



North Carolina Department of Health and Human Services
Division of Health Service Regulation

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Drexdal Pratt
Division Director

November 21, 2013

Gary S. Qualls
P.O. Box 14210
Research Triangle Park, NC 27709-4210

Exempt from Review – Acquisition of Facility

Facility: Highland Gardens
Acquisition by: Wells Fargo Bank, N.A.
County: Robeson
FID #: 920569

Dear Mr. Qualls:

In response to your letter of October 16, 2013, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, Wells Fargo Bank, N.A. may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Adult Care Licensure Section of the Division of Health Service Regulation to obtain instructions for changing ownership of the existing facility. Note that pursuant to N.C.G.S. §131E-181(b): *“A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need.”*

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Tanya S. Rupp
Project Analyst

Craig R. Smith, Chief
Certificate of Need Section

cc: Medical Facilities Planning Branch, DHSR
Adult Care Licensure Section, DHSR



Certificate of Need Section

www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-733-8139

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603

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Fargo

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October 16, 2013

Gary S. Qualls
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gary.qualls@klgates.com



Mr. Craig Smith, Chief
Ms. Martha Frisone, Assistant Chief
Certificate of Need Section
Division of Health Service Regulation
Department of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Exemption Notice for Potential Acquisition of Highland Gardens (Adult Care Home in Robeson County)

Dear Craig and Martha:

Our client, Wells Fargo Bank, N.A. (“Wells Fargo”), is potentially acquiring ownership of an adult care home in Robeson County, known as Highland Gardens (hereafter “the Facility”) through foreclosure. The Facility is located at 104 Hope Lane, Red Springs, NC 28377. The Facility is listed in the “Inventory of Adult Care Home Beds” in the 2013 State Medical Facilities Plan as having 63 adult care home beds. See Exhibit 1.

The purpose of this letter is to provide prior notice of this potential acquisition, which is exempt from certificate of need (“CON”) review, to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the “Agency”). Wells Fargo seeks confirmation that it is permitted to acquire the Facility as described herein without CON Review, thus acquiring the Facility’s existing CON rights to own that existing health service facility (as defined in the CON statute) with 63 adult care beds.

I. THE PROPOSAL

As of this date, The Burns Group, LLC owns the property and building comprising the Facility, which is an existing “health service facility,” as that term is defined in N.C. Gen. Stat. § 131E-176(9b). Wells Fargo will acquire ownership of the Facility through the foreclosure process. The Facility is currently being operated pursuant to a Receivership Order, attached as

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Ms. Martha Frisone, Assistant Chief
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Exhibit 2. A new licensee has applied for licensure status to operate the Facility under Wells Fargo's ownership.

II. EXEMPTION NOTICE

Under North Carolina law, a certificate of need ("CON") is required only prior to offering or developing a "new institutional health service." "New institutional health service" includes a variety of services and activities, including a capital expenditure exceeding \$2 million. N.C. Gen. Stat. § 131E-176(16)(b).

The North Carolina General Assembly saw fit to exempt certain types of services or proposals from CON review, pursuant to N.C. Gen. Stat. § 131E-184. One such exempt service or proposal includes the acquisition of an existing health service facility, "including equipment owned by the health service facility at the time of acquisition." N.C. Gen. Stat. § 131E-184(a)(8).

This project involves only the acquisition of an existing adult care home, which falls within the purview of the statutory definition of "health service facility." After acquisition, Well Fargo intends to have a licensee continue to operate the Facility as an adult care home. Furthermore, Wells Fargo's acquisition of the Facility does not entail the purchase of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14o) and (16)(f1). Likewise, the acquisition does not include the offering of any *per se* reviewable services. N.C. Gen. Stat. § 131E-176(16)(f). Thus, given that the transaction involves only the acquisition of an existing health service facility, it is exempt from CON review.

III. CONCLUSION

Based on the foregoing information, we hereby request the Agency's confirmation that the proposal described above is exempt from CON review, pursuant to N.C. Gen. Stat. § 131E-184(a)(8), and thus Wells Fargo may acquire the Facility with all its existing CON rights without a CON.

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In addition, we respectfully request that this request be considered on an expedited basis because the parties wish to proceed with this transaction as soon as possible. If you require additional information to consider this request, please contact us at the above number as soon as possible. We thank you for your consideration of this request.

Sincerely,

Gary S. Qualls by SKH
Gary S. Qualls

Enclosures

Mr. Craig Smith, Chief
Ms. Martha Frisone, Assistant Chief
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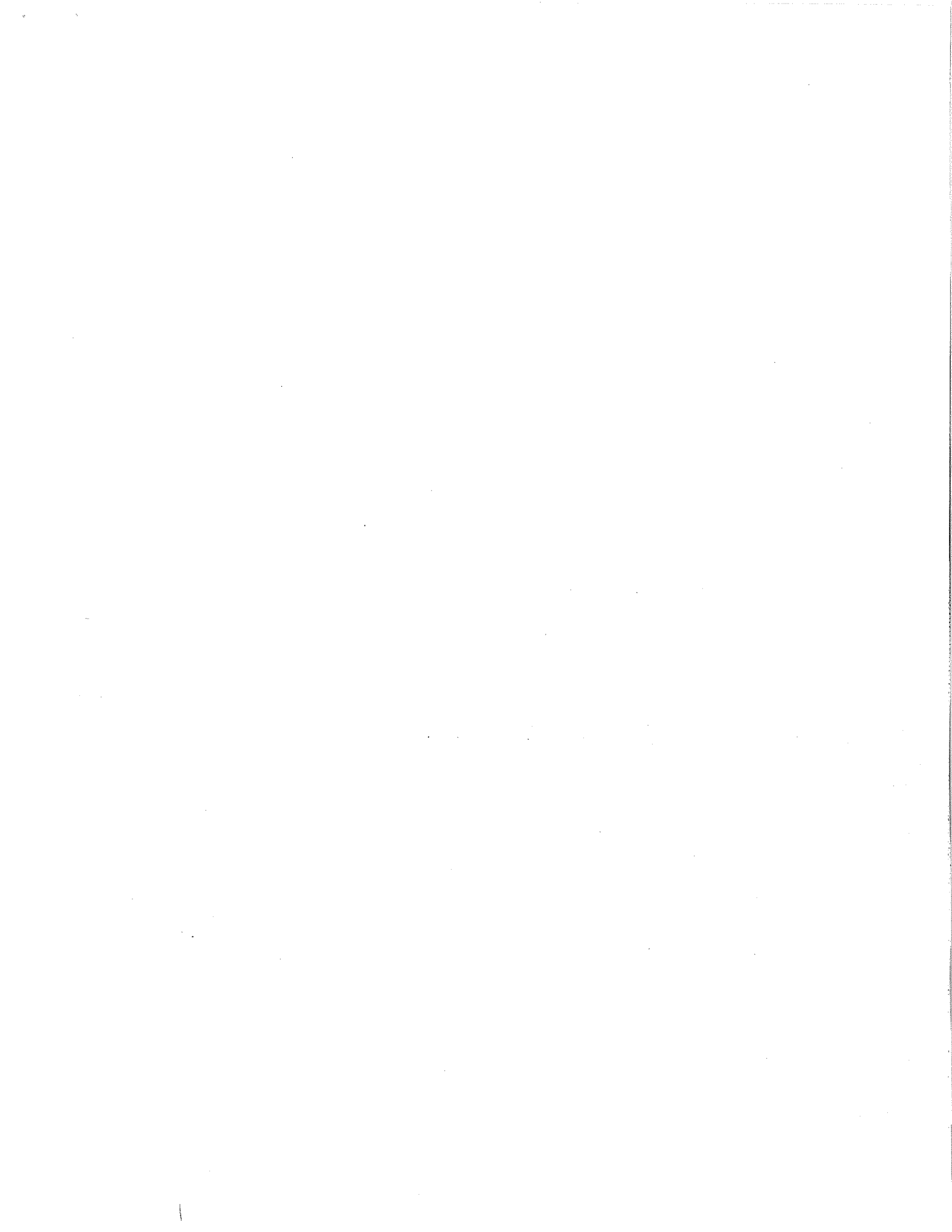
Exhibits

1. SMFP Excerpts
2. Receivership Order



Table 11A: Inventory of Adult Care Homes (Assisted Living) Beds

County	Facility Name	Licensed Beds in Nursing Homes	Licensed Beds in Hospitals	Licensed Beds in Adult Care Facilities	Total Licensed Beds	CON Approved/License Pending				Total Available in SMFP	Total Available	Sum of Exclusions	Total Planning Inventory
						CON	ACH Exempt	ACH Pipeline	CON Bed Transfer				
Randolph	Country Manor	0	0	9	9	0	0	0	0	0	9	0	9
Randolph	Cross Road Retirement Community	0	0	152	152	0	0	0	0	0	152	0	152
Randolph	North Pointe	0	0	67	67	0	0	0	0	0	67	0	67
Randolph	North Pointe Assisted Living of Archdale	0	0	56	56	0	0	0	0	0	56	0	56
Randolph	The GrayBrier Nursing & Retirement Center	14	0	0	14	0	0	0	0	0	14	0	14
Randolph	Westwood Health and Rehabilitation	16	0	0	16	0	0	0	0	0	16	0	16
	Randolph Totals	30	0	576	606	0	0	0	0	0	606	0	606
Richmond	Hamlet House	0	0	60	60	0	0	0	0	0	60	0	60
Richmond	New Hope Adult Care	0	0	15	15	0	0	0	0	0	15	0	15
Richmond	Richmond Pines Healthcare and Rehabilitation Center	10	0	0	10	0	0	0	0	0	10	0	10
Richmond	The Heritage Retirement Center of Rockingham	0	0	114	114	0	0	0	0	0	114	0	114
	Richmond Totals	10	0	189	199	0	0	0	0	0	199	0	199
Robeson	Covenant Care	0	0	30	30	0	0	0	0	0	30	0	30
Robeson	Cromartie Spring Village Rest Home	0	0	11	11	0	0	0	0	0	11	0	11
Robeson	Glen Flora	20	0	0	20	0	0	0	0	0	20	0	20
Robeson	Green Manor Rest Home	0	0	82	82	0	0	0	0	0	82	0	82
Robeson	Greenbrier of Fairmont	0	0	100	100	0	0	0	0	0	100	0	100
Robeson	Highland Gardens	0	0	63	63	0	0	0	0	0	63	0	63
Robeson	J & S Care - Morning Star Assisted Living	0	0	10	10	0	0	0	0	0	10	0	10
Robeson	J & S Care - Morningstar Assisted Living #2	0	0	12	12	0	0	0	0	0	12	0	12
Robeson	J & S Care - Morningstar Assisted Living #3	0	0	12	12	0	0	0	0	0	12	0	12
Robeson	J & S Care - Morningstar Assisted Living #4	0	0	12	12	0	0	0	0	0	12	0	12
Robeson	Lumberton Assisted Living	0	0	104	104	0	0	0	0	0	104	0	104
Robeson	Red Springs Assisted Living	0	0	81	81	0	0	0	0	0	81	0	81
Robeson	Wesley Pines Retirement Community	42	0	0	42	0	0	0	0	0	42	0	42
	Robeson Totals	62	0	517	579	0	0	0	0	0	579	0	579
Rockingham	Carolina House of Reidsville	0	0	76	76	0	0	0	0	0	76	0	76
Rockingham	Eden Estates	0	0	82	82	0	0	0	0	0	82	0	82
Rockingham	Highgrove Long Term Care Center	0	0	62	62	0	0	0	0	0	62	0	62
Rockingham	Moyer's Rest Home	0	0	18	18	0	0	0	0	0	18	0	18
Rockingham	North Pointe of Mayodan	0	0	70	70	0	0	0	0	0	70	0	70
Rockingham	Penn Nursing Center	10	0	0	10	0	0	0	0	0	10	0	10
Rockingham	Pine Forest Home for the Aged	0	0	58	58	0	0	0	0	0	58	0	58
Rockingham	Reidsville House	0	0	43	43	0	0	0	-43	0	0	0	0
Rockingham	Reidsville House - Replacement	0	0	0	0	0	0	0	43	0	43	0	43
	Rockingham Totals	10	0	409	419	0	0	0	0	0	419	0	419
Rowan	Best of Care Assisted Living	0	0	25	25	0	0	0	0	0	25	0	25
Rowan	Bethany Retirement Center	0	0	43	43	0	0	0	0	0	43	0	43
Rowan	Big Elm Retirement and Nursing Center	96	0	0	96	0	0	0	0	0	96	0	96
Rowan	Brightmoor Nursing Center	43	0	0	43	0	0	0	0	0	43	0	43
Rowan	Carillon Assisted Living of Salisbury	0	0	128	128	0	0	0	0	0	128	0	128
Rowan	China Grove Retirement Center	0	0	28	28	0	0	0	0	0	28	0	28
Rowan	Harris Enterprises - Deal Care Inn	0	0	21	21	0	0	0	0	0	21	0	21
Rowan	Heritage Center	0	0	34	34	0	0	0	0	0	34	0	34
Rowan	Kannon Creek Assisted Living	0	0	106	106	0	0	0	0	0	106	0	106
Rowan	Lutheran Home at Trinity Oaks	25	0	0	25	0	0	0	0	0	25	0	25
Rowan	Salisbury Center	20	0	0	20	0	0	0	0	0	20	0	20
Rowan	Salisbury Gardens	0	0	88	88	0	0	0	0	0	88	0	88
Rowan	The Laurels of Salisbury	20	0	0	20	0	0	0	0	0	20	0	20
Rowan	The Meadows of Rockwell Retirement Center	0	0	120	120	0	0	0	0	0	120	0	120
Rowan	Trinity Oaks Continuing Care Retirement Community	0	0	20	20	0	0	0	0	0	20	0	20
Rowan	Veranda Residential Care	0	0	89	89	0	0	0	0	0	89	0	89
	Rowan Totals	204	0	702	906	0	0	0	0	0	906	0	906



STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED
2012 MAR 19 PM 4:17

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 12-CVS- 2831

WAKE COUNTY, C.S.C.
WELLS FARGO BANK, N.A., successor)
by merger to WACHOVIA BANK, N.A.,)
Plaintiff,)
v.)
The Burns Group, L.L.C.,)
Defendants.)

**CONSENT ORDER GRANTING
PRELIMINARY INJUNCTION AND
APPOINTMENT OF RECEIVER**

This matter is before the court on Plaintiff's Motion for Preliminary Injunction and Appointment of Receiver (collectively, the "Motion"), which was filed on February 24, 2005. The parties have jointly submitted a proposed order reflecting their agreement to resolve the Motion. The Court, having reviewed the filings and pleadings, finds the parties' agreement acceptable and hereby makes the following findings of fact and conclusions of law:

1. This Court has jurisdiction over the parties and the subject matter.
2. Defendant The Burns Group, L.L.C. ("Borrower") is indebted to Plaintiff Wells Fargo Bank, N.A., as successor by merger to Wachovia Bank, N.A., ("Wells Fargo") under the terms of two promissory notes ("Notes") as described in the Motion.
3. Borrower's obligations are secured by two deeds of trust ("Deeds of Trust") as described in the Complaint.
4. The Deeds of Trust transferred to a trustee of Wells Fargo Borrower's fee simple interest in two pieces of real property located in Robeson County, North Carolina ("Red Springs Property") and in Northampton County, North Carolina ("Pleasant Hills Property," and

collectively with the Red Springs Property, the "Properties"), as more particularly described in the Deeds of Trust.

5. The Deeds of Trust also assigned and transferred to Wells Fargo "all the leases, rents, issues and profits of the [Properties] (collectively 'Rents')."

6. The Deeds of Trust also granted Borrower a revocable license to collect those Rents so long as there was no default under the Notes or Deeds of Trust.

7. Upon default under the Notes or Deeds of Trust, the Deeds of Trust give Wells Fargo the right to "apply to any court of competent jurisdiction for the appointment of a receiver for all purposes"

8. Borrower has defaulted under the Notes and Deeds of Trust.

9. Borrower is unable to undertake necessary repairs, maintenance, and physical improvements in order for the Properties to be fit for use as an adult home care facility, which is their intended purpose.

10. Thus, Wells Fargo has been denied the Rents that could be generated from the Properties due to Borrower's inability to perform repairs, maintenance, and improvements on the Properties.

11. Borrower has also failed to pay property taxes on the Properties.

12. The Properties, any existing Rents from the Properties, and the ability to collect future Rents upon the successful completion of repairs, maintenance, and improvements, are in the possession and control of Borrower.

13. Any existing Rents from the Properties, and the ability to collect future Rents upon the successful completion of repairs, maintenance, and improvements, are in imminent danger of being lost, materially injured, or impaired.

14. Wells Fargo will suffer irreparable loss and damage in the form of substantial lost rental payments and diminished fair market value of its collateral unless a preliminary injunction is granted and a receiver is appointed.

15. A Receiver is necessary to manage and operate the Properties and to secure and safeguard any existing Rents and future Rents that could be collected upon the successful completion of repairs, maintenance, and improvements.

16. Appointment of a Receiver is therefore appropriate pursuant to N.C. Gen. Stat. § 1-502.

17. Appointment of a Receiver is also appropriate pursuant to the express terms of the Deeds of Trust.

18. A preliminary injunction appointing a receiver is appropriate pursuant to N.C. Gen. Stat. § 1A-1, Rule 65(a) and N.C. Gen. Stat. § 1-485, et seq.

19. Meridian Senior Living, LLC is a North Carolina based company that provides a wide range of specialized services in the development of senior living and healthcare services. Meridian Senior Living, LLC has extensive experience in acting as a Court appointed receiver and is well qualified to act as a receiver in this case and to provide necessary reports to the Court.

Therefore, IT IS HEREBY ORDERED, ADJUGED AND DECREED:

1. Meridian Senior Living, LLC ("Receiver") is hereby appointed as receiver, pursuant to N.C. Gen. Stat. § 1-502 and the terms of this Order, in order to take possession of, manage, and operate the Properties and to secure and safeguard any existing Rents and future Rents that will be collected upon the successful completion of repairs, maintenance, and improvements;

2. Receiver shall have all of the rights, powers and authority permitted by N.C. Gen. Stat. § 1-507.2, including without limitation the following:

a. Receiver may enter upon and take possession of the Properties and exclude Borrower, its officers, members, directors, affiliates and employees, as well as third parties, therefrom and otherwise protect the Properties;

b. Receiver is authorized to employ attorneys, accountants, other professionals, managing agents, collection agents, and any other persons, firms or corporations necessary or appropriate to the orderly and efficient collection and management of the Properties;

c. Receiver is authorized to enforce contracts, accounts, and leases and take such action with respect to contracts, leases or other account rights as may be necessary or appropriate to assure collection and payment of Borrower's indebtedness and the orderly and efficient management of the Properties;

d. Receiver is authorized to renew and extend leases and enter into new leases for the Properties upon such terms, and subject to such conditions as the receiver shall deem appropriate;

e. The receiver is authorized to make all repairs, maintenance, and improvements to the Properties as necessary or appropriate to the orderly and efficient management of the Properties;

f. The receiver is authorized to keep the Properties insured to the extent necessary or appropriate and to pay for insurance;

g. Receiver is authorized to obtain access to, collect mail received through, and otherwise use any post office box that receives mail relating to the Properties. Receiver may

close this post office box and open a new post office box or otherwise re-direct delivery of mail addressed to Borrower in its discretion;

3. Borrower is restrained and enjoined from making any transfer or other disposition of the Properties except to the Receiver for the duration of the receivership; provided, that this paragraph does not limit the Plaintiff's right to conduct a foreclosure or UCC sale of the Properties;

4. All utility companies are hereby restrained and enjoined from terminating any electricity, gas, telephone, or other utility services at the Properties except on terms and conditions approved by this Court;

5. Receiver shall have full authority to contest, settle or otherwise resolve on behalf of Borrower any condemnation demand made with respect to or condemnation action filed against the Property;

6. All persons, firms and corporations are restrained and enjoined from interfering with the receiver in the performance of his duties or from soliciting or accepting payment deriving from the Properties from any customer or lessee of Borrower;

7. All persons, firms, and corporations are ordered and directed to turn over directly to Receiver all earnings, revenues, rents, issues, profits, income and deposits resulting from the Properties, and are further ordered and directed to turn over directly to Receiver all books, records, contracts, insurance policies, leases, and other documents and records relating to the Properties or the collection or management thereof, including but not limited to electronic and computer records, and the receiver shall give appropriate receipts and acquittances for the same;

8. Receiver may pay all necessary and actual expenses of managing and liquidating the Properties and remit any excess to Borrower for application against the amount due to Wells Fargo;

9. Receiver shall serve a copy of this Order on any person at the Properties, and all persons, firms, and corporations on whom this Order may be served shall take notice of the terms and provisions thereof;

10. All officers, directors, employees, agents, attorneys, members, affiliates and any other person acting on behalf of Borrower are ordered and restrained from taking any action on behalf Borrower inconsistent with this Order;

11. Receiver and its employees, agents and attorneys shall have no personal liability in connection with any liabilities, obligations, liens or amounts owed to any of Borrower's creditors because of its duties as Receiver, except for the failure to comply with this Court's orders or where such liability is due to the gross negligence or willful misconduct of Receiver. Nothing in this Order shall grant any rights to trade creditors or general unsecured creditors, whose rights shall be solely determine in accordance with North Carolina law.

12. Any notices required by this Order or sent in connection with this case shall be addressed as follows:

If to Plaintiff:

Amy Pritchard Williams
K&L Gates
Hearst Tower, 47th Floor
214 North Tryon Street
Charlotte, NC 28202
Direct Dial: (704) 331-7429
Direct Fax: (704) 353-3129
amy.williams@klgates.com

If to Borrower:

Rebecca Finch Redwine
Hendren & Malone, PLLC
4600 Marriott Drive, Suite 150
Raleigh, North Carolina 27612
Direct Dial: (919) 420-0941

Fax: 919.420.0475

If to Receiver:

Charles E. Trefzger, Jr.,
Chief Executive Officer
Meridian Senior Living, LLC
P.O Box 2568
Hickory, North Carolina 28603
Phone: (828) 381-2587
cet@meridiansenior.com

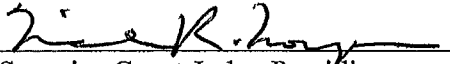
13. Wells Fargo shall serve a copy of the Order on all persons entitled to notice of the proceeding affecting the Properties and shall file its Certificate of Service herein. Service on any other parties shall be made by personal service, FedEx, direct signature required, or by certified mail, return receipt requested, to the last known address of the person to be served. All persons, firms and corporations on whom the Order may be served shall take notice of the terms and provisions herein;

14. This Order is conditioned on, and shall take effect after, the posting of a bond for the sum of \$250.00 by Wells Fargo and \$250.00 by the receiver for the faithful performance of the duties of the receiver and for the payment of costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained;

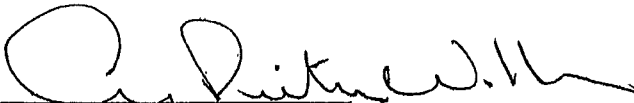
15. Receiver shall have immediate access to and the right to control access to the Collateral and Property.

16. This cause is retained for such other and further orders as may be necessary or appropriate.

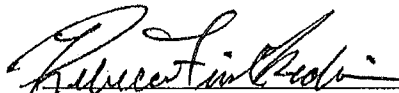
This the 16th day of ~~February~~ ^{March}, 2012.


Superior Court Judge Presiding

Consented to by the parties:


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Attorney for The Burns Group, LLC