



North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
Certificate of Need Section

2704 Mail Service Center • Raleigh, North Carolina 27699-2704

<http://www.ncdhhs.gov/dhsr/>

Drexdal Pratt, Director

Beverly Eaves Perdue, Governor  
Albert A. Delia, Acting Secretary

Craig R. Smith, Section Chief  
Phone: (919) 855-3873  
Fax: (919) 733-8139

September 28, 2012

Allen K. Robertson  
Robinson Bradshaw & Hinson, PA  
101 North Tryon Street, Suite 1900  
Charlotte, NC 28246

**Exempt from Review – Acquisition of Facility**

Facility: Highland Farms  
Acquisition by: The Givens Estates, Inc.  
County: Buncombe  
FID #: 923490

Dear Mr. Robertson:

In response to your letters of September 19 and September 24, 2012 the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, The Givens Estates, Inc. may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Nursing Home Licensure and Certification 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,

Les Brown  
Project Analyst

Craig R. Smith, Chief  
Certificate of Need Section

cc: Nursing Home Licensure and Certification Section, DHSR



September 19, 2012

**VIA E-MAIL**

Mr. Les Brown  
Certificate of Need Section  
Division of Health Service Regulation  
North Carolina Department of Health and Human Services  
2704 Mail Service Center (27699-2704)  
809 Ruggles Drive  
Raleigh, North Carolina 27603  
E-mail: les.brown@dhhs.nc.gov

Re: Request for Exemption Pursuant to N.C.G.S. § 131E-184(a)(8) - Acquisition of Existing Combination Home

Dear Mr. Brown:

We represent The Givens Estates, Inc. ("Givens") and its wholly-owned subsidiary, Givens Highland Farms, LLC ("Givens Highland Farms," and collectively with Givens, the "Buyers"). The Buyers have entered into an Asset Purchase Agreement, dated as of September 10, 2012, with Highland Farms, Inc. ("Highland Farms") and Mirafel, LLC ("Mirafel," and collectively with Highland Farms, the "Sellers") and Ed Neves, Charles R. Worley and David G. Worley (collectively, the "Shareholders"), pursuant to which the Buyers will purchase substantially all of the assets of the Sellers, including a continuing care retirement community known as "Highland Farms Retirement Community" located at 200 Tabernacle Road, Black Mountain, North Carolina (the "Retirement Community"). The Retirement Community includes 60 skilled nursing beds and 30 assisted living beds, which Highland Farms is licensed by the Division of Health Service Regulation of the North Carolina Department of Health and Human Services to operate as a nursing facility (License No. NH0147) known as "Highland Farms Inc" located in Black Mountain, Buncombe County, North Carolina (the "Combination Home").

On behalf of the Buyers, we hereby request that you issue a letter confirming that the acquisition of the Combination Home, which is an existing health service facility, by the Buyers is exempt from certificate of need review pursuant to N.C.G.S. § 131E-184(a)(8).

Mr. Les Brown  
September 19, 2012  
Page 2

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Thank you for your help in this matter. Please contact me if you have any questions.

Very truly yours,

ROBINSON BRADSHAW & HINSON, P.A.

A handwritten signature in black ink that reads "Allen K. Robertson". The signature is written in a cursive style with a prominent flourish at the end of the name.

Allen K. Robertson

cc: Ken Partin  
Allen Squires

## Brown, Les

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**From:** Robertson, Allen [ARobertson@rbh.com]  
**Sent:** Monday, September 24, 2012 5:20 PM  
**To:** Brown, Les  
**Subject:** RE: Givens/Highland Farms: CON Exemption Request  
**Attachments:** Excerpt from Asset Purchase Agreement Givens Estates Highland Farms.pdf

Les,

Attached is an excerpt from the September 10, 2012 Asset Purchase Agreement between Givens Estates and Highland Farms. Section 2.9 of the APA specifies that the Closing will take place no earlier than November 1, 2012.

Please let me know if you need any additional information.

Best regards.

Allen

Allen K. Robertson  
Robinson, Bradshaw & Hinson, P.A.  
P: 704.377.8368

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**From:** Brown, Les [mailto:les.brown@dhhs.nc.gov]  
**Sent:** Monday, September 24, 2012 12:47 PM  
**To:** Robertson, Allen  
**Subject:** RE: Givens/Highland Farms: CON Exemption Request

Allen,  
Could you please give me the projected closing date in writing to document that this request is being made prior to the actual sale. Thanks for your help.  
Les

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**From:** Robertson, Allen [mailto:ARobertson@rbh.com]  
**Sent:** Wednesday, September 19, 2012 10:36 AM  
**To:** Brown, Les  
**Cc:** Partin, Ken M; 'Squires, Allen'  
**Subject:** Givens/Highland Farms: CON Exemption Request

Dear Les:

Following up on our telephone conversation that just ended, attached is the request for a letter confirming that the proposed acquisition by The Givens Estates, Inc. and Givens Highland Farms, LLC of the combination home that is part of Highland Farms Retirement Community is exempt from CON review.

I would be most appreciative if you would reply to confirm your receipt of this e-mail and the attached request.

Thanks for your help on this. Please call me if you have any questions.

9/25/2012

Best regards.

Allen

Allen K. Robertson  
Robinson, Bradshaw & Hinson, P.A.  
101 North Tryon Street, Suite 1900  
Charlotte, NC 28246  
P: 704.377.8368  
F: 704.373.3968  
M: 704.726.3451  
[arobertson@rbh.com](mailto:arobertson@rbh.com)  
[www.rbh.com](http://www.rbh.com)

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9/25/2012

**ASSET PURCHASE AGREEMENT**

BETWEEN

**THE GIVENS ESTATES, INC.**

and

**GIVENS HIGHLAND FARMS, LLC**  
(the "Buyers")

and

**HIGHLAND FARMS, INC.**

and

**MIRAFEL, LLC**  
(the "Sellers")

and

**ED NEVES,**

**CHARLES R. WORLEY**

and

**DAVID G. WORLEY**  
(the "Shareholders")

Dated as of September 10, 2012

Post-Closing Payments, the Buyers shall pay such difference to the Sellers within five Business Days after the delivery of the Post-Closing Adjustment Certificate to the Sellers. If the amount of the Post-Closing Payments exceeds the sum of the True-Up Holdback plus the Post-Closing Collections, the Sellers and the Shareholders, jointly and severally, promise to pay such difference to the Buyers within five Business Days after the delivery of the Post-Closing Adjustment Certificate to the Sellers. If the Buyers collect any Accounts Receivable of each Seller from Residents (including Resident Notes Receivable) after delivery of the Post-Closing Adjustment Certificate, the Buyers shall promptly remit such amounts to the Sellers or apply all or a portion of such amounts to reimburse the Buyers for payment of Assumed Accounts Payable after the delivery of the Post-Closing Adjustment Certificate. If the Buyers pay any Assumed Accounts Payable after delivery of the Post-Closing Adjustment Certificate, the Sellers and the Shareholders, jointly and severally, promise to reimburse the Buyers within five Business Days after receipt of notice of such payment from the Buyers.

(e) Proceeds from Sale of Units 18 or 62. If the closing of a sale of units 18 or 62 pursuant to a Home Purchase Contract entered into prior to the Closing Date occurs after the Closing Date, but no later than December 31, 2012, the Buyers shall pay to the Sellers, in addition to the amount due pursuant to Section 2.7, an amount equal to 25% of the gain on sale of such unit, which shall be calculated by subtracting the following from the gross sale price of such unit: (i) closing costs, (ii) repurchase amount and refurbishment expenses paid to third parties. Such payment(s) shall be made at the closing of the sale(s) of such units.

2.9 Closing. The closing (the “Closing”) of the purchase and sale of the Purchased Assets shall take place at the offices of Robinson, Bradshaw & Hinson, P.A., in Charlotte, North Carolina, beginning at 10:00 a.m., local time, on the later of (i) November 1, 2012, or the first day of any succeeding calendar month; (ii) receipt by Buyers of all Required Governmental Authorizations; and (iii) closing of the Financing. The Closing shall be effective as of 12:01 a.m. on the Closing Date (the “Effective Time”) and all actions scheduled in this Agreement for the Closing Date shall be deemed to occur simultaneously at the Effective Time. Subject to the provisions of **Article IX**, failure to consummate the purchase and sale provided for in this Agreement on the date determined pursuant to this Section will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement.

2.10 Closing Obligations. At the Closing:

(a) The Sellers and the Shareholders shall deliver to the Buyers:

(i) a bill of sale substantially in the form of **Exhibit A** attached hereto (the “Bill of Sale”) executed by each Seller, conveying the Purchased Assets constituting personal property to the Acquisition Subsidiary;

(ii) an assignment and assumption agreement substantially in the form of **Exhibit B** attached hereto (the “Assignment & Assumption Agreement”) executed by each Seller, assigning to the Acquisition Subsidiary the rights under the Purchased Contracts;

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**THE GIVENS ESTATES, INC.**

By: Kenneth M. Partin  
Kenneth M. Partin  
President and Chief Executive Officer

**GIVENS HIGHLAND FARMS, LLC**

By: The Givens Estates, Inc., its Member

By: Kenneth M. Partin  
Kenneth M. Partin  
President and Chief Executive Officer

**HIGHLAND FARMS, INC.**

By: \_\_\_\_\_  
Ed Neves  
President

**MIRAFEL, LLC**

By: \_\_\_\_\_  
Ed Neves  
Manager

**SHAREHOLDERS**

\_\_\_\_\_  
Name: Ed Neves  
Address: P.O. Box 595  
Black Mountain, North Carolina 28711

\_\_\_\_\_  
Name: Charles R. Worley  
Address: 7 Orchard Street, Suite 201  
Asheville, North Carolina 28801

\_\_\_\_\_  
Name: David G. Worley  
Address: P.O. Box 2101  
Asheville, North Carolina 28802



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**THE GIVENS ESTATES, INC.**

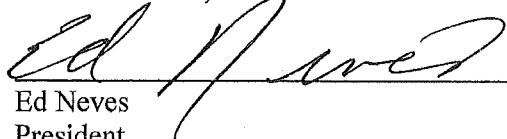
By: \_\_\_\_\_  
Kenneth M. Partin  
President and Chief Executive Officer

**GIVENS HIGHLAND FARMS, LLC**

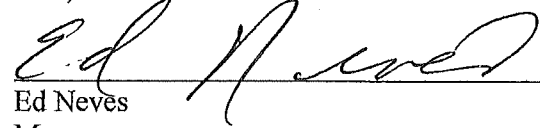
By: The Givens Estates, Inc., its Member

By: \_\_\_\_\_  
Kenneth M. Partin  
President and Chief Executive Officer

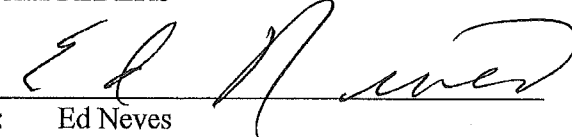
**HIGHLAND FARMS, INC.**

By:   
Ed Neves  
President

**MIRAFEL, LLC**

By:   
Ed Neves  
Manager

**SHAREHOLDERS**

  
Name: Ed Neves  
Address: P.O. Box 595  
Black Mountain, North Carolina 28711

\_\_\_\_\_  
Name: Charles R. Worley  
Address: 7 Orchard Street, Suite 201  
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Kenneth M. Partin  
President and Chief Executive Officer

**HIGHLAND FARMS, INC.**

By: \_\_\_\_\_  
Ed Neves  
President

**MIRAFEL, LLC**

By: \_\_\_\_\_  
Ed Neves  
Manager

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Name: Ed Neves  
Address: P.O. Box 595  
Black Mountain, North Carolina 28711

\_\_\_\_\_  
*Charles R. Worley*  
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Name: Charles R. Worley  
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Asheville, North Carolina 28801

\_\_\_\_\_  
*David G. Worley*  
Name: David G. Worley  
Address: P.O. Box 2101  
Asheville, North Carolina 28802

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We hereby acknowledgement receipt  
of the Earnest Money and agree to serve  
as Earnest Money Escrow Agent pursuant to  
the terms of this Agreement:

THE TITLE COMPANY OF NORTH CAROLINA, INC.

By: Candice E. Williams  
Name: Candice E. Williams  
Title: Vice-President