



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

Pat McCrory  
Governor

Richard O. Brajer  
Secretary DHHS

Drexdal Pratt  
Division Director

September 2, 2015

Charles E. Trefzger, Jr.  
PO Box 2568  
Hickory, NC 28603-2568

**Exempt from Review – Acquisition of Facility**


**Record #:** 1697  
**Facility Name:** Longview Assisted Living  
**Type of Facility:** Adult Care Home  
**FID #:** 941202  
**Acquisition by:** Burkeview, LLC  
**Business #:** 2267  
**County:** Burke

Dear Mr. Trefzger:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) determined that based on the letters received on August 17, 2015 and September 1, 2015, the above referenced proposal is exempt from certificate of need review in accordance with G.S 131E-184(a)(8). Therefore, Burkeview, LLC may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Agency's Adult Care Licensure Section to obtain instructions for changing ownership of the existing facility. Note that pursuant to 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,

  
Julie Halatek  
Project Analyst

  
Martha J. Frisone  
Assistant Chief, Certificate of Need

cc: Construction Section, DHSR  
Adult Care Licensure Section, DHSR  
Assistant Chief, Healthcare Planning  
Ruth A. Levy, Williams Mullen

**Healthcare Planning and Certificate of Need Section**

[www.ncdhhs.gov](http://www.ncdhhs.gov)

Telephone: 919-855-3873 • Fax: 919-715-4413

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

Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

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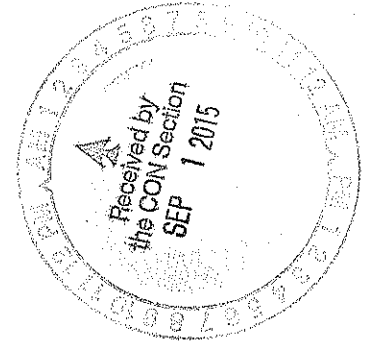
# WILLIAMS MULLEN

Ruth A. Levy  
Direct Dial: 919.981.4029  
rlevy@williamsmullen.com

September 1, 2015

## VIA HAND DELIVERY

Martha Frisone, Assistant Chief  
CON Section  
Division of Health Service Regulation  
NC Department of Health and Human Services  
809 Ruggles Drive  
Raleigh, NC 27603



Re: Longview Assisted Living, LLC – Intent to Relocate Beds  
HAL-012-022

Dear Ms. Frisone:

I am writing on behalf of Directed Capital Resources Mortgage VI Sub II, LLC (“DCR”), Burkeview, LLC (“Burkeview”) and Longview Assisted Living, LLC (“Longview”) to provide the Certificate of Need (“CON”) Section with notice of the planned acquisition and re-location of Longview Assisted Living (the “Facility”). The Facility is an existing, 63-bed adult care home (“ACH”) located in Morganton, Burke County, North Carolina, and is owned and operated by Longview. DCR is a subsidiary of Directed Capital Resources, an investment company located in St. Petersburg, Florida. Several other DCR subsidiaries are owners of adult care homes throughout North Carolina and are operated or managed by Meridian Senior Living. Burkeview is a limited liability company owned and operated by DCR.

## I. HISTORY OF LONGVIEW

On 19 May 2015, Longview was issued a provisional license pursuant to N.C. Gen. Stat. § 131D-2.7. The downgrade to provisional licensure status came as a result of building issues for which the Facility was cited under 10A NCAC 13F .0306. A copy of the license is attached hereto as Exhibit 1.

Prior to the issuance of its provisional license, on 13 May 2015, Longview entered into a Settlement Agreement with the Adult Care Licensure Section of the North Carolina Department of Health and Human Services (the “Department”). A copy of the Agreement is attached hereto as Exhibit 2. Pursuant to the terms of this Agreement, in order to maintain its license, Longview was to “complete the Facility repairs and receive approval by the earlier of the closing of the sale [of the Facility] as an operating concern or the expiration of its provisional license. Failure to make Facility repairs and receive approval from the Construction Section by the earlier of the closing of the sale as an operating concern or the expiration of its provisional license will result in Longview no longer having a license to operate the Facility.” Ex. 2, ¶ 3. Longview failed to make repairs to the Facility. Longview’s provisional license expired on 16 August 2015 and the Facility is no longer licensed. During this interim period, Longview has removed all residents from the Facility as to not endanger their well-being and in order to ensure continuity of care.

# WILLIAMS MULLEN

Burkeview plans to acquire Longview through a foreclosure sale, currently scheduled for 23 September 2015. On 17 August 2015, Burkeview filed an Exemption Notice with the CON Section, requesting that the sale of Longview be exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(8), which states:

Except as provided in subsection (b), the Department shall exempt from CON review a new institutional health service if it receives prior written notice from the entity proposing the new institutional health service, which notice includes an explanation of why the new institutional health service is required...to acquire an existing health service facility, including equipment owned by the health service facility at the time of acquisition.

A copy of the Exemption Notice is attached hereto as Exhibit 3. As you know, an adult care home is considered a health service facility and therefore, it is a new institutional health service which requires CON review under N.C. Gen. Stat. § 131E-176(9b) and -178(a) unless an exemption applies. The purchase of Longview by Burkeview is exempted from CON review under § 131E-184(a)(8). Burkeview has not yet received a response from the CON Section.

Following the acquisition, Burkeview intends to file an application to relocate the CON. Pursuant to the terms of the Settlement Agreement (see Ex. 2), the Adult Care Licensure Rules, the CON Law and past precedent by the CON Section, Burkeview is able to file a relocation application and the CON Section should grant Burkeview's application.

As discussed with the CON Section, it was not our intention to alert the CON Section to our actions following the expiration of the Facility's license. Had we been aware of the Settlement Agreement and view of the Adult Care Licensure Section regarding the Facility, we would have taken appropriate action to keep the Facility's license alive. We respectfully request that Burkeview and DCR not be penalized for the actions of the owner of Longview prior to our involvement.

## II. REGULATIONS APPLICABLE TO BURKEVIEW'S RELOCATION REQUEST

### 1. *The Settlement Agreement and Adult Care Licensure Rules Do Not Apply*

On 12 August 2015, Burkeview attempted to file a Change of Ownership Licensure Application for the Facility with the Adult Care Licensure Section. Adult Care Licensure denied its request due to the terms of the Settlement Agreement, which restricts Longview or any subsequent purchaser of the Facility from filing for a Change of Ownership unless physical repairs to the Facility had been made and approved by the Construction Section. See Ex. 2, ¶ 3. As stated in Section I above, Longview chose not to make repairs to the Facility and instead filed for bankruptcy.

No terms of the Settlement Agreement apply to the CON Section; the CON Section is not a party to the Agreement. Further, there are no adult care home licensure rules which tie

# WILLIAMS MULLEN

the terms of the Agreement to the CON Section. See 10A NCAC 13F *et seq.* Therefore, Burkeview should be able to file a CON Application to relocate the Facility's ACH beds and still abide by the terms of the Settlement Agreement.

As discussed with the CON Section via telephone on Friday, 21 August 2015, the CON itself belongs to the entity who owns the bricks and mortar to the building. Therefore, Burkeview has a right, with the CON Section's permission, to relocate the Facility and is not restricted by the terms of the Settlement Agreement or the Adult Care Licensure Section.

## 2. **The CON Law and CON Section Precedent Gives Burkeview the Ability to Relocate the ACH Beds**

ACH beds are considered health service facility beds under the CON Law. See N.C. Gen. Stat. § 131E-176(9c)(ix). A "change in bed capacity" means "any relocation of health service facility beds," and is considered a "new institutional health service" for which a CON is required. § 131E-176(5), (16c); - 178(a). Therefore, Burkeview must file a CON Application to relocate the beds.

According to Long Term Care Policy LTC-2: Relocation of Adult Care Home Beds, relocations of existing licensed ACH beds are allowed "only within the host county and to contiguous counties currently served by the facility." See 2015 State Medical Facilities Plan ("SMFP"), Ch. 4. Burkeview plans to relocate the Facility's ACH beds within Burke County.

As noted in the 2015 SMFP, a foundational principle of health care planning is to ensure "equitable access to timely, clinically appropriate and high quality health care for all the people of North Carolina." 2015 SMFP, p. 3. Burke County currently is projected to have a surplus of 50 ACH beds in 2018. See *Id.*, Table 11B. If the relocation is not approved, Burke County will face a deficit of 13 ACH beds in 2018. By allowing the relocation of the Facility, the CON Section will be furthering the purpose of the CON Law and health care planning.

Burke County is located within Health Service Area ("HSA") I. See 2015 SMFP, Appendix A. The next review cycles for applications to relocate ACH beds (Category I applications) located in HSA I are 1 October, and 1 November, 2015. The corresponding deadline for filing Category I applications are 15 September, and 15 October, 2015, respectfully. See *Id.*, Ch. 3, Table 3A. Burkeview plans to file its CON Application to relocate the Facility's ACH beds to be reviewed during either the October or November review cycles.

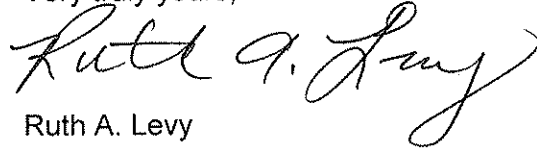
### III. CONCLUSION

We respectfully request that the CON Section provide us with guidance as to whether it will allow Burkeview to file a CON Application to relocate the Facility's ACH beds and whether the CON Section will approve the Application assuming it is correctly and timely filed. We also ask for a response to our 17 August 2015 Exemption Notice so that DCR, Burkeview and Longview can make plans for the Facility ahead of the foreclosure sale. Thank you for your

# WILLIAMS MULLEN

consideration, and we look forward to the CON Section's response. Please do not hesitate to contact me if you have any questions or concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ruth A. Levy". The signature is written in a cursive style with a large, sweeping initial "R".

Ruth A. Levy

Attachments

Cc via E-mail: John W. Savage  
Charlie Trefzger

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

*Effective May 19, 2015, this provisional license is issued to  
 Longview Assisted Living, LLC  
 to operate an Adult Care Home known as  
 Longview Assisted Living  
 located at 2001 Bristol Creek Avenue  
 Morganton, NC, Burke County.*

*This license is issued subject to the statutes of the State of North  
 Carolina, is not transferable and shall expire  
 August 16, 2015.*

*License Number: HAL-012-022*

*Capacity: 63*

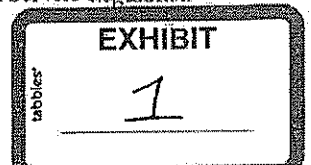
*Special Care Units:  Yes  No*

Authorized by:

*[Signature]*  
 Secretary, N.C. Department of Health and  
 Human Services



*[Signature]*  
 Director, Division of Health Service Regulation



STATE OF NORTH CAROLINA

SETTLEMENT AGREEMENT

COUNTY OF BURKE

This Settlement Agreement (the "Agreement") is made and entered into by and between Longview Assisted Living, LLC ("Longview") and the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Adult Care Licensure Section ("Agency") and provides as follows:

**RECITALS**

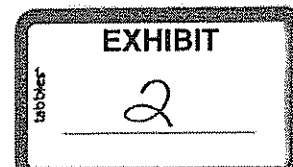
WHEREAS, Longview is the licensee and owner of the real property in and on which the adult care home known as Longview Assisted Living (License Number: HAL-012-022) is operating;

WHEREAS the Agency found Longview to be operating in violation of Chapter 131D and the rules and regulations promulgated thereunder and issued Longview a suspension of admissions dated December 5, 2015, and a provisional license dated March 5, 2015. Longview was required to have the deficient practice corrected within 45 days, or by April 30, 2015;

WHEREAS, Longview notified the Agency that it had filed for bankruptcy in the U.S. Bankruptcy Court for the Western District of North Carolina on December 23, 2013, Case Number 13-40588.

WHEREAS, the bankruptcy attorney indicated Longview is planning to file a Motion to Sell the Business (or a Bankruptcy Plan that incorporates a sale ("Bankruptcy Plan")).

WHEREAS, Longview requested additional time to operate the facility to enable the sale of the facility;



WHEREAS, Longview has received an automatic stay by operation of law in the Bankruptcy Case under 11 U.S.C. § 362(a);

WHEREAS pursuant to N.C. Gen. Stat. § 150B-22, it is the policy of the State of North Carolina to settle disputes between State agencies and other persons whenever possible;

NOW THEREFORE, the Parties have decided to resolve this dispute in the manner set forth below, pursuant to N.C. Gen. Stat. §§ 150B-22 and -31(b), and subject to the approval of the Director of the Division of Health Service Regulation ("Director").

#### AGREEMENT

1. Provisional License. Within five (5) business days of the effective date of this Agreement, the Agency shall rescind the existing provisional license and issue a new provisional license for ninety (90) days. The Agency agrees to extend the ninety (90) day provisional license for an additional sixty (60) days provided Longview submits documentation which indicates the Bankruptcy Court has approved the transfer of the business as an operating concern prior to the expiration of the ninety (90) day provisional license. Longview agrees that failure to submit documentation from the Bankruptcy Court showing approval for the transfer of the business as an operating concern, prior to the expiration of its ninety (90) day provisional license, will result in the expiration of its provisional license. Longview further agrees not to appeal the issuance or expiration of the provisional license to the N.C. Office of Administrative Hearings.

2. Ensure Resident Safety. The Division of Health Service Regulation, Construction Section, shall inspect the facility and determine what areas of the facility have conditions detrimental to the health and safety of the residents. Longview shall block-off and prevent access by residents to any areas identified as detrimental by the Construction Section to ensure the safety of the residents in the facility.



3. Facility Repairs. Longview shall make all physical repairs to the existing facility which are necessary to bring the building into compliance with the applicable construction standards outlined in Title 10A, Chapter 13F of the North Carolina Administrative Code and local building codes and receive approval from the Construction Section that the deficiencies have been corrected, prior to filing for a Change of Ownership for the facility. In order to comply with the applicable construction standards, Longview must "meet licensure and code requirements in effect at the time of construction, change in service or bed count, addition, renovation, or alteration" as required by 10 A NCAC 13F .0301(2) and must correct any violations or deficiencies noted by the Construction Section in the statements of Deficiencies and Plan of Corrections dated November 20, 2014, September 3, 2014, May 5, 2014, and the Memorandum of Inspection dated November 24, 2014. Regardless of the mechanism of sale approved by the Bankruptcy Court and the status of closing on the sale, Longview shall complete the facility repairs and receive approval by the earlier of the closing of the sale as an operating concern or the expiration of its provisional license. Failure to make facility repairs and receive approval from the Construction Section by the earlier of the closing of the sale as an operating concern or the expiration of its provisional license will result in Longview no longer having a license to operate the facility.

4. Suspension of Admissions. Longview agrees that the suspension of admissions will remain in effect until the repairs and approvals required by Paragraph 3 have been completed. Further, Longview agrees not to appeal the continued suspension of admissions.

5. Automatic Stay. Longview agrees not to file a Motion to enforce the automatic stay in Bankruptcy Court regarding the issuance of any provisional license by the Agency.

6. Notification of Parties. Longview shall provide written notice of completion of repairs, within ten (10) days of completion, to all interested parties, including the Construction Section and the Adult Care Licensure Section.

7. No Admission. Except as otherwise set forth in this Agreement, neither party, by entering into this Agreement, concedes to any allegation of the other party. Further, neither party waives objection to any allegations of the other party with respect hereto, nor does either party waive its rights, whether statutory or otherwise; if any, to dispute or contest any of the facts raised herein in any other proceeding.

8. Release. Each party releases the other party, their officials, employees, and representatives, from any and all claims or liabilities that have arisen or might arise out of the inspections completed by the Construction Section, DSHR on November 24, 2014, November 20, 2014, September 3, 2014, and May 5, 2014.

9. Effect of Approval. If approved by the Director of the Division of Health Service Regulation, this Agreement shall resolve all issues in, or arising out of, the issuance of the provisional license.

10. Effect of Non-Approval of Agreement. If this Agreement is not approved by the Director, the Parties agree that this Agreement shall be null and void. In addition, if this Agreement is not approved by the Director, the Parties agree that it shall be inadmissible in any hearing for any purpose.

11. Full Resolution. The Parties further agree and acknowledge that this written Agreement sets forth all of the terms and conditions between them concerning the subject matter of this Agreement, superseding all prior oral and written statements and representations, and that

there are no terms or conditions between the Parties except as specifically set forth in this Agreement.

12. Modification or Waiver. No modification or waiver of any provision of this Agreement shall be effective unless it is in writing. Any modification or waiver must be signed by authorized representatives of the Parties and must be adopted and approved by the Director.

13. No Strict Interpretation Against Draftsman. Each of the Parties had the opportunity to review this Agreement and consult with counsel concerning its terms. This Agreement shall not be interpreted strictly against one party on the grounds that it drafted the Agreement.

14. Expenses. The Parties agree that each party shall bear its own expenses, including attorney's fees, and that no claim for such costs or expenses shall be made by one party against the other.

15. Authority to Settle. The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the Parties to this Agreement.

16. Governing Law. This Agreement shall be construed and governed according to the laws of the State of North Carolina. If any provision of this Agreement is held to be invalid or unenforceable, all other provisions shall continue in full force and effect.

17. Ex Parte Presentation. Longview authorizes counsel for the Agency to present this Agreement to the Director, *ex parte*.

18. Effective Date. This Agreement shall be effective as of the day and year on which it is adopted and approved by the Director of the Division of Health Service Regulation.

IN WITNESS WHEREOF, the Parties have executed duplicate original copies of this Settlement Agreement, with one original copy being retained by each party.

LONGVIEW ASSISTED LIVING

BY: Donnie Puett  
Donnie Puett  
P.O. Box 548  
Morganton, NC 28680  
PETITIONER

BY: Glenn Thompson (as to form only)  
Glenn Thompson  
Hamilton Stephens Steele + Martin, PLLC  
201 S. College Street, Suite 2020  
Charlotte, NC 28244  
COUNSEL FOR PETITIONER

ADULT CARE LICENSURE SECTION

BY: Megan Lamphers  
Megan Lamphers, Chief  
Adult Care Licensure Section  
N.C. DHHS, Division of Health Service Regulation  
2708 Mail Service Center  
Raleigh, NC 27699-2708

ROY COOPER  
Attorney General

BY: Adrian W. Dellinger (as to form only)  
Adrian W. Dellinger  
Assistant Attorney General  
N.C. Department of Justice  
Post Office Box 629  
Raleigh, NC 27602-0629  
COUNSEL FOR N.C. DHHS

APPROVED AND ADOPTED this the 13<sup>th</sup> day of MAY, 2015.

Drexel Pratt  
Drexel Pratt, Director  
Division Health Service Regulation  
N.C. Department of Health and Human Services

# Morganton Opco Holdings, LLC

Post Office Box 2568  
Hickory, North Carolina 28603-2568

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August 7, 2015

Ms. Martha J. Frisone, Assistant Chief  
Certificate of Need Section  
Division of Health Service Regulation  
Department of Health & Human Services  
2704 Mail Center Service  
Raleigh, NC 27499-2704

Re: Exemption Notice for Potential Acquisition of Longview Assisted Living  
FID#: 941202; HAL-012-022

Dear Martha:

Burkeview, LLC ("Burkeview"), is potentially acquiring ownership of an adult care home in Burke County through a foreclosure sale. The facility, Longview Assisted Living ("Longview") (License No. HAL-012-022) is an existing, licensed 63-bed adult care home currently owned and operated by Longview Assisted Living, LLC ("Longview") and is located at 2001 Bristol Creek Avenue, Morganton, Burke County, North Carolina 28655. Longview is an existing health service facility under N.C. Gen. Stat. § 131B-176(9b). See Exhibit 1.

The purpose of this letter is to provide prior notice of this potential acquisition to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the "Agency"). Pursuant to N.C. Gen. Stat. § 131E-184(a)(8), the acquisition of Longview is exempt from Certificate of Need ("CON") review. Burkeview seeks confirmation that it is permitted to acquire Longview as described herein without CON review, thus acquiring Longview's existing CON rights to own the existing health service facility.

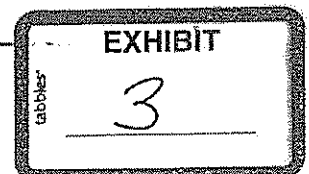
Burkeview will acquire ownership of Longview through the foreclosure process. A new licensee, Morganton Opco Holdings, LLC ("Licensee") has applied for licensure status to operate Longview under Burkeview's ownership.

## I. EXEMPTION NOTICE

Under North Carolina law, a CON is required only prior to offering or developing a "new institutional health service." "New institutional health service" includes a variety of services and

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Physical Address: 1270 25<sup>th</sup> Street Place, SE Hickory, NC 28602-9657  
Phone: (828) 261-7312 Fax: (828) 322-3897



Letter to Ms. Martha Frisone, Assistant Chief  
August 7, 2015  
Page 2

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." Furthermore, Burkeview's acquisition of Longview 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.

## II. 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 Burkeview may acquire Longview with all its existing CON rights without applying for a new CON. If you require additional information to consider this request, please contact us at the number below. We thank you for your consideration.

Sincerely,



Charles E. Trofzger, Jr.

Attachment

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

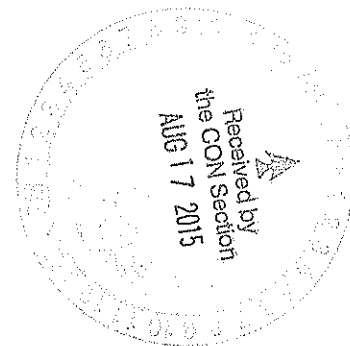
County	Facility Name	Licensed Beds in Nursing Homes	Licensed Beds in Hospitals	Licensed Beds in Adult Care Facilities	Total Licensed Beds	CON Approved/ License Pending		Bed Pipeline	Available in SMFP	Total Available	Sum of Exclusions	Total Planning Inventory
						CON	CON Bed Transfer					
Buncombe	Fletcher's Fairview Health Care Center	14	0	0	14	0	0	0	0	14	0	14
Buncombe	Fletcher's Fairview Rest Home	0	0	64	64	0	0	0	0	64	0	64
Buncombe	Giveens Health Center	14	0	0	14	0	0	0	0	14	0	14
Buncombe	Heather Glen At Ardenwoods	0	0	60	60	0	0	0	0	60	0	60
Buncombe	Highland Farms	30	0	0	30	0	0	0	0	30	0	30
Buncombe	Hominy Valley Retirement Center	0	0	30	30	0	0	0	0	30	0	30
Buncombe	Marjorie McCune Memorial Center	0	0	64	64	0	0	0	0	64	0	64
Buncombe	Nana's Assisted Living	0	0	49	49	0	0	0	0	49	0	49
Buncombe	Richard A. Wood, Jr. Assisted Living Center	0	0	56	56	0	0	0	0	56	0	56
Buncombe	Richmond Hill Rest Home #1	0	0	12	12	0	0	0	0	12	0	12
Buncombe	Richmond Hill Rest Home #2	0	0	12	12	0	0	0	0	12	0	12
Buncombe	Richmond Hill Rest Home #3	0	0	12	12	0	0	0	0	12	0	12
Buncombe	Richmond Hill Rest Home #4	0	0	12	12	0	0	0	0	12	0	12
Buncombe	Richmond Hill Rest Home #5	0	0	12	12	0	0	0	0	12	0	12
Buncombe	The Crossings at Beverdam (bed transfer from Canterbury Hills)	0	0	0	0	0	99	0	0	99	0	99
Buncombe	The Laurels of Summit Ridge	63	0	0	63	0	0	0	0	63	0	63
Buncombe	The Oaks at Sweeten Creek	14	0	0	14	0	0	0	0	14	0	14
Buncombe	Trinity View	0	0	24	24	0	0	0	0	24	0	24
Buncombe	Western North Carolina Baptist Home	50	0	0	50	0	0	0	0	50	0	50
Buncombe	Windwood Assisted Living	0	0	12	12	0	0	0	0	12	0	12
Burke	Autumn Care of Drexel	20	0	0	20	0	0	0	0	20	0	20
Burke	Burke Long Term Care	0	0	24	24	0	0	0	0	24	0	24
Burke	Cambridge House	0	0	60	60	0	0	0	0	60	0	60
Burke	Grace Ridge	47	0	0	47	0	0	0	0	47	0	47
Burke	Jones Ridge Adult Care	0	0	57	57	0	0	0	0	57	0	57
Burke	Longview Assisted Living	0	0	63	63	0	0	0	0	63	0	63
Burke	McAlpine Adult Care	0	0	60	60	0	0	0	0	60	0	60
Burke	Morganton Long Term Care Facility	0	0	20	20	0	0	0	0	20	0	20
Burke	Morganton Long Term Care, Southview Facility	0	0	64	64	0	0	0	0	64	0	64
Burke	Summit Ridge	20	0	0	20	0	0	0	0	20	0	20
Cabarrus	Cabarrus Manor (replacement facility for Kannapolis Village)	0	0	0	0	0	60	0	0	60	0	60
Cabarrus	Caremoor Retirement Center	0	0	30	30	0	0	0	0	30	0	30
Cabarrus	Carillon Assisted Living of Harrisburg	0	0	96	96	0	0	0	0	96	0	96
Cabarrus	Concord House	0	0	48	48	0	0	0	0	48	0	48
Cabarrus	Concord Place	0	0	112	112	0	0	0	0	112	0	112
Cabarrus	First Assembly Living Center	0	0	180	180	0	0	0	0	180	0	180
Cabarrus	Five Oaks Manor	24	0	0	24	0	0	0	0	24	0	24
Cabarrus	Horizon Bay Assisted Living at Concord	0	0	60	60	0	0	0	0	60	0	60

# *Morganton Opco Holdings, LLC*

*Post Office Box 2568  
Hickory, North Carolina 28603-2568*

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August 7, 2015



Ms. Martha J. Frisone, Assistant Chief  
Certificate of Need Section  
Division of Health Service Regulation  
Department of Health & Human Services  
2704 Mail Center Service  
Raleigh, NC 27499-2704

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FID#: 941202; HAL-012-022

Dear Martha:

Burkeview, LLC (“Burkeview”), is potentially acquiring ownership of an adult care home in Burke County through a foreclosure sale. The facility, Longview Assisted Living (“Longview”) (License No. HAL-012-022) is an existing, licensed 63-bed adult care home currently owned and operated by Longview Assisted Living, LLC (“Longview”) and is located at 2001 Bristol Creek Avenue, Morganton, Burke County, North Carolina 28655. Longview is an existing health service facility under N.C. Gen. Stat. § 131E-176(9b). See Exhibit 1.

The purpose of this letter is to provide prior notice of this potential acquisition to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the “Agency”). Pursuant to N.C. Gen. Stat. § 131E-184(a)(8), the acquisition of Longview is exempt from Certificate of Need (“CON”) review. Burkeview seeks confirmation that it is permitted to acquire Longview as described herein without CON review, thus acquiring Longview’s existing CON rights to own the existing health service facility.

Burkeview will acquire ownership of Longview through the foreclosure process. A new licensee, Morganton Opco Holdings, LLC (“Licensee”) has applied for licensure status to operate Longview under Burkeview’s ownership.

## **I. EXEMPTION NOTICE**

Under North Carolina law, a CON is required only prior to offering or developing a “new institutional health service.” “New institutional health service” includes a variety of services and



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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." Furthermore, Burkeview's acquisition of Longview 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.

## II. 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 Burkeview may acquire Longview with all its existing CON rights without applying for a new CON. If you require additional information to consider this request, please contact us at the number below. We thank you for your consideration.

Sincerely,



Charles E. Trefzger, Jr.

Attachment

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		Available in SMFP	Total Available	Sum of Exclusions	Total Planning Inventory
					Licensed Beds in Hospitals	Licensed Beds in Adult Care Facilities	CON	CON Bed Transfer				
Buncombe	Flesher's Fairview Health Care Center	14	0	0	14	0	0	0	0	14	0	14
Buncombe	Flesher's Fairview Rest Home	0	0	64	64	0	0	0	0	64	0	64
Buncombe	Givens Health Center	14	0	0	14	0	0	0	0	14	0	14
Buncombe	Heather Glen At Ardenwoods	0	0	60	60	0	0	0	0	60	0	60
Buncombe	Highland Farms	30	0	0	30	0	0	0	0	30	0	30
Buncombe	Hominy Valley Retirement Center	0	0	30	30	0	0	0	0	30	0	30
Buncombe	Marjorie McCune Memorial Center	0	0	64	64	0	0	0	0	64	0	64
Buncombe	Nana's Assisted Living	0	0	49	49	0	0	0	0	49	0	49
Buncombe	Richard A. Wood, Jr. Assisted Living Center	0	0	56	56	0	0	0	0	56	0	56
Buncombe	Richmond Hill Rest Home #1	0	0	12	12	0	0	0	0	12	0	12
Buncombe	Richmond Hill Rest Home #2	0	0	12	12	0	0	0	0	12	0	12
Buncombe	Richmond Hill Rest Home #3	0	0	12	12	0	0	0	0	12	0	12
Buncombe	Richmond Hill Rest Home #4	0	0	12	12	0	0	0	0	12	0	12
Buncombe	Richmond Hill Rest Home #5	0	0	12	12	0	0	0	0	12	0	12
Buncombe	The Crossings at Beaverdam (bed transfer from Canterbury Hills)	0	0	0	0	0	99	0	0	99	0	99
Buncombe	The Laurels of Summit Ridge	63	0	0	63	0	0	0	0	63	0	63
Buncombe	The Oaks at Sweeten Creek	14	0	0	14	0	0	0	0	14	0	14
Buncombe	Trinity View	0	0	24	24	0	0	0	0	24	0	24
Buncombe	Western North Carolina Baptist Home	50	0	0	50	0	0	0	0	50	0	50
Buncombe	Windwood Assisted Living	0	0	12	12	0	0	0	0	12	0	12
	<b>Buncombe Totals</b>	<b>290</b>	<b>0</b>	<b>385</b>	<b>1,175</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,175</b>	<b>10</b>	<b>1,165</b>
Burke	Autumn Care of Drexel	20	0	0	20	0	0	0	0	20	0	20
Burke	Burke Long Term Care	0	0	24	24	0	0	0	0	24	0	24
Burke	Cambridge House	0	0	60	60	0	0	0	0	60	0	60
Burke	Grace Ridge	47	0	0	47	0	0	0	0	47	0	47
Burke	Jonas Ridge Adult Care	0	0	57	57	0	0	0	0	57	0	57
Burke	Longview Assisted Living	0	0	63	63	0	0	0	0	63	0	63
Burke	McAlpine Adult Care	0	0	60	60	0	0	0	0	60	0	60
Burke	Morganton Long Term Care Facility	0	0	20	20	0	0	0	0	20	0	20
Burke	Morganton Long Term Care, Southview Facility	0	0	64	64	0	0	0	0	64	0	64
	<b>Burke Totals</b>	<b>67</b>	<b>0</b>	<b>348</b>	<b>415</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>415</b>	<b>0</b>	<b>415</b>
Cabarrus	Cabarrus Manor (replacement facility for Kannapolis Village)	0	0	0	0	0	60	0	0	60	0	60
Cabarrus	Caremoor Retirement Center	0	0	30	30	0	0	0	0	30	0	30
Cabarrus	Carillon Assisted Living of Harrisburg	0	0	96	96	0	0	0	0	96	0	96
Cabarrus	Concord House	0	0	48	48	0	0	0	0	48	0	48
Cabarrus	Concord Place	0	0	112	112	0	0	0	0	112	0	112
Cabarrus	First Assembly Living Center	0	0	180	180	0	0	0	0	180	0	180
Cabarrus	Five Oaks Manor	24	0	0	24	0	0	0	0	24	0	24
Cabarrus	Horizon Bay Assisted Living at Concord	0	0	60	60	0	0	0	0	60	0	60