

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

Pat McCrory
Governor

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

Drexdal Pratt
Division Director

April 5, 2013

Gary S. Qualls
K&L Gates
430 Davis Drive, Suite 400
Morrisville, NC 27560

Denial of Exemption from Certificate of Need Review

Facility: Crawley Memorial Long Term Care Hospital
Project Description: Demolition, asbestos abatement, and rebuilding cost overrun for Project ID C-8736-11
County: Cleveland
FID #: 120232

Dear Mr. Qualls:

In response to your letter of February 25, 2013, the above referenced proposal is a new institutional health service within the meaning of G.S. 131E-176(16)(e) because it results in a cost overrun of more than 15% of the approved capital expenditure amount of the project. Therefore, Cleveland County HealthCare System and Crawley Memorial Hospital may not proceed to incur an obligation for the demolition, asbestos abatement, and rebuilding of Crawley Memorial Long Term Care Hospital without first obtaining a certificate of need.

This decision is based on the following findings:

1. The February 25, 2013 letter states the initial demolition of the existing space revealed more asbestos than had been anticipated.
2. The anticipated cost of the asbestos abatement is now expected to be \$1,490,000, which represents a cost overrun of 205% of the approved capital expenditure and therefore requires a certificate of need.
3. But for the initial demolition of the existing space pursuant to the above-mentioned project, the need for additional asbestos abatement would not have been discovered or necessary, and thus, it is part of the approved project.

Any person aggrieved by this decision may file a petition for a contested case hearing in accordance with G.S. 150B, Article 3, as amended. This petition must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC, 27699-6714, within thirty (30) days of the date of this decision. [Note: Effective October 1, 2009, OAH requires a filing fee with submittal of petitions for contested cases. Please direct all questions regarding this fee to OAH Clerk's Office (919-431-3000).]

Certificate of Need Section

www.ncdhhs.gov

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

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

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

An Equal Opportunity/ Affirmative Action Employer



Therefore, if you file a petition for a contested case hearing, you must serve a copy of the petition on the Department of Health and Human Services by mailing a copy of your petition to:

Emery Milliken
Department of Health and Human Services
Office of Legal Affairs
Adams Building – Room 154
2001 Mail Service Center
Raleigh, North Carolina, 27699-2001

It is requested that a copy of the petition also be served on the Certificate of Need Section. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,



Julie Halatek
Project Analyst



Craig R. Smith, Chief
Certificate of Need Section

cc: Nadine Pfeiffer, Medical Facilities Planning Section, DHSR
Steven Lewis, Construction Section, DHSR (Not Hospice Home Care/ Home Health/ESRD)
Azzie Conley, Acute and Home Care Licensure and Certification Section, DHSR

Julie

J-5110-94



February 25, 2013

Gary S. Qualls
(919) 466-1182
(919) 516-2072
Gary.qualls@klgates.com

VIA HAND DELIVERY and E-MAIL

Craig R. Smith, Chief
Julie Halatek, Analyst
Certificate of Need Section
Division of Health Service Regulation
N.C. Department of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Exemption Notice under N.C. Gen. Stat. § 131E-184(a)(1) – Cleveland County HealthCare System and Crawley Memorial Hospital

Dear Craig and Julie:

We are writing on behalf of our clients, Cleveland County HealthCare System (“CCHS”) and Crawley Memorial Hospital (“Crawley”). The purpose of this letter is to request that the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the “Agency”) confirm that the proposed demolition, remediation and rebuilding described herein is exempt from review under the Certificate of Need (“CON”) Law’s exemption provision in N.C. Gen. Stat. § 131E-184(a)(1).

Background

In Project I.D. No. C-8736-11, Cleveland County HealthCare System and Crawley Memorial Hospital, Inc. applied for and were approved for a CON to relocate 28 long-term acute care beds from Crawley Memorial Hospital to leased space in Kings Mountain Hospital in Cleveland County (the “LTACH Relocation Project”). During the initial demolition of the existing space, more asbestos was discovered than originally thought present. The projected cost to remove and replace the newly discovered asbestos in the contaminated drywall for the whole wing and the associated increase in specialty work is \$1,490,000 more than the original CON capital cost for the LTACH Relocation Project. The associated costs in the amount of \$1,490,000 are solely based on the demolition, remediation and rebuilding of the

walls not originally slated for removal in the CON application. There has been no change in the LTACH Relocation Project's scope.

Description of Exempt Work

During the initial planning and renovation design process for the proposed Kings Mountain Hospital 2nd Floor LTACH Wing renovations, existing Asbestos Containing Material (ACM) surveys of the hospital facility revealed the presence of asbestos containing spray-on fireproofing and floor mastic (encapsulated under 2 layers of existing flooring) on the LTACH Wing. As a result, the LTACH renovation budget was prepared to include the following ACM abatement scope:

- 1) removal of the flooring mastic only in areas where new flooring was proposed – corridor, nurse station 3 administrative rooms and 12 patient rooms – as the existing flooring to remain allowed the remaining mastic to remain encapsulated and undisturbed. **See Exhibit 1**
- 2) removal of spray-on fireproofing in areas above ceiling throughout the LTACH wing where moderate to heavy renovation within the wing was to occur – primarily along the perimeter Patient Rooms, Nurse Station and Conference Rooms. **See Exhibit 2.**

The overall CON renovation budget and project scope was finalized and approved, and floor mastic & spray fireproofing abatement activities began in March 2012. During this abatement of the fireproofing above the existing ceiling, it was discovered that the original, 1970s era existing gypsum wall board and joint compound was in place throughout the entire hospital wing. With this new information, the abatement monitoring consultant, Terracon, noted to CCHS that wallboard joint compound utilized during this particular 1970s-era construction timeframe *may* have the presence of joint compound containing portions of ACM. While other areas within the hospital facility have been tested for ACM in the joint compound and have resulted in negative findings, this could not provide enough guarantee that this wing in particular – constructed separate from other wings/areas during the 1970s – did not contain joint compound ACM. With this under advisement, our client requested testing of the joint compound in multiple locations throughout the LTACH wing. Of the 20 joint compound locations tested, 100% resulted in positive presence of ACM. **See Exhibit 3.**

Due to the inability of the general contractor to cut into walls, paint/sand any joints, patch any holes in the wall of any size or provide conduit, piping, etc., as required within any portion of the LTACH wing due to the presence of the ACM joint compound, the renovation project scope of work and budget was significantly altered. The impacts of this discovery resulted in the following additional abatement and replacement/repair scope of work:

Craig R. Smith, Chief

Julie Halatek, Analyst

February 25, 2013

Page 3

- 1) removal of all gypsum wallboard and integrated ACM joint compound on all walls throughout the entire suite;
- 2) in advance of abatement, removal of all doors, toilets, sinks, and other plumbing fixtures, wall mounted equipment and other alarm, HVAC and electronic devices for temporary storage and reinstallation during reconstruction renovations;
- 3) full support of existing stud walls, back boxes, ductwork, piping, conduit and other slated to remain materials on the wing prior to abatement in order to allow those to remain in place in light of removal of all gypsum board, which would otherwise assist in supporting these materials;
- 4) full abatement/cleaning of existing stud walls, back boxes, ductwork, piping, conduit and other slated to remain replacement of any;
- 5) replacement of any stud walls, back boxes, ductwork, piping, conduit and other equipment that is lost during the abatement process due to unforeseen conditions/unavoidable demolition circumstances incurred;
- 6) replacement of all drywall with new drywall; and
- 7) replacement of all wall, ceiling and flooring finishes due to the loss of the surrounding drywall and joint compound contamination of adjacent surfaces.

Applicable Exemption Provisions

We believe that the foregoing project is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(1). The General Assembly has chosen to exempt certain, otherwise reviewable, events from CON review, including:

- (1) To eliminate or prevent imminent safety hazards as defined in federal, State, or local fire, building, or life safety codes or regulations.

See N.C. Gen. Stat. § 131E-184(a)(1).

As described above, this work falls within the scope of Subpart (1) because it is to eliminate the asbestos that is an imminent safety hazard. The Federal Environmental Protection Agency ("EPA") has adopted National Emission Standard for Hazardous Air Pollutants ("NESHAP"). Within those standards, the National Emission Standards for Asbestos establish procedures for asbestos emission control, as follows:

Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures: (1) Remove all RACM from a

Craig R. Smith, Chief
Julie Halatek, Analyst
February 25, 2013
Page 4

facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal

See 40 CFR 61.145(c)(1).

In turn, the North Carolina regulations at 10A NCAC 41C.0609 (titled Asbestos NESHAP for Renovations and Demolitions) provide that:

Each owner or operator of a renovation or demolition activity, as defined in 40 CFR 61.141, shall comply with all applicable requirements of the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) for renovations and demolitions as found in 40 CFR Part 61, Subparts A and M. 40 CFR Part 61, Subparts A and M are hereby incorporated by reference, including any subsequent amendments and editions.

See 10A NCAC 41C.0609(a).

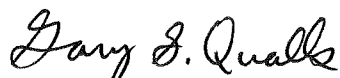
The asbestos removal project described in this letter is subject to the foregoing federal and State mandates.

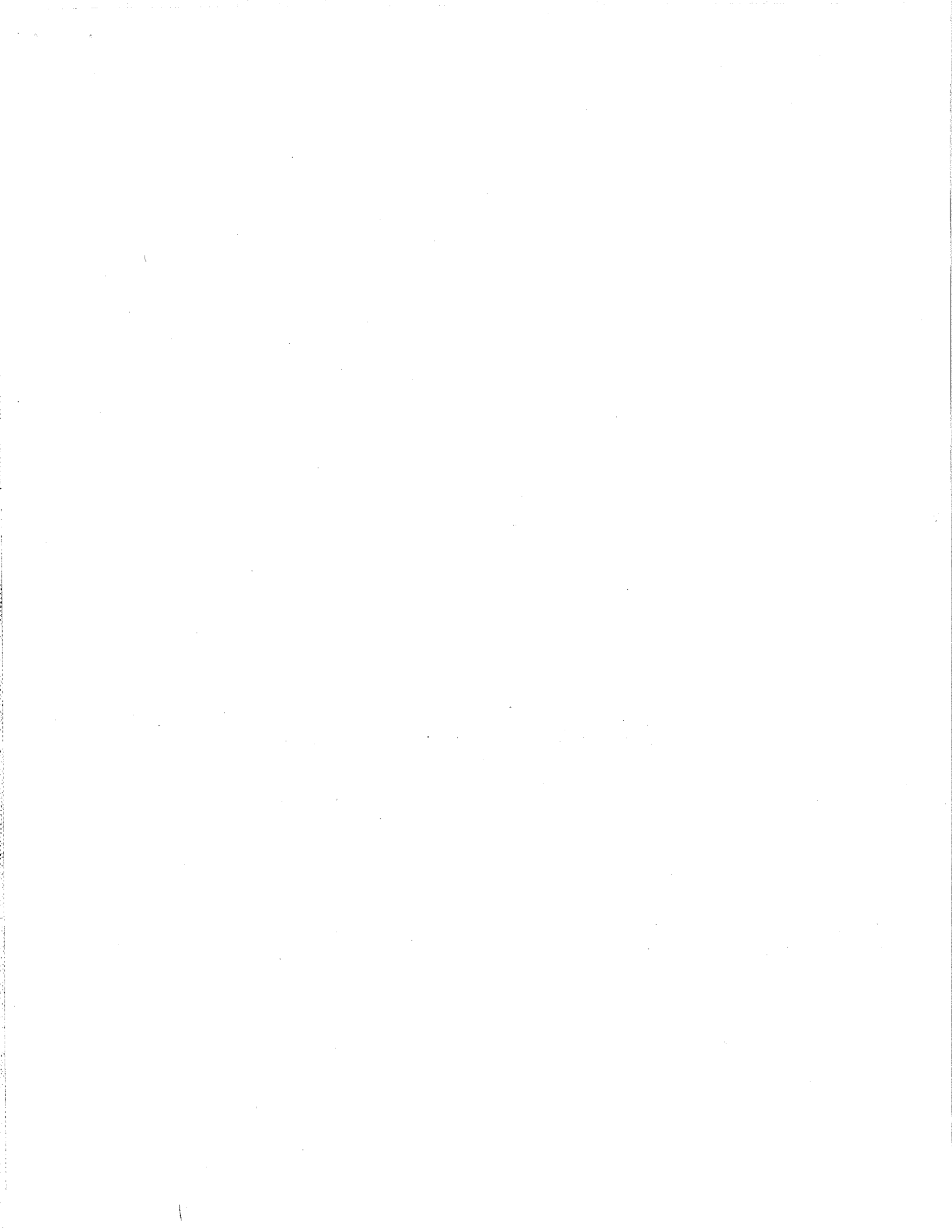
Moreover, the fact that the LTACH Relocation Project involved removing asbestos as part of that project, albeit to a lesser extent and for different walls, does not preclude the use of this exemption provision. Unlike Subpart (4) in Section 131E-184(a), Subpart (1) does not contain any limitation that the exemption activities not be part of a project subject to CON review. Thus, Section 131E-184(a)(1) exemptions do not require any programmatic, physical, or other lines of demarcation between the CON project and the exempt project.

Based upon the foregoing information, we request that the Agency confirm that the project described herein to demolish, remediate and rebuild walls to eliminate asbestos in order to proceed with the LTACH Relocation Project is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(1).

Please let us know if you need additional information to consider this request. Thank you for your time and consideration.

Sincerely,


Gary S. Qualls



Note: Red Hatched areas indicate locations of Asbestos Containing Material in Flooring Mastic. Mastic confirmed to be encapsulated under two layers of existing flooring.

ASSUMED TO HAVE ASBESTOS-CONTAINING FLOORING

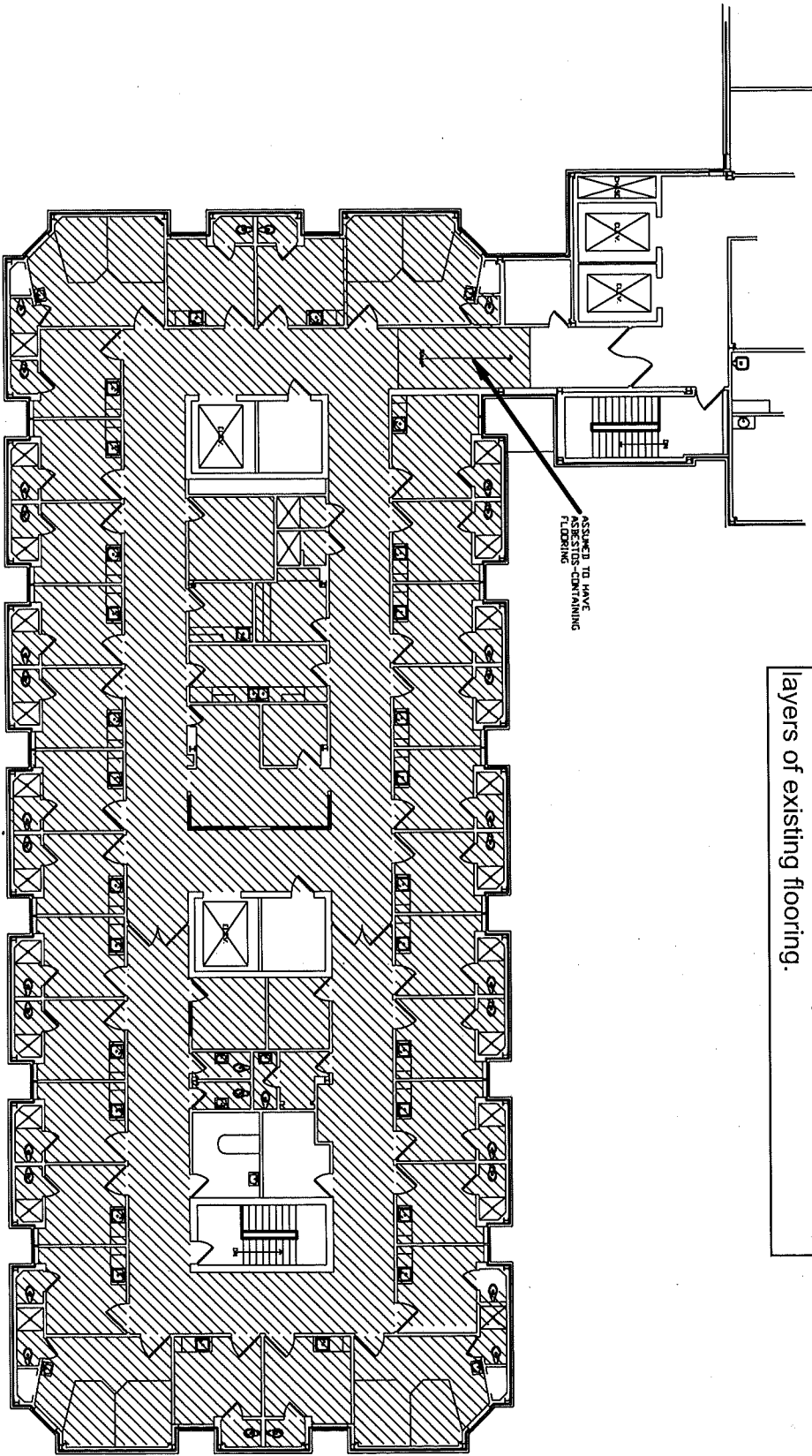


Exhibit 1 - ACM Flooring Mastic Locations (page 1) and proposed project abatement locations (page 2)

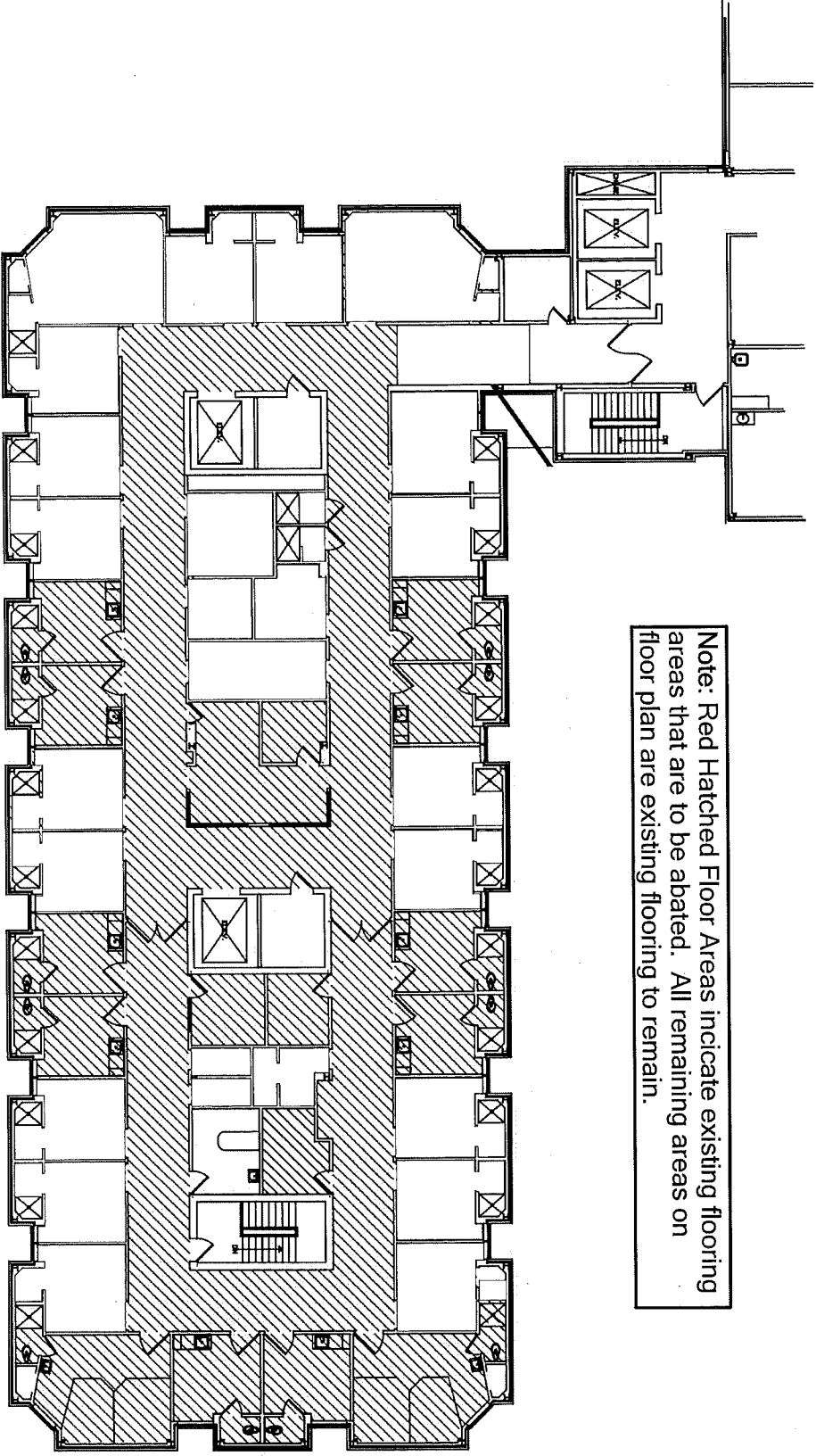
tables'

EXHIBIT

1 p. 1

<p>DATE: 1/11/2006 TIME: 11:27 AM USER: [unclear]</p>	<p>FILE NAME: [unclear] PROJECT: [unclear] REVISIONS:</p>	<p>DESCRIPTION</p>	<p>KINGS MOUNTAIN HOSPITAL 2ND FLOOR LTACH RENOVATIONS KINGS MOUNTAIN, NORTH CAROLINA</p>	<p>Terracon 2020-E STARITA ROAD CHARLOTTE, NORTH CAROLINA 28206</p>
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LTACH Flooring Abatement Drawing
01 March 2012



Note: Red Hatched Floor Areas indicate existing flooring areas that are to be abated. All remaining areas on floor plan are existing flooring to remain.

NO.	DATE	BY	DESCRIPTION
1	01/03/12	JTB	ISSUED FOR CONSTRUCTION

PROJECT: LTACH RENOVATIONS
DRAWN BY: JTB
CHECKED BY: [Signature]

DESCRIPTION

KINGS MOUNTAIN HOSPITAL
2ND FLOOR LTACH RENOVATIONS
KINGS MOUNTAIN, NORTH CAROLINA

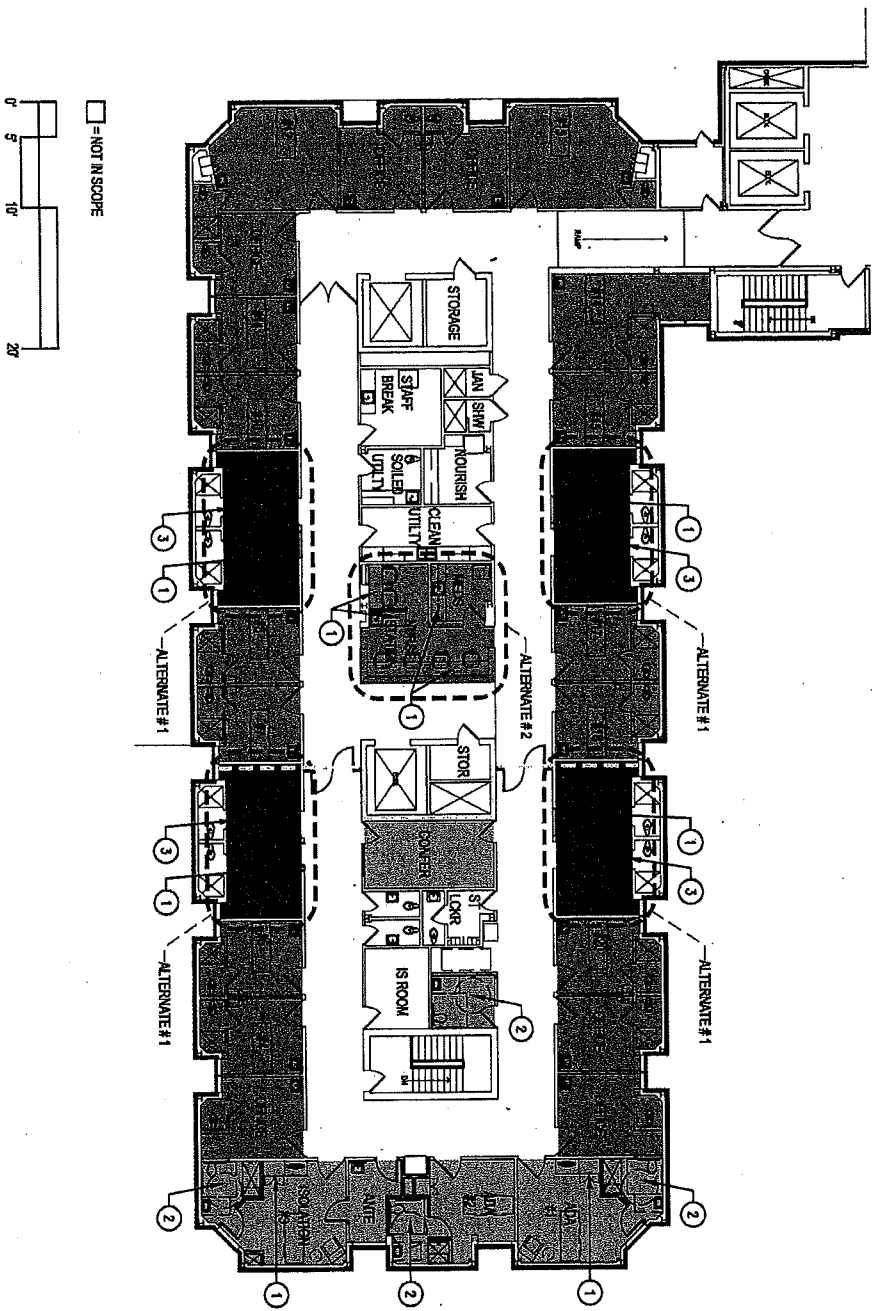
Terracon
2020-E STARITA ROAD
CHARLOTTE, NORTH CAROLINA 28206

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EXHIBIT
1 of 2

- KEY NOTES:**
- ① NEW MILLWORK / CASEWORK
 - ② NEW ADA TOILET
 - ③ ADD LOCKSET

CONSTRUCT NEW 1-HOUR FIRE AND SMOKE PROTECTION

- REMOVED AREA - 1,042 SQFT
- LIGHT COSMETIC RENOVATION AREA - 3,194 SQFT
- ALTERNATE #1 RENOVATED AREA - 802 SQFT
- ALTERNATE #2 RENOVATED AREA - 201 SQFT
- NOT IN SCOPE

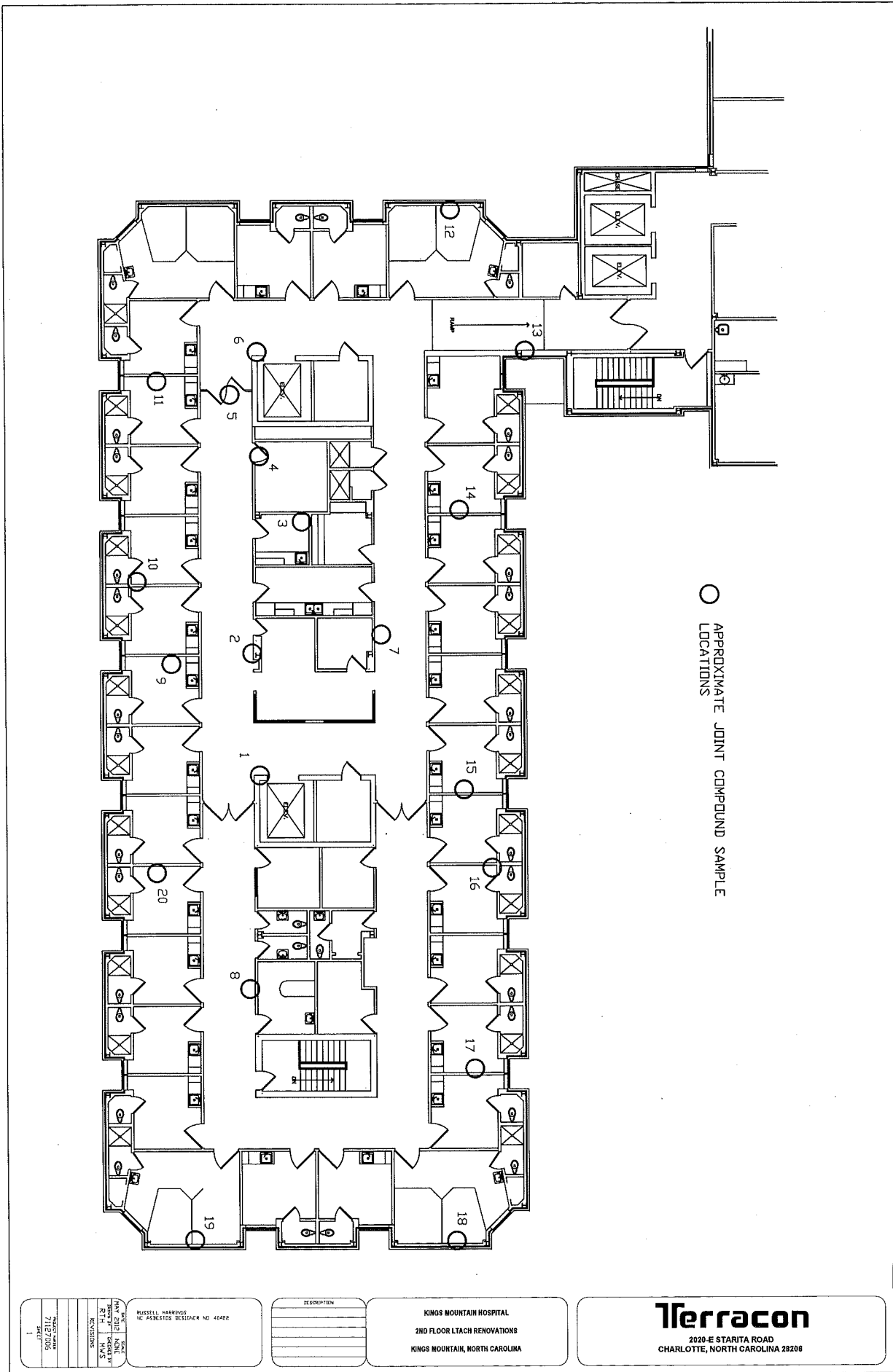


Cleveland County HealthCare System



KINGS MOUNTAIN HOSPITAL
 LONG TERM/ACUTE CARE
 SECOND FLOOR PLAN
 JUNE 17, 2011

Exhibit 2 - Location of proposed significant ceiling work locations (indicated with darkest and lightest shaded areas on plan)



○ APPROXIMATE JOINT COMPOUND SAMPLE LOCATIONS

DATE	NO.	BY	REVISIONS
7/12/2015	1	RUSSELL HARRINGS	AS PER ARCHITECT'S DESIGNER NO. 45492

RUSSELL HARRINGS
NC ARCHITECT DESIGNER NO. 45492

NO. 2000-17320

KINGS MOUNTAIN HOSPITAL
2ND FLOOR LTACH RENOVATIONS
KINGS MOUNTAIN, NORTH CAROLINA

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CHARLOTTE, NORTH CAROLINA 28208

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EXHIBIT

3 p.1

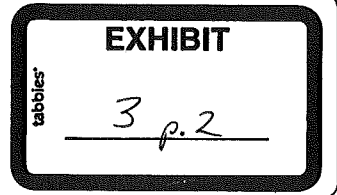
**EMSL Analytical, Inc.**

376 Crompton Street, Charlotte, NC 28273
 Phone/Fax: (704) 525-2205 / (704) 525-2382
<http://www.emsl.com> charlottelab@emsl.com

EMSL Order: 411201474
 CustomerID: TITA52
 CustomerPO: 71127006
 ProjectID:

Attn: **Russell Harrings**
Terracon Consultants, Inc.
2020 Starita Road
Suite E
Charlotte, NC 28206

Phone: (704) 509-1777
 Fax: (704) 509-1888
 Received: 05/01/12 8:00 AM
 Analysis Date: 5/1/2012
 Collected:



Test Report: Asbestos Analysis of Bulk Materials via EPA 600/R-93/116 and/or EPA 600/M4-82-020 Method(s) using Polarized Light Microscopy

Sample	Description	Appearance	Non-Asbestos		Asbestos
			% Fibrous	% Non-Fibrous	% Type
1-Joint Compound 411201474-0001	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
1-Tape 411201474-0001A	Joint Compound	Tan Fibrous Heterogeneous	98% Cellulose	2% Non-fibrous (other)	None Detected
1-Drywall 411201474-0001B	Joint Compound	White Fibrous Heterogeneous	5% Cellulose 2% Min. Wool	93% Non-fibrous (other)	None Detected
2-Joint Compound 411201474-0002	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
2-Tape 411201474-0002A	Joint Compound	Tan Fibrous Heterogeneous	98% Cellulose	2% Non-fibrous (other)	None Detected
2-Drywall 411201474-0002B	Joint Compound	White Fibrous Heterogeneous	5% Cellulose 2% Min. Wool	93% Non-fibrous (other)	None Detected
3 411201474-0003	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
4 411201474-0004	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile

Analyst(s)

Eric Loomis (19)
 Kristie Elliott (10)

Lee Plumley, Laboratory Manager
 or other approved signatory

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Initial report from 05/01/2012 12:47:32

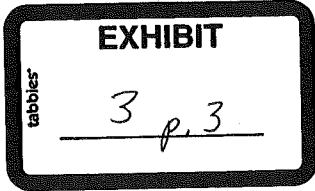
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			% Fibrous	% Non-Fibrous	% Type
5-Joint Compound 411201474-0005	Joint Compound	Cream Fibrous Heterogeneous		98% Non-fibrous (other)	2% Chrysotile
5-Tape 411201474-0005A	Joint Compound	Tan Fibrous Heterogeneous	98% Cellulose	2% Non-fibrous (other)	None Detected
6-Joint Compound 411201474-0006	Joint Compound	Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
6-Tape 411201474-0006A	Joint Compound	Tan Fibrous Heterogeneous	98% Cellulose	2% Non-fibrous (other)	None Detected
6-Gray Material 411201474-0006B	Joint Compound	Gray Fibrous Heterogeneous	20% Cellulose	80% Non-fibrous (other)	<1% Chrysotile
7 411201474-0007	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
8 411201474-0008	Joint Compound	Cream Fibrous Heterogeneous		98% Non-fibrous (other)	2% Chrysotile
9 411201474-0009	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile

Analyst(s)

Eric Loomis (19)
 Kristie Elliott (10)

Lee Plumley, Laboratory Manager
 or other approved signatory

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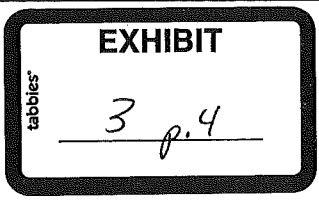
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			% Fibrous	% Non-Fibrous	% Type
10-Joint Compound 411201474-0010	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
10-Tape 411201474-0010A	Joint Compound	Tan Fibrous Heterogeneous	98% Cellulose	2% Non-fibrous (other)	None Detected
11 411201474-0011	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
12 411201474-0012	Joint Compound	Beige Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
13-Drywall 411201474-0013	Joint Compound	Brown/Gray Fibrous Heterogeneous	20% Cellulose 1% Glass	79% Non-fibrous (other)	None Detected
13-Joint Compound 411201474-0013A	Joint Compound	White Non-Fibrous Heterogeneous	<1% Cellulose	100% Non-fibrous (other)	None Detected
14 411201474-0014	Joint Compound	Beige Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
15 411201474-0015	Joint Compound	Beige Non-Fibrous Heterogeneous		98% Non-fibrous (other)	2% Chrysotile

Analyst(s)
 Eric Loomis (19)
 Kristie Elliott (10)

Eric L. Plumley
 Lee Plumley, Laboratory Manager
 or other approved signatory

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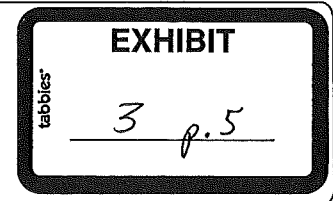
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Sample	Description	Appearance	Non-Asbestos		Asbestos
			% Fibrous	% Non-Fibrous	% Type
16 411201474-0016	Joint Compound	Beige Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
17 411201474-0017	Joint Compound	Tan Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
18 411201474-0018	Joint Compound	Beige Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
19 411201474-0019	Joint Compound	Beige Non-Fibrous Heterogeneous		98% Non-fibrous (other)	2% Chrysotile
20 411201474-0020	Joint Compound	Beige Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile

Analyst(s)

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Lee Plumley, Laboratory Manager
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K&L Gates LLP
Post Office Box 14210
Research Triangle Park, NC 27709-4210
430 Davis Drive, Suite 400
Morrisville, NC 27560
T 919.466.1190 www.klgates.com



February 25, 2013

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(919) 466-1182
(919) 516-2072
Gary.qualls@klgates.com

VIA HAND DELIVERY and E-MAIL

Craig R. Smith, Chief
Julie Halatek, Analyst
Certificate of Need Section
Division of Health Service Regulation
N.C. Department of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Exemption Notice under N.C. Gen. Stat. § 131E-184(a)(1) – Cleveland County HealthCare System and Crawley Memorial Hospital

Dear Craig and Julie:

We are writing on behalf of our clients, Cleveland County HealthCare System (“CCHS”) and Crawley Memorial Hospital (“Crawley”). The purpose of this letter is to request that the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the “Agency”) confirm that the proposed demolition, remediation and rebuilding described herein is exempt from review under the Certificate of Need (“CON”) Law’s exemption provision in N.C. Gen. Stat. § 131E-184(a)(1).

Background

In Project I.D. No. C-8736-11, Cleveland County HealthCare System and Crawley Memorial Hospital, Inc. applied for and were approved for a CON to relocate 28 long-term acute care beds from Crawley Memorial Hospital to leased space in Kings Mountain Hospital in Cleveland County (the “LTACH Relocation Project”). During the initial demolition of the existing space, more asbestos was discovered than originally thought present. The projected cost to remove and replace the newly discovered asbestos in the contaminated drywall for the whole wing and the associated increase in specialty work is \$1,490,000 more than the original CON capital cost for the LTACH Relocation Project. The associated costs in the amount of \$1,490,000 are solely based on the demolition, remediation and rebuilding of the

walls not originally slated for removal in the CON application. There has been no change in the LTACH Relocation Project's scope.

Description of Exempt Work

During the initial planning and renovation design process for the proposed Kings Mountain Hospital 2nd Floor LTACH Wing renovations, existing Asbestos Containing Material (ACM) surveys of the hospital facility revealed the presence of asbestos containing spray-on fireproofing and floor mastic (encapsulated under 2 layers of existing flooring) on the LTACH Wing. As a result, the LTACH renovation budget was prepared to include the following ACM abatement scope:

- 1) removal of the flooring mastic only in areas where new flooring was proposed – corridor, nurse station 3 administrative rooms and 12 patient rooms – as the existing flooring to remain allowed the remaining mastic to remain encapsulated and undisturbed. **See Exhibit 1**
- 2) removal of spray-on fireproofing in areas above ceiling throughout the LTACH wing where moderate to heavy renovation within the wing was to occur – primarily along the perimeter Patient Rooms, Nurse Station and Conference Rooms. **See Exhibit 2.**

The overall CON renovation budget and project scope was finalized and approved, and floor mastic & spray fireproofing abatement activities began in March 2012. During this abatement of the fireproofing above the existing ceiling, it was discovered that the original, 1970s era existing gypsum wall board and joint compound was in place throughout the entire hospital wing. With this new information, the abatement monitoring consultant, Terracon, noted to CCHS that wallboard joint compound utilized during this particular 1970s-era construction timeframe *may* have the presence of joint compound containing portions of ACM. While other areas within the hospital facility have been tested for ACM in the joint compound and have resulted in negative findings, this could not provide enough guarantee that this wing in particular – constructed separate from other wings/areas during the 1970s – did not contain joint compound ACM. With this under advisement, our client requested testing of the joint compound in multiple locations throughout the LTACH wing. Of the 20 joint compound locations tested, 100% resulted in positive presence of ACM. **See Exhibit 3.**

Due to the inability of the general contractor to cut into walls, paint/sand any joints, patch any holes in the wall of any size or provide conduit, piping, etc., as required within any portion of the LTACH wing due to the presence of the ACM joint compound, the renovation project scope of work and budget was significantly altered. The impacts of this discovery resulted in the following additional abatement and replacement/repair scope of work:

- 1) removal of all gypsum wallboard and integrated ACM joint compound on all walls throughout the entire suite;
- 2) in advance of abatement, removal of all doors, toilets, sinks, and other plumbing fixtures, wall mounted equipment and other alarm, HVAC and electronic devices for temporary storage and reinstallation during re-construction renovations;
- 3) full support of existing stud walls, back boxes, ductwork, piping, conduit and other slated to remain materials on the wing prior to abatement in order to allow those to remain in place in light of removal of all gypsum board, which would otherwise assist in supporting these materials;
- 4) full abatement/cleaning of existing stud walls, back boxes, ductwork, piping, conduit and other slated to remain replacement of any;
- 5) replacement of any stud walls, back boxes, ductwork, piping, conduit and other equipment that is lost during the abatement process due to unforeseen conditions/unavoidable demolition circumstances incurred;
- 6) replacement of all drywall with new drywall; and
- 7) replacement of all wall, ceiling and flooring finishes due to the loss of the surrounding drywall and joint compound contamination of adjacent surfaces.

Applicable Exemption Provisions

We believe that the foregoing project is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(1). The General Assembly has chosen to exempt certain, otherwise reviewable, events from CON review, including:

- (1) To eliminate or prevent imminent safety hazards as defined in federal, State, or local fire, building, or life safety codes or regulations.

See N.C. Gen. Stat. § 131E-184(a)(1).

As described above, this work falls within the scope of Subpart (1) because it is to eliminate the asbestos that is an imminent safety hazard. The Federal Environmental Protection Agency ("EPA") has adopted National Emission Standard for Hazardous Air Pollutants ("NESHAP"). Within those standards, the National Emission Standards for Asbestos establish procedures for asbestos emission control, as follows:

Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures: (1) Remove all RACM from a

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Craig R. Smith, Chief
Julie Halatek, Analyst
February 25, 2013
Page 4

facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal

See 40 CFR 61.145(c)(1).

In turn, the North Carolina regulations at 10A NCAC 41C.0609 (titled Asbestos NESHAP for Renovations and Demolitions) provide that:

Each owner or operator of a renovation or demolition activity, as defined in 40 CFR 61.141, shall comply with all applicable requirements of the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) for renovations and demolitions as found in 40 CFR Part 61, Subparts A and M. 40 CFR Part 61, Subparts A and M are hereby incorporated by reference, including any subsequent amendments and editions.

See 10A NCAC 41C.0609(a).

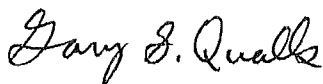
The asbestos removal project described in this letter is subject to the foregoing federal and State mandates.

Moreover, the fact that the LTACH Relocation Project involved removing asbestos as part of that project, albeit to a lesser extent and for different walls, does not preclude the use of this exemption provision. Unlike Subpart (4) in Section 131E-184(a), Subpart (1) does not contain any limitation that the exemption activities not be part of a project subject to CON review. Thus, Section 131E-184(a)(1) exemptions do not require any programmatic, physical, or other lines of demarcation between the CON project and the exempt project.

Based upon the foregoing information, we request that the Agency confirm that the project described herein to demolish, remediate and rebuild walls to eliminate asbestos in order to proceed with the LTACH Relocation Project is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(1).

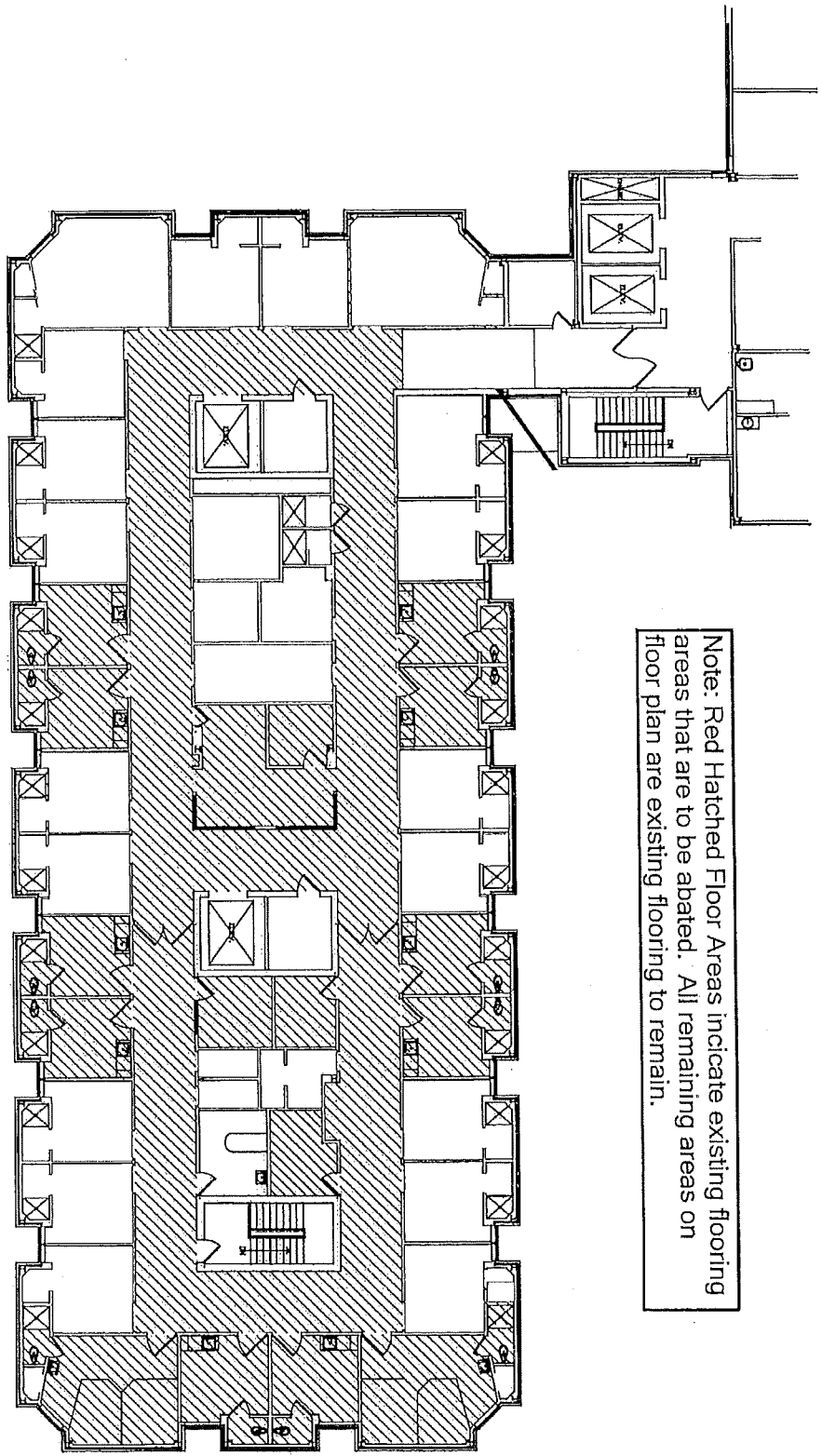
Please let us know if you need additional information to consider this request. Thank you for your time and consideration.

Sincerely,



Gary S. Qualls

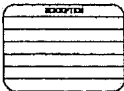
LTACH Flooring Abatement Drawing
01 March 2012



Note: Red Hatched Floor Areas indicate existing flooring areas that are to be abated. All remaining areas on floor plan are existing flooring to remain.

DATE	BY	DESCRIPTION
01/03/12	TR	REVISED
01/03/12	TR	ISSUED FOR PERMIT
01/03/12	TR	ISSUED FOR CONSTRUCTION

7700 Shiloh Road
Charlotte, NC 28226



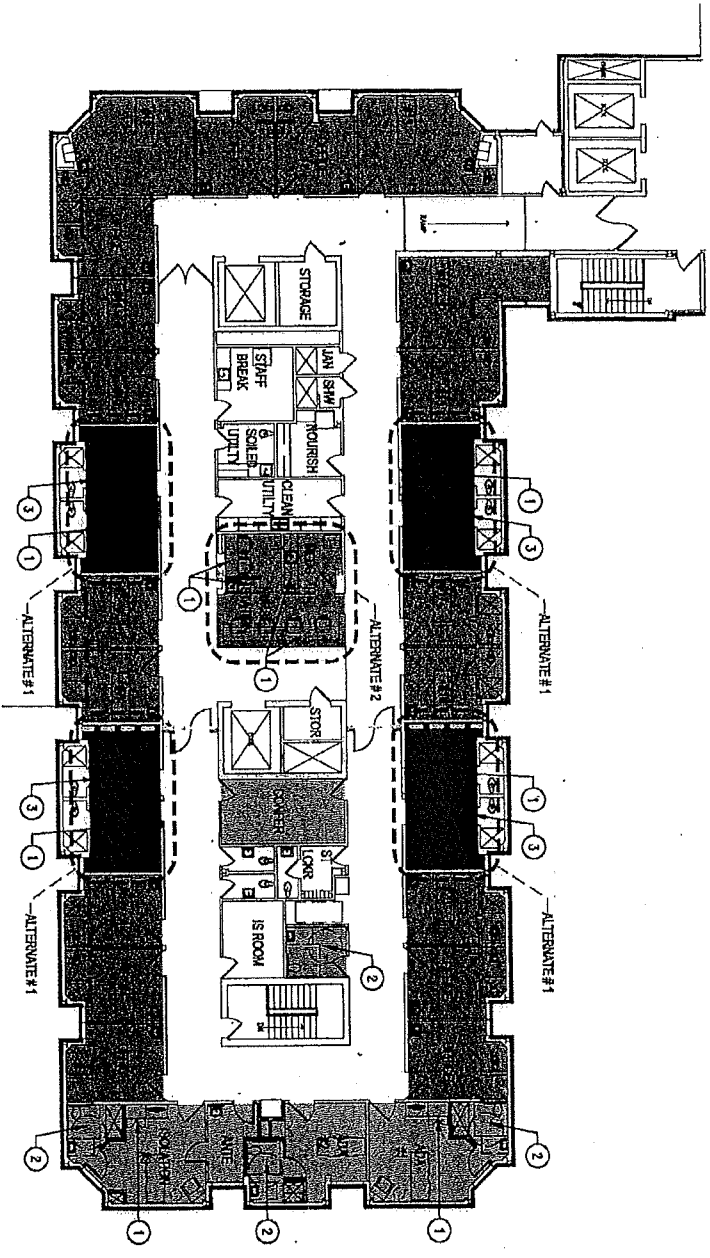
KINGS MOUNTAIN HOSPITAL
2ND FLOOR LTACH RENOVATIONS
KINGS MOUNTAIN, NORTH CAROLINA

Terracon
2020-E STARITA ROAD
CHARLOTTE, NORTH CAROLINA 28206

tabbles'
EXHIBIT
1 of 2

- KEY NOTES:**
- ① NEW MILLWORK / CASEWORK
 - ② NEW ADA TOILET
 - ③ ADD LOCKSET

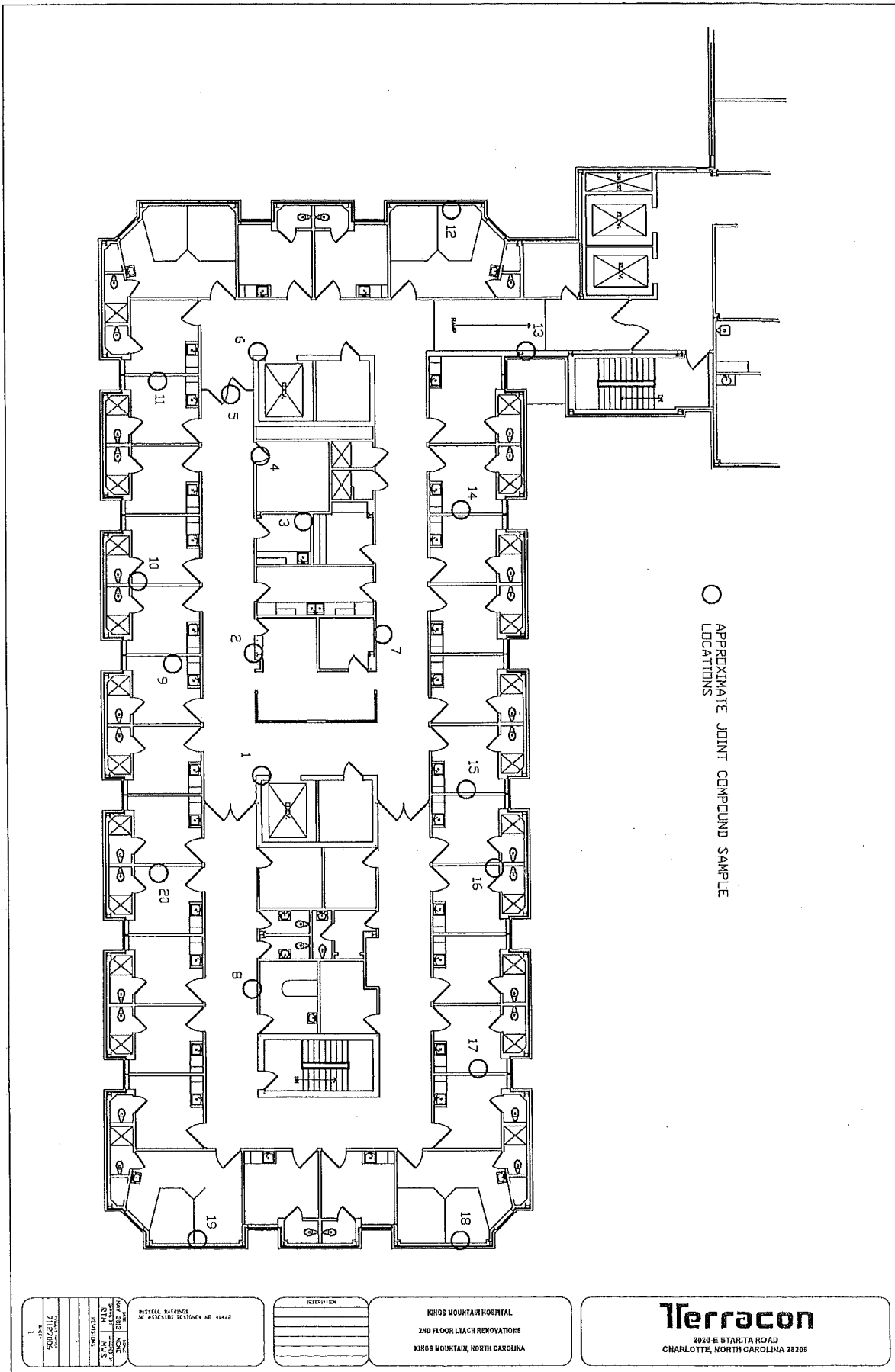
- CONSTRUCT NEW 1-HOUR FIRE AND SMOKE PROTECTION
- RENOVATED AREA - 1,082 SQFT
 - LIGHT COSMETIC RENOVATION AREA - 3,194 SQFT
 - ALTERNATE #1 RENOVATED AREA - 282 SQFT
 - ALTERNATE #2 RENOVATED AREA - 381 SQFT
 - NOT IN SCOPE



KINGS MOUNTAIN HOSPITAL
 LONG TERM ACUTE CARE
 SECOND FLOOR PLAN
 JUNE 17, 2011

Cleveland County HealthCare System

Exhibit 2 - Location of proposed significant ceiling work locations (indicated with darkest and lightest shaded areas on plan)



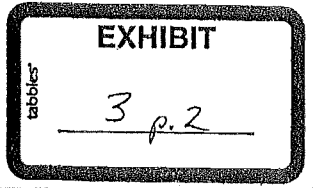
tables
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 p. 1
EXHIBIT



EMSL Analytical, Inc.

376 Crompton Street, Charlotte, NC 28273
Phone/Fax: (704) 525-2205 / (704) 525-2382
<http://www.emsl.com> charlotte@emsl.com

EMSL Order: 411201474
CustomerID: TITA52
CustomerPO: 71127006
ProjectID:



Attn: **Russell Harrings**
Terracon Consultants, Inc.
2020 Starita Road
Suite E
Charlotte, NC 28206

Phone: (704) 509-1777
Fax: (704) 509-1888
Received: 05/01/12 8:00 AM
Analysis Date: 5/1/2012
Collected:

Test Report: Asbestos Analysis of Bulk Materials via EPA 600/R-93/116 and/or EPA 600/M4-82-020 Method(s) using Polarized Light Microscopy

Sample	Description	Appearance	Non-Asbestos		Asbestos
			% Fibrous	% Non-Fibrous	% Type
1-Joint Compound 411201474-0001	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
1-Tape 411201474-0001A	Joint Compound	Tan Fibrous Heterogeneous	98% Cellulose	2% Non-fibrous (other)	None Detected
1-Drywall 411201474-0001B	Joint Compound	White Fibrous Heterogeneous	5% Cellulose 2% Min. Wool	93% Non-fibrous (other)	None Detected
2-Joint Compound 411201474-0002	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
2-Tape 411201474-0002A	Joint Compound	Tan Fibrous Heterogeneous	98% Cellulose	2% Non-fibrous (other)	None Detected
2-Drywall 411201474-0002B	Joint Compound	White Fibrous Heterogeneous	5% Cellulose 2% Min. Wool	93% Non-fibrous (other)	None Detected
3 411201474-0003	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
4 411201474-0004	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile

Analyst(s)

Eric Loomis (19)
Kristie Elliott (10)

Lee Plumley, Laboratory Manager
or other approved signatory

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Samples analyzed by EMSL Analytical, Inc. Charlotte, NC NVLAP Lab Code 200841-0, VA 3333 00312, WV LT000325

Initial report from 05/01/2012 12:47:32

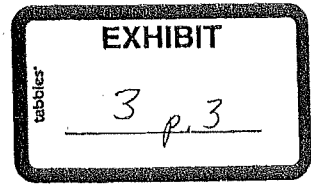
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			% Fibrous	% Non-Fibrous	% Type
5-Joint Compound 411201474-0005	Joint Compound	Cream Fibrous Heterogeneous		98% Non-fibrous (other)	2% Chrysotile
5-Tape 411201474-0005A	Joint Compound	Tan Fibrous Heterogeneous	98% Cellulose	2% Non-fibrous (other)	None Detected
6-Joint Compound 411201474-0006	Joint Compound	Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
6-Tape 411201474-0006A	Joint Compound	Tan Fibrous Heterogeneous	98% Cellulose	2% Non-fibrous (other)	None Detected
6-Gray Material 411201474-0006B	Joint Compound	Gray Fibrous Heterogeneous	20% Cellulose	80% Non-fibrous (other)	<1% Chrysotile
7 411201474-0007	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
8 411201474-0008	Joint Compound	Cream Fibrous Heterogeneous		98% Non-fibrous (other)	2% Chrysotile
9 411201474-0009	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile

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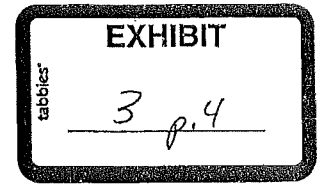
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			% Fibrous	% Non-Fibrous	% Type
10-Joint Compound 411201474-0010	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
10-Tape 411201474-0010A	Joint Compound	Tan Fibrous Heterogeneous	98% Cellulose	2% Non-fibrous (other)	None Detected
11 411201474-0011	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
12 411201474-0012	Joint Compound	Beige Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
13-Drywall 411201474-0013	Joint Compound	Brown/Gray Fibrous Heterogeneous	20% Cellulose 1% Glass	79% Non-fibrous (other)	None Detected
13-Joint Compound 411201474-0013A	Joint Compound	White Non-Fibrous Heterogeneous	<1% Cellulose	100% Non-fibrous (other)	None Detected
14 411201474-0014	Joint Compound	Beige Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
15 411201474-0015	Joint Compound	Beige Non-Fibrous Heterogeneous		98% Non-fibrous (other)	2% Chrysotile

Analyst(s)

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 Kristie Elliott (10)

Lee Plumley, Laboratory Manager
 or other approved signatory

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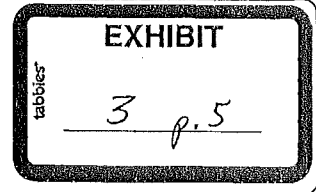
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16 411201474-0016	Joint Compound	Beige Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
17 411201474-0017	Joint Compound	Tan Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
18 411201474-0018	Joint Compound	Beige Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
19 411201474-0019	Joint Compound	Beige Non-Fibrous Heterogeneous		98% Non-fibrous (other)	2% Chrysotile
20 411201474-0020	Joint Compound	Beige Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile

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Post Office Box 14210
Research Triangle Park, NC 27709-4210
430 Davis Drive, Suite 400
Morrisville, NC 27560
T 919.466.1190 www.klgates.com



February 25, 2013

Gary S. Qualls
(919) 466-1182
(919) 516-2072
Gary.qualls@klgates.com

VIA HAND DELIVERY and E-MAIL

Craig R. Smith, Chief
Julie Halatek, Analyst
Certificate of Need Section
Division of Health Service Regulation
N.C. Department of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603

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K&L | GATES

Craig R. Smith, Chief

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February 25, 2013

Page 4

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See 40 CFR 61.145(c)(1).

In turn, the North Carolina regulations at 10A NCAC 41C.0609 (titled Asbestos NESHAP for Renovations and Demolitions) provide that:

Each owner or operator of a renovation or demolition activity, as defined in 40 CFR 61.141, shall comply with all applicable requirements of the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) for renovations and demolitions as found in 40 CFR Part 61, Subparts A and M. 40 CFR Part 61, Subparts A and M are hereby incorporated by reference, including any subsequent amendments and editions.

See 10A NCAC 41C.0609(a).

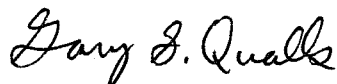
The asbestos removal project described in this letter is subject to the foregoing federal and State mandates.

Moreover, the fact that the LTACH Relocation Project involved removing asbestos as part of that project, albeit to a lesser extent and for different walls, does not preclude the use of this exemption provision. Unlike Subpart (4) in Section 131E-184(a), Subpart (1) does not contain any limitation that the exemption activities not be part of a project subject to CON review. Thus, Section 131E-184(a)(1) exemptions do not require any programmatic, physical, or other lines of demarcation between the CON project and the exempt project.

Based upon the foregoing information, we request that the Agency confirm that the project described herein to demolish, remediate and rebuild walls to eliminate asbestos in order to proceed with the LTACH Relocation Project is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(1).

Please let us know if you need additional information to consider this request. Thank you for your time and consideration.

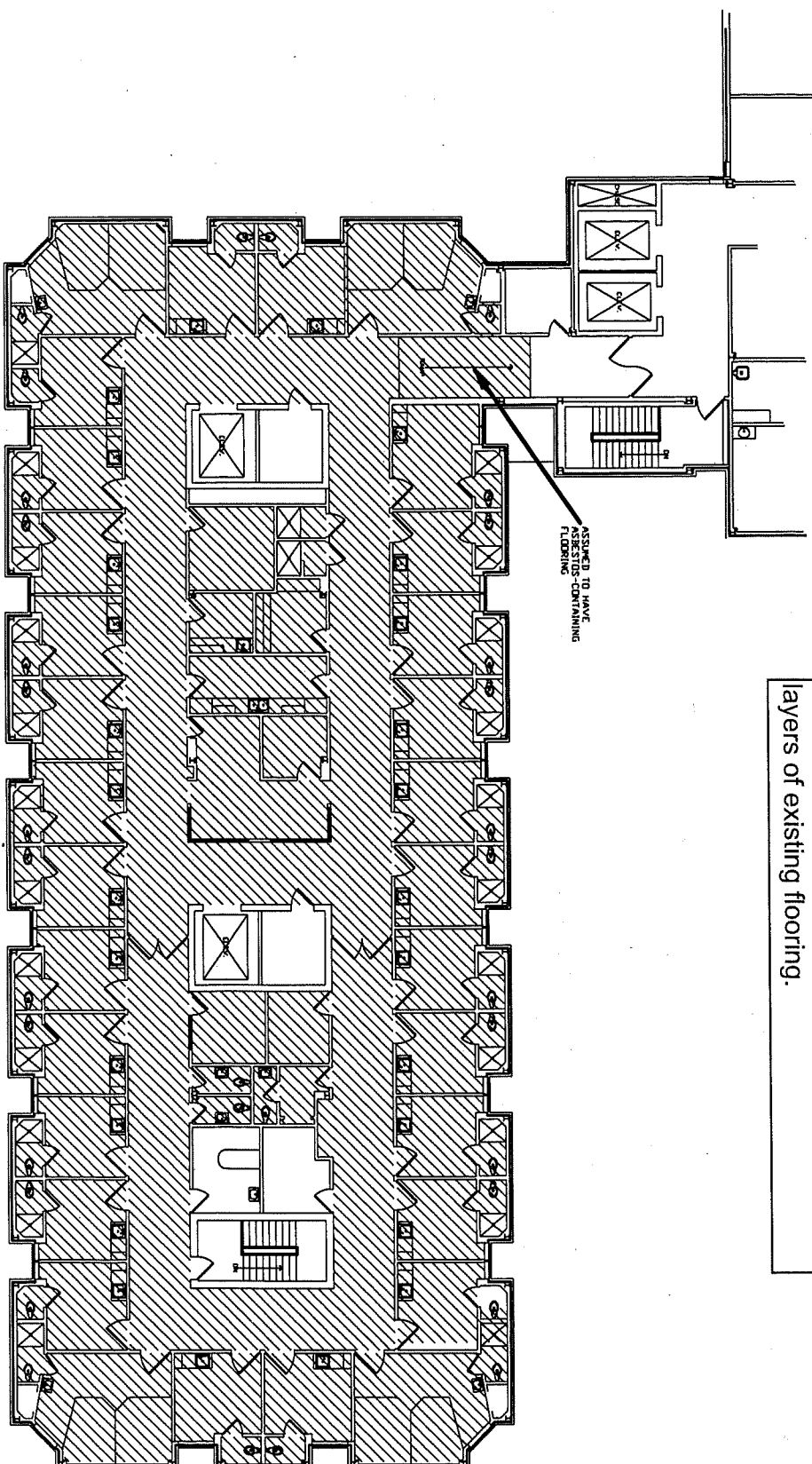
Sincerely,



Gary S. Qualls



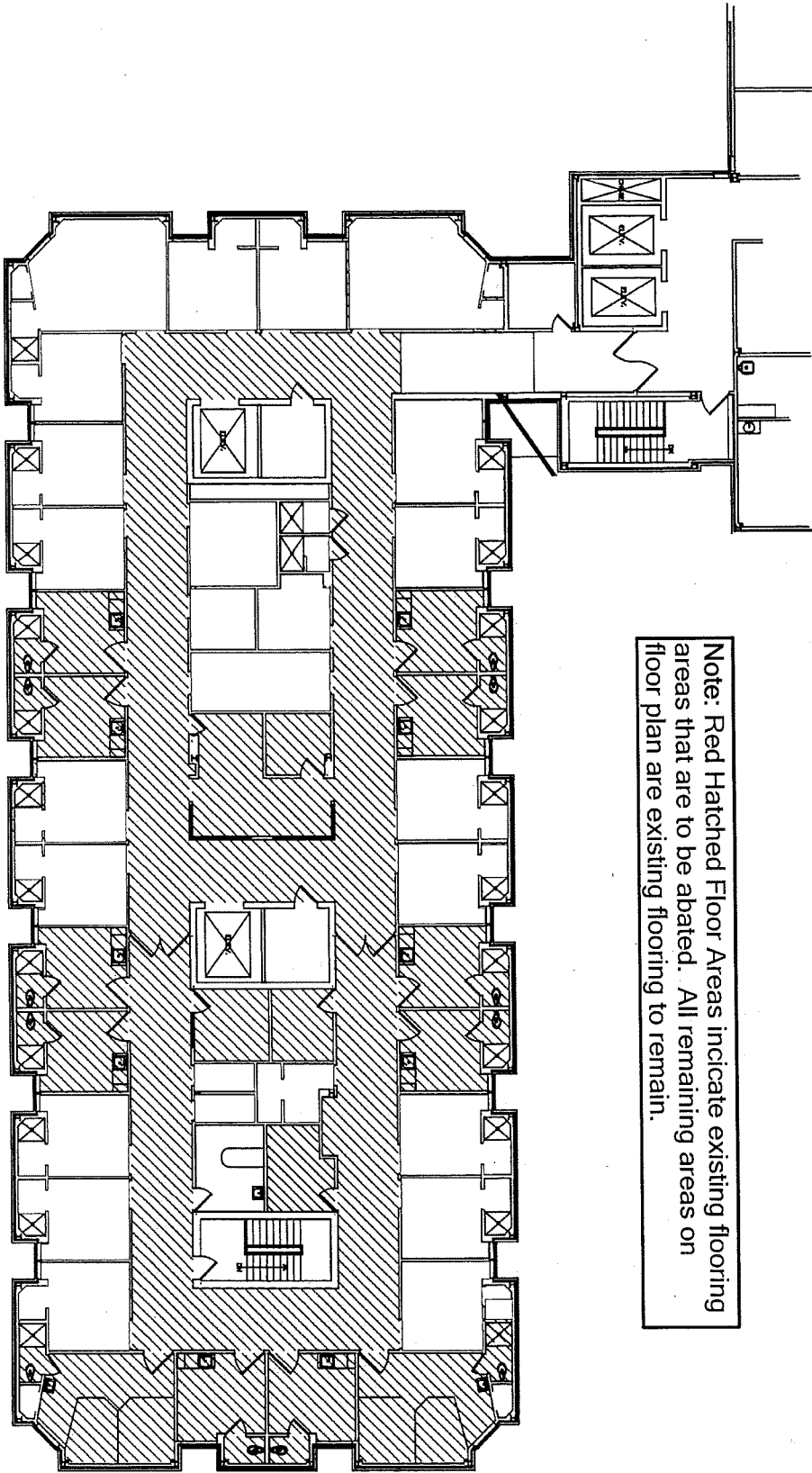
Exhibit 1 - ACM Flooring Mastic Locations (page 1)
 and proposed project abatement locations (page 2)



Note: Red Hatched areas indicate locations of Asbestos Containing Material in Flooring Mastic. Mastic confirmed to be encapsulated under two layers of existing flooring.

		2020-E STARITA ROAD CHARLOTTE, NORTH CAROLINA 28206	
KINGS MOUNTAIN HOSPITAL 2ND FLOOR LTACH RENOVATIONS KINGS MOUNTAIN, NORTH CAROLINA			
DESCRIPTION			
2020-01-15			
71127006			

LTACH Flooring Abatement Drawing
01 March 2012



Note: Red Hatched Floor Areas indicate existing flooring areas that are to be abated. All remaining areas on floor plan are existing flooring to remain.

DATE	BY	CHKD BY	APP'D BY
01/03/12	JMS	JMS	JMS
REV	DESCRIPTION	DATE	BY
1	ISSUED FOR CONSTRUCTION	01/03/12	JMS

PROJECT NAME
KINGS MOUNTAIN HOSPITAL

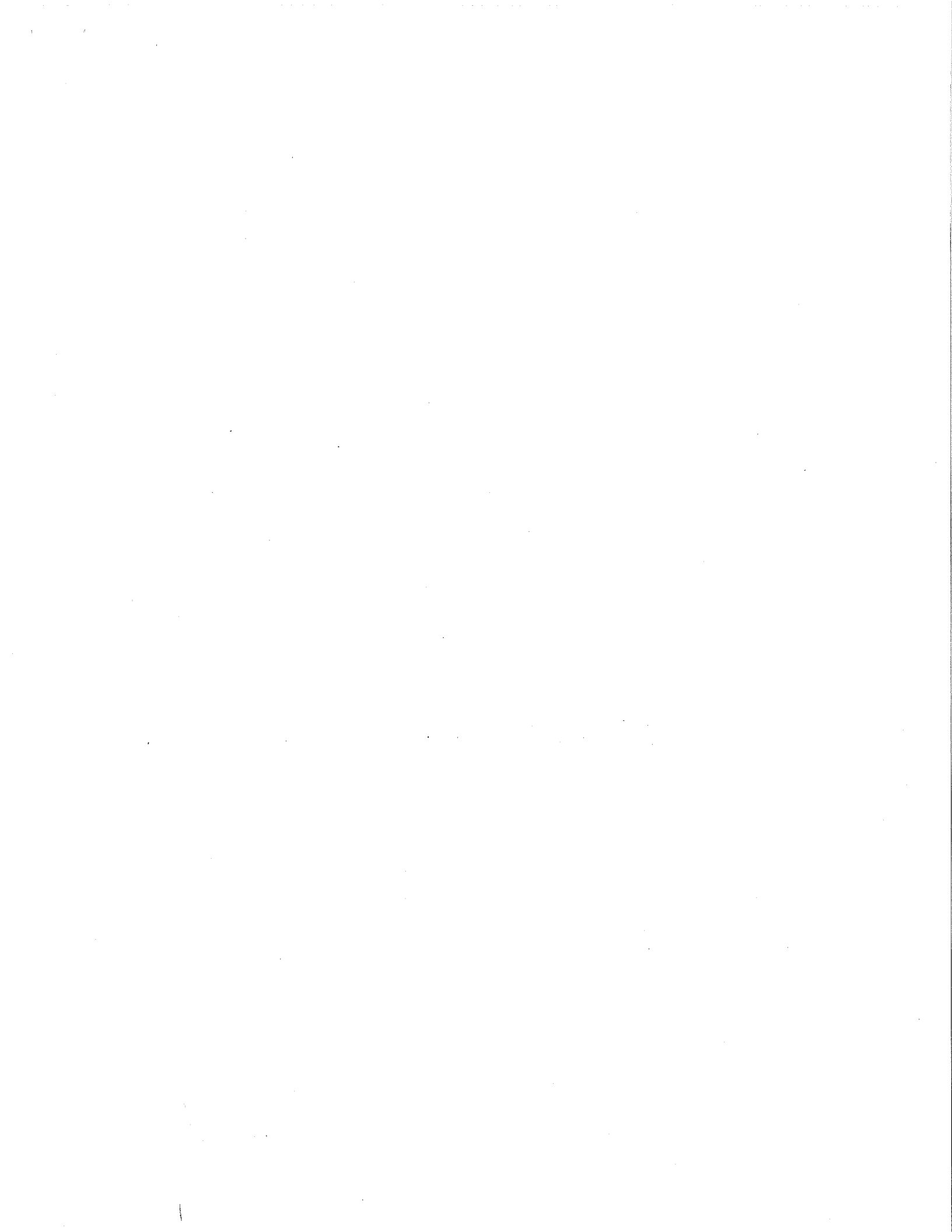
DESCRIPTION
2ND FLOOR RENOVATIONS

CLIENT
KINGS MOUNTAIN HOSPITAL

KINGS MOUNTAIN HOSPITAL
2ND FLOOR LTACH RENOVATIONS
KINGS MOUNTAIN, NORTH CAROLINA

Terracon
2020-E STARITA ROAD
CHARLOTTE, NORTH CAROLINA 28206

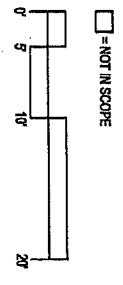
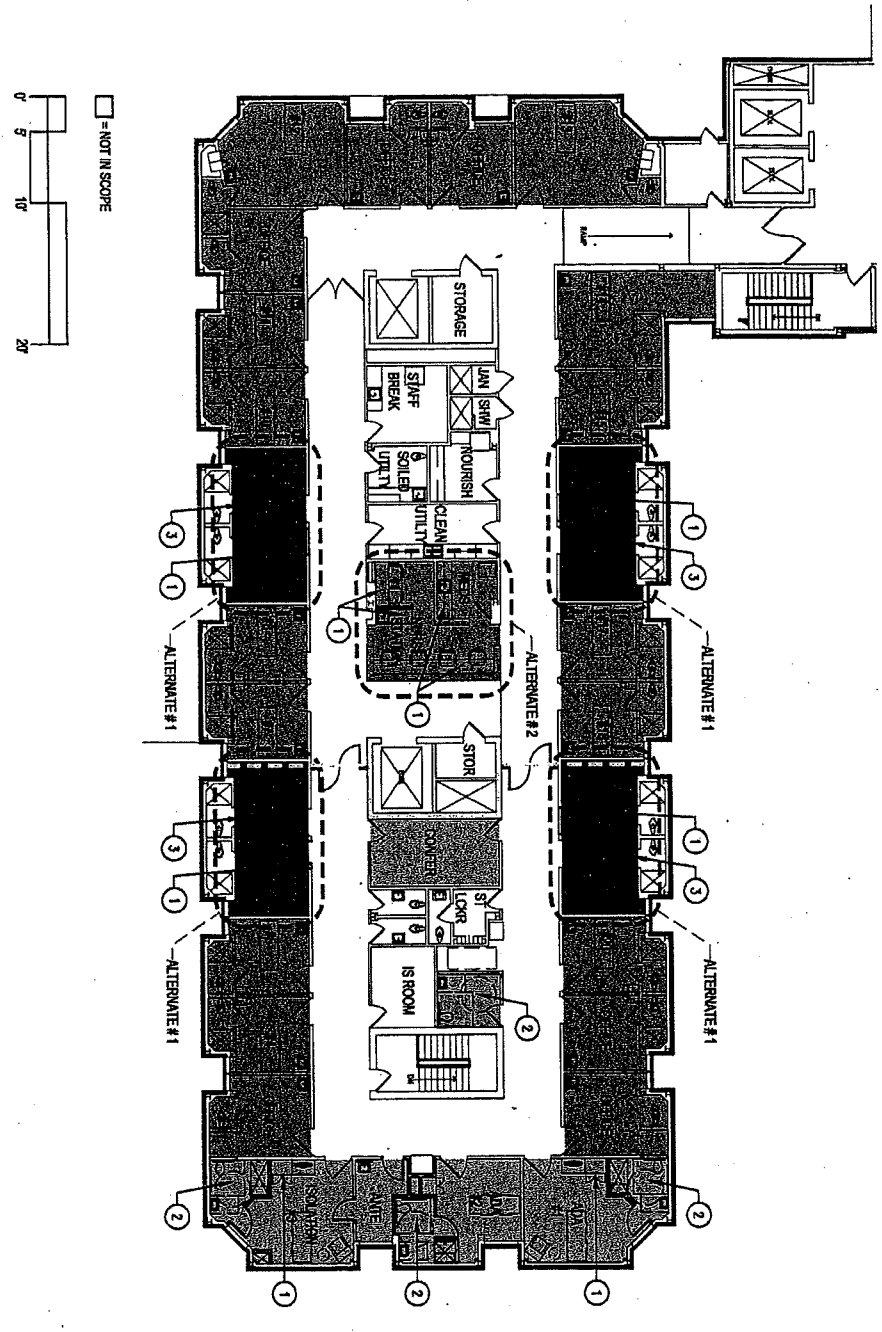
tabbles'
EXHIBIT
1 of 2



- KEY NOTES:**
- ① NEW MILLWORK / CASEWORK
 - ② NEW ADA TOILET
 - ③ ADD LOCKSET

- RENOVATED AREA - 1,022 SQFT
- USIT COSMETIC RENOVATION AREA - 1,194 SQFT
- ALTERNATE # 1 RENOVATED AREA - 432 SQFT
- ALTERNATE # 2 RENOVATED AREA - 201 SQFT
- NOT IN SCOPE

CONSTRUCT NEW 1-HOUR FIRE AND SMOKE PROTECTION



Cleveland County HealthCare System

KINGS MOUNTAIN HOSPITAL
LONG TERM ACUTE CARE
SECOND FLOOR PLAN
JUNE 17, 2011

DesignStrategies
Charlotte | Greenville

Exhibit 2 - Location of proposed significant ceiling work locations (indicated with darkest and lightest shaded areas on plan)



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CustomerPO: 71127006
ProjectID:

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Fax: (704) 509-1888
Received: 05/01/12 8:00 AM
Analysis Date: 5/1/2012
Collected:

EXHIBIT
tabbles
3 p. 2

Test Report: Asbestos Analysis of Bulk Materials via EPA 600/R-93/116 and/or EPA 600/M4-82-020 Method(s) using Polarized Light Microscopy

Sample	Description	Appearance	Non-Asbestos		Asbestos
			% Fibrous	% Non-Fibrous	% Type
1-Joint Compound 411201474-0001	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
1-Tape 411201474-0001A	Joint Compound	Tan Fibrous Heterogeneous	98% Cellulose	2% Non-fibrous (other)	None Detected
1-Drywall 411201474-0001B	Joint Compound	White Fibrous Heterogeneous	5% Cellulose 2% Min. Wool	93% Non-fibrous (other)	None Detected
2-Joint Compound 411201474-0002	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
2-Tape 411201474-0002A	Joint Compound	Tan Fibrous Heterogeneous	98% Cellulose	2% Non-fibrous (other)	None Detected
2-Drywall 411201474-0002B	Joint Compound	White Fibrous Heterogeneous	5% Cellulose 2% Min. Wool	93% Non-fibrous (other)	None Detected
3 411201474-0003	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
4 411201474-0004	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile

Analyst(s)

Eric Loomis (19)
Kristie Elliott (10)

Lee Plumley, Laboratory Manager
or other approved signatory

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Samples analyzed by EMSL Analytical, Inc. Charlotte, NC NVLAP Lab Code 200841-0, VA 3333 00312, WV LT000325

Initial report from 05/01/2012 12:47:32



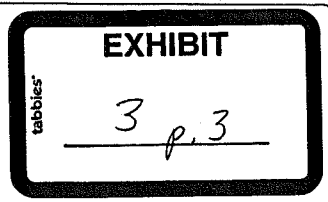
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			% Fibrous	% Non-Fibrous	% Type
5-Joint Compound 411201474-0005	Joint Compound	Cream Fibrous Heterogeneous		98% Non-fibrous (other)	2% Chrysotile
5-Tape 411201474-0005A	Joint Compound	Tan Fibrous Heterogeneous	98% Cellulose	2% Non-fibrous (other)	None Detected
6-Joint Compound 411201474-0006	Joint Compound	Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
6-Tape 411201474-0006A	Joint Compound	Tan Fibrous Heterogeneous	98% Cellulose	2% Non-fibrous (other)	None Detected
6-Gray Material 411201474-0006B	Joint Compound	Gray Fibrous Heterogeneous	20% Cellulose	80% Non-fibrous (other)	<1% Chrysotile
7 411201474-0007	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
8 411201474-0008	Joint Compound	Cream Fibrous Heterogeneous		98% Non-fibrous (other)	2% Chrysotile
9 411201474-0009	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile

Analyst(s)
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Lee Plumley, Laboratory Manager
or other approved signatory

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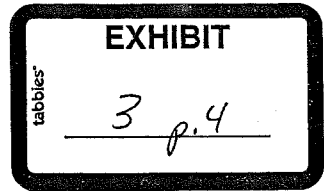
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			% Fibrous	% Non-Fibrous	% Type
10-Joint Compound 411201474-0010	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
10-Tape 411201474-0010A	Joint Compound	Tan Fibrous Heterogeneous	98% Cellulose	2% Non-fibrous (other)	None Detected
11 411201474-0011	Joint Compound	Cream Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
12 411201474-0012	Joint Compound	Beige Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
13-Drywall 411201474-0013	Joint Compound	Brown/Gray Fibrous Heterogeneous	20% Cellulose 1% Glass	79% Non-fibrous (other)	None Detected
13-Joint Compound 411201474-0013A	Joint Compound	White Non-Fibrous Heterogeneous	<1% Cellulose	100% Non-fibrous (other)	None Detected
14 411201474-0014	Joint Compound	Beige Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
15 411201474-0015	Joint Compound	Beige Non-Fibrous Heterogeneous		98% Non-fibrous (other)	2% Chrysotile

Analyst(s)

Eric Loomis (19)
 Kristie Elliott (10)

Eric L. Plumley

Lee Plumley, Laboratory Manager
 or other approved signatory

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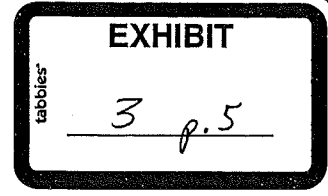
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Sample	Description	Appearance	Non-Asbestos		Asbestos
			% Fibrous	% Non-Fibrous	% Type
16 411201474-0016	Joint Compound	Beige Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
17 411201474-0017	Joint Compound	Tan Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
18 411201474-0018	Joint Compound	Beige Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile
19 411201474-0019	Joint Compound	Beige Non-Fibrous Heterogeneous		98% Non-fibrous (other)	2% Chrysotile
20 411201474-0020	Joint Compound	Beige Non-Fibrous Heterogeneous		97% Non-fibrous (other)	3% Chrysotile

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