

Premier Consulting Services, Inc.  
PO Box 21133  
Roanoke, Virginia 24018

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September 30, 2013

Craig R. Smith, Chief  
Certificate of Need Section  
Division of Facilities Service Regulation  
NC Department of Health and Human Services  
2704 Mail Service Center  
Raleigh, NC 27699-2704

RE: **Competitive Comments offered by:**  
Chatham Health Investors, LLC  
Project ID # J- 010169-13  
Chatham County, North Carolina

Dear Mr. Smith:

Enclosed please find comments offered by Chatham Health Investors, LLC, regarding each of the four other competitive CON applications for new ninety bed nursing facilities now under review by your office.

Please let me know if you have any questions. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Frank Peck".

Frank Peck, President  
Premier Consulting Services, Inc.  
Consultant to Chatham Health Investors, LLC

**COMPETITIVE COMMENTS** – submitted by Chatham Health Investors, LLC

Delivered by hand to CON Section on Monday September 30, 2013.

Project ID # J-010167-13

J.E.E., LLC (Lessor)

Kensington Rehab and Nursing Center, Inc. (Lessee)

Received by  
the CON Section  
SEP 30 2013

**COMMENTS**

Kensington's CON application is not in compliance with the following CON Review Criteria:

*Criterion (1) The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which constitutes a determinative limitation on the provision of any health service, health service facility, health service facility beds, dialysis stations, operating rooms, or home health offices that may be approved.*

**Response:** GEN-3: BASIC PRINCIPLES

Kensington's proposal offers Medicaid access to its new 90 bed facility on a lower basis than do the existing Medicaid certified beds in Chatham County.

The 290 Medicaid certified beds in Chatham County experienced a rate of utilization by patients with limited financial resources of 77.3% in 2012, yet Kensington offers access to its 90 beds at only a 74% rate for Medicaid patients.

*Criterion (3) The applicant shall identify the population to be served by the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.*

**Response:** Kensington's proposal offers Medicaid access to its new 90 bed facility on a lower basis than do the existing Medicaid certified beds in Chatham County.

The 290 Medicaid certified beds in Chatham County experienced a rate of utilization by patients with limited financial resources of 77.3% in 2012, yet Kensington offers access to its 90 beds at only a 74% rate for Medicaid patients.

Kensington is proposing to situate its new 90 bed nursing home very near (within 3 miles) to the existing 140 bed nursing home in Pittsboro, The Laurels.

According to the 2012 LRAs, The Laurels of Chatham's utilization by Chatham County residents was about 40% total utilization, which strongly suggests that the large seniors population north and east of Pittsboro is choosing to seek long-term care services in nearby Durham and Orange Counties, rather than in Pittsboro.

Adding a new 90 bed nursing home in Pittsboro is unlikely to curb the market's tendency to travel north to Durham and Orange Counties for such services. In fact, much of the senior population in northeast Chatham County are well acclimated to being served by Durham and Orange County acute care hospitals, and it would seem only natural for that very large and explosively growing seniors population to seek nursing home services nearer to their homes and other health care providers.

If Kensington's project in Pittsboro is approved, it will cannibalize the current utilization at The Laurels, causing that facility's census to decrease and operating costs to increase. The patient population in northeast Chatham County has already showed a behavior toward not seeking nursing home services in Pittsboro, and Kensington has provided no data to show that such behavior will change. The Laurels of Chatham's 2012 LRA reflects less than 40% utilization by Chatham County residents.

*Criterion (6) The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.*

**Response:** If Kensington's project in Pittsboro is approved, it will cannibalize the current utilization at The Laurels, causing that facility's census to decrease and operating costs to increase. The patient population in northeast Chatham County has already shown a behavior toward not seeking nursing home services in Pittsboro, and Kensington has provided no data to show that such behavior will change. The Laurels of Chatham's 2012 LRA reflects 40% utilization by Chatham County residents.

*Criterion (12) Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.*

**Response:** The design model for patient room environments, as proposed by Kensington, offers the smallest patient room square footages in this review. According to Kensington's proposal, private room beds are allotted 216 square feet each, and semi-private room beds are allotted only 107 square feet each ( $216/2=107$  sf each).

These square footages are comparatively small in this review, and are not in keeping with the “culture-change” environmental enhancements offered by most new nursing homes today.

*Criterion (13) The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:*

- a. The extent to which medically underserved populations currently use the applicant's existing services in comparison to the percentage of the population in the applicant's service area which is medically underserved;*
- b. Its past performance in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant;*
- c. That the elderly and the medically underserved groups identified in this subdivision will be served by the applicant's proposed services and the extent to which each of these groups is expected to utilize the proposed services; and*
- d. That the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.*

**Response:** Kensington’s proposal offers Medicaid access to its new 90 bed facility on a lower basis than do the existing Medicaid certified beds in Chatham County.

The 290 Medicaid certified beds in Chatham County experienced a rate of utilization by patients with limited financial resources of 77.3% in 2012, yet Kensington offers access to its 90 beds at only a 74% rate for Medicaid patients.

*Criterion (18a) The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.*

**Response:** Kensington has failed to consider its proposals' impact on the existing nursing home already serving Pittsboro, the 140 bed Laurels of Chatham. Having a new 90 bed nursing home within three miles of its facility will likely cannibalize The Laurels of patients, staff, and referrals. The impending reduced occupancy of The Laurels will increase its operating costs.

Kensington should have located its facility in Baldwin or Williams Townships, north of Pittsboro. That area contains the greatest population numbers and growth in the elderly, and would have avoided head-to-head direct competition with The Laurels of Chatham.

**COMPETITIVE COMMENTS** – submitted by Chatham Health Investors, LLC

Delivered by hand to CON Section on Monday September 30, 2013.

Project ID # J-010168-13

Liberty Healthcare Properties of Chatham County, LLC (Lessor)

Liberty Commons Nursing and Rehabilitation Center of Chatham County, LLC



**COMMENTS**

Liberty's CON application is not in compliance with the following CON Review Criteria:

*Criterion (6) The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.*

**Response:** Liberty failed to discuss the occupancy rates of the existing Alzheimer's Medicaid certified nursing facility beds in Chatham County. A new special care unit recently opened in Pittsboro. The Alzheimer's need data provided by Liberty fails to document that more nursing facility Alzheimer's Special Care Unit beds are needed in Chatham County. Approval of a project which contains a service component for which a need determination has not been made (and which does not include analysis of all known service providers) would have detrimental effects on existing providers of Alzheimer's services.

*Criterion (20) An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.*

**Response:** Liberty has reported a substantiated quality of care event which has occurred within the past nine months. There are competitor applicants which have no such events to report, and, like Liberty, have divulged all facilities over which they have operational control.

SECTION. 1100 – Criteria and standards for nursing facility or adult care home services.

10A NCAC 14C. 1101 INFORMATION REQUIRED OF APPLICANT

(2) An applicant proposing to establish a new nursing facility shall document that the proposed and alternate sites are suitable for development of the facility with regard to water, sewage disposal, site development and zoning including the required procedures for obtaining zoning changes and a special use permit after a Certificate of Need is obtained. Specifically, applicants are requested by SECTION II. 2. (n) and 3. (n) to: "provide documentation from local health and environmental officials that the proposed well or sewage disposal system is adequate and that it meets applicable health and environmental regulations".

**Comment:** Liberty failed to address CON application questions in SECTION XI. 2. (n) and 3. (n). Specifically, Liberty's application provides no documentation of communication to and from North Carolina Department of Environmental Regulations concerning Liberty's interest in pursuing the development of a sewage disposal system.

Consequently, Liberty has not attempted to fulfill the intent behind CON application questions Section XI. 2. (n) and 3. (n).

**General Comments:**

1. For information purposes, please consider that, according to all of Liberty's 2013 Licensure Renewal Applications, reported nursing hours per patient day was as low as 2.47, and the highest was nowhere near Liberty's projected 4.06 nursing hours ppd.
2. Liberty's capital cost of \$15,707,139 is far in excess of even the average capital cost projected by all five competitive applicants. Liberty's capital cost is excessive across all measurements.
3. Additionally, Liberty has planned to self-fund the entire \$15,707,139 capital expenditure, which artificially reduces the projected daily operating cost, due to no interest expense. However, there is no restriction keeping Liberty from placing a mortgage on the project after the project receives CON approval, and/or becomes operational. Consequently, Liberty's all cash ploy rings hollow.

If this feature is a desired feature for project approval, and there are no parameters governing potential future mortgages, then the approach becomes nothing but a cynical ploy offered for CON approval.

Liberty failed to address the specific question in SECTION VIII. 5. (b) (ii). Specifically, the \$15,707,139 equity component has been attested to by a CPA, and no personal financial statements have been provided as required.

4. According to Liberty's response to SECTION I. 12. (d) and (e), project IDs F-7910-07 and F-7911-07 are delayed from completion by only eight and eleven months respectively. Yet, according to the most recent Progress Reports filed by the projects at B. 2. Liberty states "We do not anticipate any delay in achieving Licensure and Certification by the projected completion date in the CON". This comment was made in November 2010 and again in February 2013. By all accounts, Liberty is late in submitting Progress Reports, and appears to be much further delayed in the development of these projects than is indicated by their responses to the Progress Reports on file at CON Section.

According to CON Section files, the most recent Progress Report for Project ID # F-7911-07 is date-stamped February 13, 2013, and references “there are no significant delays”.

According to CON Section files, the most recent Progress Report for Project ID # F-7910-07 is date-stamped November 19, 2010, and references “We do not anticipate any delay in achieving Licensure and Certification by the projected completion date in the CON”, which is January 31, 2013.



# **EXHIBIT 33**

## **Water & Sewer Availability**

Water and Wastewater Treatment Plant  
Distribution and Collection Systems



Maintenance and Construction  
Customer Service and Billing

## CHATHAM COUNTY

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### PUBLIC WORKS DEPARTMENT – UTILITIES & WATER DIVISION

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964 East Street, 2<sup>nd</sup> Floor/Suite 205  
Post Office Box 910, Pittsboro, N.C. 27312  
Website: [www.chathamnc.org](http://www.chathamnc.org)

August 6, 2013

Hunter Diefes  
Director of Financial Planning  
Liberty Healthcare Management, Inc.  
2334 South 41<sup>st</sup> Street  
Wilmington, NC 28403

Subject: Water Service Availability for Nursing Home Location

Dear Hunter Diefes,

This letter is written to verify that the subject properties as listed below have water service available.

Site 1: Parcel No. 65232 (50 Morris Rd), 2905 (70 Sunny Acres) and 2904 (70 Sunny Acres)  
Site 2: Parcel No. 3080 (72 Marvin Edwards Lane, Chapel Hill, Chatham County, NC)

Site 1 has water service available from an existing Chatham County owned 8-inch water main along US 15-501 North Highway and a 6-inch water main along Morris Road with simple service connection. Site 2 has water service available from an existing Chatham County owned 16-inch water main along US 15-501 North Highway with simple service connection. The water availability is for Domestic Demand only calculated by NCDENR standard design methods. Fire Demand will require an analysis by a licensed engineer to determine if the county water system can supply the demand.

Chatham County does not provide sanitary sewer.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Leonard McBryde III, P.E.  
Public Utilities Director

## Hunter Diefes

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**From:** Grant Livengood <glivengood@mckimcreed.com>  
**Sent:** Tuesday, August 13, 2013 6:20 PM  
**To:** Hunter Diefes; tim@architectskt.com; adrienne@architectskt.com  
**Cc:** Thomas@architectskt.com; nic@architectskt.com  
**Subject:** Hwy 15-501 Sites - Sewer

Mr. Diefes,

We have looked at a very preliminary evaluation of sewer service options to the two parcels of land located in Chatham County. As you are probably aware, Chatham County does not provide public sewer in this area. The Marvin Site and the Sunny Acres Site are both located along the 15-501 corridor.

Both sites are mapped in Chatham County as predominant Wedowee soils types. These soil is relatively well drained exhibiting moderate permeability, which might provide adequate conditions for onsite treatment. It should be noted that this review is based solely on review of published literature and prior to development of any reliable design recommendations and associated costs, very detailed investigations of site and soil resources are necessary. It is assumed that the site will contain a senior living center, housing approximately 90 beds. Based on the "book value" of the intended use from NCDENR, the anticipated facility will produce in the 10,000 GPD range. This value was used in the analysis. The exact flow will depend on the actual occupancy and facility use.

For a land application use, an assumed hydraulic loading of 0.5" per week was used. Based on this load, it would require approximately 5.2 acres for capacity. The requirements for land application also require an equal treatment capacity in land as a backup for the primary area. This would mean a total of approximate 10 acres may be needed.

In addition to the land, there will be a requirement for wet weather storage and pre-treatment prior to the land application. An approximate 45 day storage for this application would require a basin approximately 4-5' deep and 0.5 acres in surface area.

The pre-treatment of the flows can be treated to reuse levels for use in irrigation and cooling towers, will range in an approximate cost from \$15/gallon - \$25/gallon depending on the level chosen to treat to.

For land application, there are options of surface irrigation. Drip irrigation and spray irrigation. These two options provide for differing costs. Drip irrigation is approximated at \$25,000 /acre and spray at \$12,000 /acre.

I know this is a lot of information to compile, so in conclusion, a preliminary opinion of probable cost could be:

Land cost – approximately 10 acres needed ( excluding required buffers)

Wet Weather Storage – \$50,000-\$100,000

Pre-Treatment -\$250,000 ( Assumes \$25/gal x 10,000 gpd)

Surface irrigation –

Drip - \$25,000/ac x 5.2 ac = \$130,000

Spray \$12,000/ac x 5.2 ac. = \$62,400

In total, the preliminary probably cost could range from \$360,000 - \$480,000, not including the cost of required land. This cost does not include field verified site assessment, permitting or design.

As you can see, this option can get costly pretty fast. I do think that looking at options of purchasing capacity from other entities might be more cost efficient. I pretty confident that Fearrington Village and Briar Chapel have self-sustained treatment and may be options for discussion. In addition, there may be options for the Marvin Site to talk to OWASA

across the County line to the north, as I think there is public sewer in a proximal subdivision off of Smith Level Rd to the north. All of these options would require off-site transmission and associated approvals.

I hope that this information is helpful. Please let me know if there are any questions or comments.

Regards,

Grant

**Grant Livengood, PE | Director of Planning, Development and Natural Resources**

Tel 919.233.5261 ext 187 | Cell 919.630.1634

1730 Varsity Drive, Suite 500 | Raleigh, NC 27606

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CERTIFICATE OF NEED

PROGRESS REPORT FORM

County: Mecklenburg  
 Facility: Churchill Commons  
 Project I.D. #: F-7911-07

Date of Progress Report: 12/31/2012  
 Facility I.D. #: 070529  
 Effective Date of Certificate: 5/21/2009

CON. 1-1-12

Project Description:

Relocate 120 nursing facility beds from Liberty Nursing & Rehabilitation Center of Mecklenburg County in Charlotte to a replacement facility located at 10011 Providence Road West in Charlotte, NC.

**A. Status of the Project**

- (a) Describe in detail the current status of the project. If the project is not going to be developed exactly as proposed in the certificate of need application, describe all differences between the project as proposed in the application and the project as currently proposed. Such changes include, but are not limited to, changes in the: 1) design of the facility; 2) number or type of beds to be developed; 3) medical equipment to be acquired; 4) proposed charges; and 5) capital cost of the project. (See the Capital Cost Section of this form for additional questions regarding changes in the total capital cost of the project). *(The project is under construction, site work and foundation are completed, and walls are going up.)*
- (b) Pursuant to G.S. 131E-181(d), the CON Section cannot determine that a project is complete until "the health service or the health service facility for which the certificate of need was issued is licensed and certified and in material compliance with the representations made in the certificate of need application." To document that new or replacement facilities, new or additional beds, new or replacement equipment or new services have been licensed and certified, provide copies of correspondence from the appropriate section within the Division of Health Service Regulation and the Centers for Medicare and Medicaid Services (CMS).

**B. Timetable**

1. Complete the following table. The first column must include the timetable dates found on the certificate of need. If the CON Section has authorized an extension of the timetable in writing, you may substitute the dates from that letter.

PROJECT MILESTONES	Projected Completion Date from certificate	Actual completion date	Proposed completion date
	Month/day/year	Month/day/year	Month/day/year
Obtained Funds for the Project	3/31/2012	6/18/2012	6/30/2012
Final Drawings and Specifications Sent to DHR	11/30/2011	2/20/2012	2/20/2012
Acquisition of land/facility	12/13/2010	12/13/2010	12/13/2010
Construction Contract Executed	5/31/2012	5/2/2012	6/30/2012
25% completion of construction	7/31/2013	12/31/2012	7/31/2013
50% completion of construction	11/30/2013		11/30/2013
75% completion of construction	3/31/2014		3/31/2014
Completion of construction	7/31/2014		7/31/2014
Ordering of medical equipment	N/A		N/A
Operation of medical equipment	N/A		N/A
Occupancy/offering of services	9/30/2014		9/30/2014
Licensure	8/31/2014		8/31/2014
Certification	9/30/2014		9/30/2014

2. If the project is experiencing significant delays in development:

- a. explain the reasons for the delay; and *(There are no significant delays)*  
 b. provide a revised timetable for the CON Section to consider. *(See Proposed Completion Dates above)*

**C. Medical Equipment Projects** – If the project involves the acquisition of any of the following equipment 1) major medical equipment as defined in NCGS § 131E-176(14f); 2) the specific equipment listed in NCGS § 131-176(16); 3) equipment that creates an oncology treatment center as defined in NCGS § 131-176(18a); or 4) equipment that creates a diagnostic center as defined in NCGS § 131E-176(7a), provide the following information for; each piece or unit of equipment 1) manufacturer; 2) model; 3) serial number; and 4) date acquired.

N/A

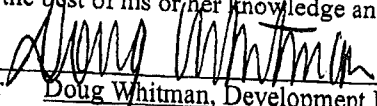
**D. Capital Expenditure**

1. Complete the following table.
  - a. Include all capital costs that have been paid to date as well as those that the applicant(s) are legally obligated to pay.
  - b. If you have not already done so, provide copies of the executed construction contracts, including the one for architect and engineering services, and all final purchase orders for medical equipment costing more than \$10,000/unit.
  - c. If the project involves renovation or construction, provide copies of the Contractors Application for Payment [AIA G702] with Schedule of Values [AIA G703].

	Capital Expense Since Last Report	Total Cumulative Capital Expenditure
<b>Site Costs</b>		
Purchase price of land	\$ -	\$ 702,247.00
Closing costs	_____	_____
Legal Fees	\$ -	\$ 16,372.00
Site preparation costs	_____	_____
Landscaping	_____	_____
Other site costs (Soil Borings & Materials Testing)	\$ 18,883.00	\$ 22,791.00
<b>Subtotal Site Costs</b>	\$ 18,883.00	\$ 741,410.00
<b>Construction Costs</b>		
Construction Contract	\$ 812,158.00	\$ 812,158.00
<b>Miscellaneous Costs</b>		
Movable Equipment	_____	_____
Fixed Equipment	_____	_____
Furniture	_____	_____
Consultant/A&E Fees	\$ 246,361.00	\$ 347,484.00
Financing Costs	_____	_____
Interest during Construction	_____	_____
Other Misc. Costs (Review & Permit Fees)	\$ 14,896.00	\$ 33,891.00
<b>Subtotal Misc. Costs</b>	\$ 261,257.00	\$ 381,375.00
<b>Total Capital Costs of the Project</b>	\$ 1,092,298.00	\$ 1,934,943.00

2. What do you project to be the remaining capital expenditure required to complete the project? \$7,379,854
3. Will the total actual capital cost of the project exceed 115% of the approved capital expenditure on the certificate of need? If yes, explain the reasons for the difference. *(We do not anticipate the actual capital cost of the project to exceed 115% of the approved capital expenditure).*

**E. CERTIFICATION** -The undersigned hereby certifies that the responses to the questions in this progress report and the attached documents are correct to the best of his or her knowledge and belief

Signature of Officer:   
 Name and Title of Responsible Officer: Doug Whitman, Development Director  
 Telephone Number of Responsible Officer: (910) 512-2988

## CERTIFICATE OF NEED PROGRESS REPORT FORM

19 NOV 2010 11:00

County: *Mecklenburg*  
 Facility: *Liberty Commons of Matthews*  
 Project I.D. #: *F-7910-07*  
 Project Description:

Date of Progress Report: *9-1-2010*  
 Facility I.D. #: *070527*  
 Effective Date of Certificate: *5-21-2009*

*Construct 169-bed skilled nursing center in Matthews, NC*

**A. Status of the Project**

- (a) Describe in detail the current status of the project. If the project is not going to be developed exactly as proposed in the certificate of need application, describe all differences between the project as proposed in the application and the project as currently proposed. Such changes include, but are not limited to, changes in the: 1) design of the facility; 2) number or type of beds to be developed; 3) medical equipment to be acquired; 4) proposed charges; and 5) capital cost of the project. (See the Capital Cost Section of this form for additional questions regarding changes in the total capital cost of the project).
- (b) Pursuant to G.S. 131E-181(d), the CON Section cannot determine that a project is complete until "the health service or the health service facility for which the certificate of need was issued is licensed and certified and in material compliance with the representations made in the certificate of need application." To document that new or replacement facilities, new or additional beds, new or replacement equipment or new services have been licensed and certified, provide copies of correspondence from the appropriate section within the Division of Health Service Regulation and the Centers for Medicare and Medicaid Services (CMS).

**B. Timetable**

1. Complete the following table. The first column **must** include the timetable dates found on the certificate of need. If the CON Section has authorized an extension of the timetable in writing, you may substitute the dates from that letter.

PROJECT MILESTONES	Projected Completion Date from certificate	Actual completion date	Proposed completion date
	Month/day/year	Month/day/year	Month/day/year
Obtained Funds for the Project	9-30-2008	9-30-2008	9-30-2008
Final Drawings and Specifications Sent to DHR			8-31-2011
Acquisition of land/facility	9-30-2008	9-30-2008	9-30-2008
Construction Contract Executed			11-30-2011
25% completion of construction	12-31-2011		2-28-2012
50% completion of construction	4-30-2012		5-31-2012
75% completion of construction			8-31-2012
Completion of construction	11-30-2012		11-30-2012
Ordering of medical equipment			9-15-2012
Operation of medical equipment			12-15-2012
Occupancy/offering of services			12-31-2012
Licensure	12-31-2013		12-31-2012
Certification	1-31-2013		1-31-2013

2. If the project is experiencing significant delays in development:  
*We do not anticipate any delay in achieving Licensure and Certification by the projected completion date in the CON*
- a. explain the reasons for the delay; and
  - b. provide a revised timetable for the CON Section to consider.

3. **Medical Equipment Projects** – If the project involves the acquisition of any of the following equipment 1) major medical equipment as defined in NCGS § 131E-176(14f); 2) the specific equipment listed in NCGS § 131-176(16); 3) equipment that creates an oncology treatment center as defined in NCGS § 131-176(18a); or 4) equipment that creates a diagnostic center as defined in NCGS § 131E-176(7a), provide the following information for; each piece or unit of equipment 1) manufacturer; 2) model; 3) serial number; and 4) date acquired.

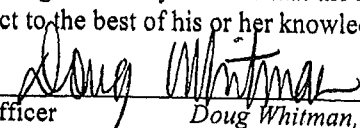
**D. Capital Expenditure**

1. Complete the following table.
  - a. Include all capital costs that have been paid to date as well as those that the applicant(s) are legally obligated to pay.
  - b. If you have not already done so, provide copies of the executed construction contracts, including the one for architect and engineering services, and all final purchase orders for medical equipment costing more than \$10,000/unit.
  - c. If the project involves renovation or construction, provide copies of the Contractors Application for Payment [AIA G702] with Schedule of Values [AIA G703].

	Capital Expense Since Last Report	Total Cumulative Capital Expenditure
<b>Site Costs</b>		
Purchase price of land	\$ 1,048,099.57	\$ 1,048,099.57
Closing costs	\$ 56,463.39	\$ 56,463.39
Legal Fees	\$ 5,553.40	\$ 5,553.40
Site preparation costs	\$ 6,967.53	\$ 6,967.53
Landscaping	\$ -	\$ -
Other site costs (identify)	\$ -	\$ -
<b>Subtotal Site Costs</b>	<b>\$ 1,117,083.89</b>	<b>\$ 1,117,083.89</b>
<b>Construction Costs</b>		
Construction Contract	\$ -	
<b>Miscellaneous Costs</b>		
Movable Equipment		
Fixed Equipment		
Furniture		
Consultant Fees		
Financing Costs		
Interest during Construction	\$ 29,142.71	\$ 29,142.71
Other Misc. Costs (identify)		
<b>Subtotal Misc. Costs</b>	<b>\$ 29,142.71</b>	<b>\$ 29,142.71</b>
<b>Total Capital Costs of the Project</b>	<b>\$ 1,146,226.60</b>	<b>\$ 1,146,226.60</b>

2. What do you project to be the remaining capital expenditure required to complete the project? \$12,733,386
3. Will the total actual capital cost of the project exceed 115% of the approved capital expenditure on the certificate of need? If yes, explain the reasons for the difference. *No, we do not expect the total actual cost to exceed 115%*

**E. CERTIFICATION** -The undersigned hereby certifies that the responses to the questions in this progress report and the attached documents are correct to the best of his or her knowledge and belief

Signature of Officer   
 Name and Title of Responsible Officer Doug Whitman, Development Director  
 Telephone Number of Responsible Officer 910.332.1982

Effective date: 4/24/09



**COMPETITIVE COMMENTS** – submitted by Chatham Health Investors, LLC

Delivered by hand to CON Section on Monday September 30, 2013.

Project ID # J-010170-13

Chatham Park Investors, LLC (Lessor)

University of North Carolina Hospitals at Chapel Hill (UNC Hospitals) (Lessee)

UNC Hospitals Nursing Care and Rehabilitation Center



**COMMENTS**

UNC Hospitals' CON application is not in compliance with the following CON Review Criteria:

*Criterion (3) The applicant shall identify the population to be served by the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.*

**Response:** In its population analysis in Section III. 1. (a) and (b) UNC Hospitals failed to consider the needs of all populations in Chatham County.

UNC Hospitals limited ZIP code analysis specifically excluded several Chatham County ZIP codes which share borders with other counties, which resulted in their limited ZIP code analysis failing to consider the demographics of over 20,000 population, or approximately 29% of all Chatham County population.

By its own admission, UNC Hospitals failed to factor into its planning process the demographics of the population in Baldwin and Williams Townships, which are two of the most populous and fastest growing in total and in elderly population of all thirteen townships in Chatham County.

Since UNC Hospitals expressed concern about using ZIP codes which may bleed into other counties, the obvious solution would have been for UNC Hospitals to have used Chatham County-specific township-based population data, which would have better addressed their demographic planning in the first place.

The flawed choice to employ a "ZIP code methodology" for planning the best location to situate its nursing facility caused UNC Hospitals to ignore the substantial demographics in Baldwin and Williams Townships, along with thousands of other citizens living through-out Chatham County.

Additionally, UNC Hospitals plan to service only a small portion of need originating from Chatham County of 48%. This extremely small amount of in-county service proposed by UNC Hospitals clearly indicates that the applicant's intentions are not oriented toward serving Chatham County's population driven need for 90 additional beds. Instead, UNC Hospitals

projection that 52% (or well over one-half) of the residents UNC Hospitals intends to serve will originate from outside Chatham County is a clear indication that UNC Hospitals intention is to be a regional service nursing care center, for which a need has not been forecast nor proven, and is decidedly not a community nursing home, for which the 90-bed need has been established.

*Criterion (9) An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals.*

**Response:** UNC proposes to serve a substantial portion of its services to individuals not residing in the health service area in which the project is located.

The applicant has provided no details, documentation, nor demographic analysis, which supports UNC Hospitals' plan to:

1. Serve only 48% (41 patients) originating from Chatham County.
2. Serve 52% (45 patients) originating from outside Chatham County.

UNC Hospitals' proposal does not represent good health planning to meet the needs of Chatham County.

*Criterion (13) The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:*

- a. *The extent to which medically underserved populations currently use the applicant's existing services in comparison to the percentage of the population in the applicant's service area which is medically underserved;*
- b. *Its past performance in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant;*
- c. *That the elderly and the medically underserved groups identified in this subdivision will be served by the applicant's proposed services and the extent to which each of these groups is expected to utilize the proposed services; and*
- d. *That the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient*

*services, admission by house staff, and admission by personal physicians.*

**Response:** Compared to other available alternatives, approval of UNC Hospitals' CON application will result in the fewest number of Chatham County Medicaid patients to be served among all applicants.

For example:

	<u>Projected number of Chatham County Patients</u>	<u>Projected Medicaid Percentage</u>	<u>Total Chatham County Medicaid Patients</u>
UNC Hospitals	41.00	88.90%	36.45
Chatham Health Investors, LLC	71.38	78.31%	55.90

UNC Hospitals' proposal represents the weakest of all five competitive applications in this review in terms of being accessible to Chatham County Medicaid recipients.

*Criterion (20) and other related Criteria An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.*

**Response:** The FINAL DECISION rendered by Administrative Law Judge Augustus B. Elkins II, on June 20, 2013, pertaining to 12DHR08691, 12DHR08666, and 12DHR08669, is instructive and applicable to this review.

According to ALJ Elkins findings, UNC Hospitals should have fully responded to Section II. 6., and reported on the quality of care status of all six facilities which UNC Hospitals reports that SanStone operates in North Carolina. This information has been withheld from this competitive review.

Furthermore, it seems clear based on ALJ Judge Elkins' findings, that UNC Hospitals should have provided the quality care record of all nursing homes which are members of the organization "UNC Health Care System". UNC Health Care System acts as an umbrella organization under which related health care providers such as UNC Hospitals, and Rex Healthcare receive organizational, operational, and quality assurance direction.

Please see page 17 of UNC Hospitals' CON application: "UNC Health Care System continues to grow rapidly. The healthcare system includes UNC Hospitals, Rex Healthcare, Chatham Hospital, Caldwell Memorial Hospital, High Pont Regional Health System, and the UNC Physicians Network. UNC Health Care System also manages Pardee Hospital."

UNC Healthcare's "Structure of Quality" is depicted on CON application page 262. This required structure for UNC entities further defines the umbrella relationship of control which UNC Healthcare System maintains over its entities. The UNC Health System Board of Directors holds governing authority over all UNC Hospitals and related entities and organizations situated under its organizational umbrella.

An organizational chart found on page 244 of UNC Hospitals' CON application clearly shows the President of Rex being a direct report to Mr. Gary Park, President of UNC Hospitals. Mr. Park in turn is a direct report to William L. Roper, MD, CEO of UNC Health Care System.

Rex Hospital, Inc owns and operates Rex Rehabilitation and Nursing Care Center of Apex, which is a licensed and dually certified 107 bed nursing facility in Wake County.

Rex Hospital, Inc. also owns Rex Rehabilitation and Nursing Care Center of Raleigh, which is a dually certified 120 bed nursing facility in Wake County, and is licensed as part of Rex Hospital.

According to the 2013 Licensure Renewal Applications for the two nursing homes owned by Rex Healthcare, Inc, the senior officers for both nursing facilities is the President of Rex Healthcare, Inc, (Rex Hospital), who in turn is a direct report to the President of UNC Hospitals, Mr. Park. UNC Health Care System's Board of Directors is the governing authority over all UNC affiliated organizations and entities.

Consequently, UNC Hospitals has failed to divulge the Quality of Care information required by CON application Section II. 6.

This application is non-conforming to Criteria 20, and all other related criteria.

**General Comment:**

UNC Hospitals has planned in the Proposed Development Schedule, CON application page 169, for occupancy by patients to occur on October 1, 2015. However, the facility is not projected to be licensed until October 15, 2015, and will not be certified until November 15, 2015.

However, the fill-up schedule and revenue for fill-up is based on patient service to commence on October 1, 2015, which renders the start-up cost and cash flow projections to be erroneous and inaccurate.

**COMPETITIVE COMMENTS** – submitted by Chatham Health Investors, LLC

Delivered by hand to CON Section on Monday September 30, 2013.

Project ID # J-010171-13

Chatham Healthcare Properties, LLC (Lessor)

PruittHealth-Chatham, LLC (Lessee)



**COMMENTS**

PruittHealth's CON application is not in compliance with the following CON Review Criteria:

*Criterion (1) The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which constitutes a determinative limitation on the provision of any health service, health service facility, health service facility beds, dialysis stations, operating rooms, or home health offices that may be approved.*

**Response:** According to voluminous information contained in PruittHealth's Attachment 34, approval of this applicant will award a new facility to a company which managed to have five of the twelve nursing homes in North Carolina with which it is affiliated be charged with seven substandard Quality of Care Incidents/Events, from the period 12/30/11 – 7/12/13 (less than nineteen months).

Essentially all other applicants in this review have remarkably better quality of care track records in North Carolina than PruittHealth.

PruittHealth has chosen to exclude from its facility all patients who live outside of Chatham County. Throughout the 1692 page CON application, PruittHealth makes repeated reference to serving Chatham County residents "exclusively". This unusual and discriminatory practice will apply to Medicaid recipients as well, even if the Medicaid recipient had family or friends in Chatham County.

PruittHealth's unusual and self-imposed policy to exclusively serve patients originating only from Chatham County will put its entire organization at risk of denying access to a Medicaid patient based on county of origin. For example, a Medicaid patient living in Wake County, who wants to live in PruittHealth's new facility (in either Pittsboro or Siler city) to be near family who live in either Pittsboro or Siler City, are told by PruittHealth that their admission is denied.

PruittHealth has not carefully thought through the seriousness of this exclusionary practice, and the results will be civil rights access complaints and/or lawsuits.

PruittHealth proposes to offer Medicaid access to its new 90 bed facility at a rate of 69.8% utilization, which is less than the current rate of Medicaid utilization of Chatham County's existing 290 Medicaid certified beds.

*Criterion (3) The applicant shall identify the population to be served by the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.*

**Response:** PruittHealth's application proposes two sites:

Primary site – Pittsboro

Secondary site – Siler City

Despite hundreds of pages and tables of data, including surveys, township-based population projections, and existing facilities, PruittHealth still failed to show any health planning rationale which supports its plan to have its primary site situated in Pittsboro, and its secondary site situated approximately 18 miles west in Siler City.

PruittHealth's Pittsboro site is located within two miles of The Laurels of Chatham, a 140 bed nursing home in Pittsboro. Both facilities will offer very similar services, and obviously serve the same area.

The data contained in PruittHealth's CON application strongly suggests that a much better primary site would be in northeast Chatham County, near Chapel Hill in Chatham County.

By choosing to locate in Pittsboro, PruittHealth chooses to ignore its own data. Furthermore, by locating a new facility almost next door to another existing facility (The Laurels of Chatham), there will be no improvement in access to nursing home beds in Chatham County.

PruittHealth's unusual selection of Siler City as its secondary site is a surprise, as there is little if any data, either anecdotal or population-based, which indicates Siler City is a reasonably better location than all of the other locations proposed in this review.

By selecting sites at opposite ends of Chatham County, PruittHealth is essentially declaring that Siler City is as reasonable a location as is Pittsboro, despite there being no data to support that declaration.

PruittHealth proposes to offer Medicaid access to its new 90 bed facility at a rate of 69.8% utilization, which is less than the current rate of Medicaid utilization of Chatham County's existing 290 Medicaid certified beds.

*Criterion (4) Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.*

**Response:** PruittHealth has not shown that its site in Pittsboro will serve an unmet need in the Pittsboro area. Additionally, PruittHealth's own data, including anecdotal data, does not show that Siler City has an unmet need for more nursing home beds.

Neither of the alternative sites proffered by PruittHealth will meet an unmet local need for additional nursing home beds.

The clear unmet need in Chatham County is in the northeast corner of the county, in Baldwin and Williams Townships.

PruittHealth's proposed operating cost is the highest among all five competitors, while its capital cost is second highest. PruittHealth is one of the most costly alternatives in this review.

*Criterion (5) Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, based upon reasonable projections of the costs of and charges for providing health services by the person proposing the service.*

**Response:** PruittHealth has proffered the highest operating cost per patient day among all five applicants, along with the second highest total capital cost.

This application is the most cost in-efficient of all five competitors.

*Criterion (6) The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.*

**Response:** PruittHealth's selection of a site in Pittsboro is within two miles of The Laurels of Chatham, which is an existing 140 bed nursing home in Pittsboro.

By selecting Primary and Secondary sites in the two areas in Chatham County which already have a nursing home, PruittHealth is choosing to ignore the county's area of need, and instead chooses to offer duplicative services in either Pittsboro or Siler City. Approval of PruittHealth will further concentrate access to nursing home beds in Chatham County, rather than expand access.

*Criterion (8) The applicant shall demonstrate that the provider of the proposed services will make available, or otherwise make arrangements for, the provision of the necessary ancillary and support services. The applicant shall also demonstrate that the proposed service will be coordinated with the existing health care system.*

**Response:** Despite listing many hospitals located outside of Chatham County as referral sources, PruittHealth has neglected to advise those hospitals that it will only accept admissions of Chatham County residents. This would include Medicare and Medicaid payer source patients as well.

PruittHealth's exclusionary admissions policy will not coordinate well with hospitals.

*Criterion (12) Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.*

**Response:** There are better alternatives in this review to PruittHealth's proposed cost, design, and means of construction. For example, Chatham Health Investors, LLC offers better patient room accommodations, and better cost, than does PruittHealth.

The proposed facility's private and semi-private room square footage sizes per bed are 222.3 sq. ft. for private room beds and 113.5 sq. ft. per semi-private room bed, which are substandard in size in the world of culture change.

*Criterion (13) The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:*

- a. *The extent to which medically underserved populations currently use the applicant's existing services in comparison to the percentage of the population in the applicant's service area which is medically underserved;*
- b. *Its past performance in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant;*



- c. *That the elderly and the medically underserved groups identified in this subdivision will be served by the applicant's proposed services and the extent to which each of these groups is expected to utilize the proposed services; and*
- d. *That the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.*

**Response:** PruittHealth proposes to have Medicaid utilization of 69.8%, while the 2012 Licensure Renewal Applications for Medicaid certified beds in Chatham County reflect a Medicaid utilization of 77.3%.

PruittHealth's proposed Medicaid service indicates that Medicaid patients will have less access to PruittHealth beds than to existing facility beds.

*Criterion (18a) The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.*

**Response:** PruittHealth's proposal is not cost effective; reflects a sub-standard quality care track record; restricts access to its services; and is located in close proximity to the only other provider facility in Pittsboro, or Siler City.

The head-to-head competition PruittHealth plans for The Laurels of Chatham would have been mitigated had PruittHealth located its site in Baldwin or Williams Townships, as its own demographic data analysis indicated as the area of need in Chatham County.

*Criterion (20) An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.*

PruittHealth's recent quality care track record in North Carolina, as noted in Exhibit 34 in its CON application, is sub-standard. Five of twelve existing PruittHealth facilities in North Carolina have documented seven (7) sub-standard quality of care incidents/events since December 30, 2011.