



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

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Secretary DHHS

Drexdal Pratt
Division Director

August 1, 2013

Kenneth Burgess
301 Fayetteville Street, Suite 1900
Raleigh, NC 27601

Exempt from Review – Acquisition of Facility

Facility: Arbor Terrace of Asheville
Acquisition by: American Realty Capital V, LLC
County: Buncombe
FID #: 970842

Dear Mr. Burgess:

In response to your letter of July 2, 2013, the above referenced proposal is exempt from certificate of need review in accordance with G.S 131E-184(a)(8). Therefore, American Realty Capital V, LLC may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Adult Care Section of the Division of Health Service Regulation to obtain instructions for changing ownership of the existing facility. Note that pursuant to G.S. 131E-181(b): *“A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need.”*

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Julie Halatek
Project Analyst

Craig R. Smith, Chief
Certificate of Need Section

cc: Barbara Ryan, Adult Care Licensure Section, DHHS



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

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See

Poyner Spruill^{LLP}



July 2, 2013

Kenneth L. Burgess
Partner
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VIA HAND-DELIVERY

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

RE: Notice of Exempt Acquisition of Arbor Terrace of Asheville Pursuant to N.C. Gen. Stat. § 131E-184(a)(8)

Dear Craig:

I am writing on behalf of our client, American Realty Capital V, LLC, pursuant to N.C. Gen. Stat. § 131E-184(a)(8), to provide notice to the N.C. Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section ("the Agency") of our client's intent to acquire the adult care home known as Arbor Terrace of Asheville, located at 3199 Sweeten Creek Road, Asheville, North Carolina 28803 ("the Facility"), which is currently licensed to SHP III/Arbor Asheville, LLC (License number HAL-011-224). The Facility is an adult care home, consisting of seventy (70) licensed adult care home beds. Pursuant to N.C. Gen. Stat. § 131E-176(9b), the Facility is a health service facility.

Our client, American Realty Capital V, LLC ("Buyer") is a Delaware limited liability company and intends to acquire the Facility via a Purchase and Sale Agreement pursuant to which it will acquire all assets of the Facility from Seller, SHP III/Arbor Asheville, LLC. The acquisition includes all real property and personal property necessary to operate the Facility as an adult care home. The transaction I have described herein is scheduled to close on July 31, 2013.

The acquisition of the Facility will not involve the development of any new health service facility or otherwise qualify as a "new institutional health service" which would be subject to Agency review under applicable Certificate of Need statutes or regulations. Rather, the acquisition I have described herein qualifies as an "exempt transaction" within the meaning of N.C. Gen. Stat. § 131E-184(a)(8) which provides that the acquisition of an existing health service facility is exempt from CON review, upon prior written notice to the Agency. This correspondence is intended to serve as the prior written notice required by that statutory provision.

Please provide me with written confirmation that this transaction is exempt from CON review pursuant to N.C. Gen. Stat. § 131E-184(a)(8). We would be very appreciative if this reply could be expedited since our client will need to apply for a new adult care home license for the Facility and we are required to include the Agency's response to this correspondence as part of that application.

Craig R. Smith, Chief
July 2, 2013
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I appreciate your attention to this matter. Please let me know if there are any questions regarding this notice or if the Agency needs further information.

Sincerely,

A handwritten signature in cursive script that reads "Ken Burgess". The signature is written in black ink and is positioned above the printed name.

Kenneth L. Burgess
Partner