty Winston-Salem facility had two immediate jeopardy citations in December 2010 regarding protecting residents from abuse and their abuse policies.

From a comparative standpoint, Hillcrest should be deemed the superior application because it has a record of deficiency free or minimum deficiency surveys.

XI. J-8729-11/E.N.W., LLC/BellaRose Nursing and Rehab Center, Inc.

Develop a 100-bed nursing facility in SE Raleigh

Criterion 1

The Application contains no discussion of Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities, and as such is non-conforming with Criterion 1.

Criterion 5

The applicant provides a letter from the owner of the proposed facility committing funds for the development of the project; however, the personal financial statement is for Robert and Kisa Evans. There is no documentation that indicates that the accounts are not joint accounts and would require Kisa Evans to jointly approve the withdrawal of over \$1.0 million.

XII. J-8730-11/Cary Operations, LLC d/b/a The Rehabilitation and Nursing Center at Cary

Develop a 120-bed nursing facility

Criterion 5

Applicant provides a letter "personally guaranteeing" \$2.6 million for the development of the project. A letter from Larson Allen states that they have "familiarity with the collective personal financial position of Mr. Straus..."; however, the applicant is required to provide the actual "personal financial statements" in the application. Failure to do so renders the application non-conforming with Criterion 5.

The CON application proposes the following rate for Private Pay: \$240 for a private room and \$205 for a semi-private room. However, Blue Ridge, an existing facility with which this facility is affiliated the following rate for Private Pay: \$455 for a private room, \$405 for a semi-private room, \$685/\$525 for a "Venilator (sic) Dep." The difference between the charges of the existing facility and proposed facility draw into question the reasonableness of the existing facility's proposal and impact the facility's financial feasibility.

Criterion 6

The applicant states there will be at least one direct-care staff member on each floor. This staff is insufficient in considering when they plan application a 30-bed (locked) unit on one floor.

Criterion 12

The application indicates that it holds title to the proposed site but documentation supporting such representation is not included in the application. The application contains a purchase agreement contract but no documentation that sale has occurred.

Additionally, this property was rezoned in 2009 and there were several restrictions on development. These restrictions include no parking allowed on the east side of the property. The application proposed parking on the east side of the property. As submitted, the proposal is not approvable. Based on these issues with the site the application should be deemed non-conforming with Criterion 12.

XIII. J-8731-11/Raleigh Operations, LLC d/b/a The Rehabilitation and Nursing Center at Raleigh

Develop a 120-bed nursing facility

Criterion 5

Applicant provides a letter "personally guaranteeing" \$2.68 million for the development of the project. A letter from LarsonAllen states that they have "familiarity with the collective personal financial position of Mr. Straus..."; however, the applicant is required to provide the actual "personal financial statements" in the application. Failure to do so renders the application non-conforming with Criterion 5.

Criterion 12

The Applicant proposes a 3 story structure along the southeast corner of the property to stay out of the "Floodway", and build on the "Floodplain". Its plan shows the building with a 30 foot "front yard" in the corner of the property adjacent to New Bern Ave and Milburne Rd. This site with a proposed development of a three story building in the floodplain and only a 30 foot front yard is not approvable.