



## **STATEMENT OF THE FACTS**

Britthaven was granted Certificate of Need on May 21, 2009 to construct a new skilled nursing facility with 120 beds in the Town of Mint Hill, Mecklenburg County, North Carolina on a 10.72 acre site. The approved location for the facility was on Allen Station Drive (hereinafter “the Original Site”) in Clear Creek Business Park. Since issuance of the CON, Britthaven became aware of several negative characteristics of the Original Site. Due to the negative characteristics of the Original Site, Britthaven contacted the owners of Clear Creek Business Park and identified a more suitable site for the proposed 120-bed skilled nursing facility. Britthaven seeks to relocate the site of the approved nursing facility to Clear Creek Commerce Drive in the Town of Mint Hill, Mecklenburg County, North Carolina on an 11.93 acre site also located in Clear Creek Business Park.

## **ANALYSIS**

The CON law would require a full review of Britthaven’s site relocation, if that relocation were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed site relocation does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

In the CON issued in 2009, the approved location was in Mecklenburg County. The change in host site is within the original approved county, approximately half a mile from the originally approved location. By changing locations within the approved area, the patient population for which the need was originally demonstrated, will continue to be served, including the medically underserved.

Britthaven does not expect to incur any additional capital cost for site preparation beyond those originally projected in the CON application. Britthaven expects that the change in site

location will eliminate obstacles to site preparation and construction, thus controlling developmental costs and providing a more suitable external environment for the residents of the facility. The change in location will not increase capital costs, operating costs or charges proposed in the approved CON application. The proposed change is in material compliance with the CON for the project.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Britthaven's CON if Britthaven fails to develop the project in a manner consistent with the representations made in the application or with any conditions that were placed on the CON. Britthaven will not be developing its project in a manner that is materially different from the representations made in its application, nor will it be developing its project in a manner that is inconsistent with any of the conditions that were placed on its CON, other than previously discussed.

### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the change of location for the facility from Allen Station Drive in Clear Creek Business Park (Mecklenburg County), Project I.D. No. E-7066-04, to a new location at Clear Creek Commerce Drive, also in Clear Creek Business Park (Mecklenburg County) will not constitute a material change in the physical location or scope of the project, will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

This the \_\_\_\_\_ day of April, 2012.

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

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in first-class, postage pre-paid envelope addressed as follows:

**CERTIFIED MAIL**

Erik P. Lindberg  
General Counsel for Britthaven, Inc.  
P.O. Box 1010  
Garner, NC 27529

This the \_\_\_\_ day of April, 2012.

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Dr. Patsy Christian, Assistant Director  
Healthcare Quality and Safety