

SUMMARY SHEET  
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

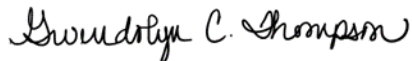
September 9, 2021

- ( ) ACTION/DECISION  
( X ) INFORMATION

- I. TITLE:** Healthcare Quality Administrative and Consent Orders.
- II. SUBJECT:** Healthcare Quality Administrative Orders and Consent Orders for the period of July 1, 2021, through July 31, 2021.
- III. FACTS:** For the period of July 1, 2021, through July 31, 2021, Healthcare Quality reports two (2) Consent Orders totaling \$20,600 in assessed monetary penalties.

Name of Bureau	Facility, Service, Provider, or Equipment Type	Administrative Orders	Consent Orders	Assessed Penalties
Community Care	Community Residential Care Facility	0	1	\$15,600
Radiological Health	Radioactive Materials Industrial Licensee	0	1	\$5000
<b>TOTAL</b>		<b>0</b>	<b>2</b>	<b>\$20,600</b>

Submitted By:



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Gwen C. Thompson  
Deputy Director  
Healthcare Quality



HEALTHCARE QUALITY ENFORCEMENT REPORT  
SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

September 9, 2021

**Bureau of Community Care**

Facility Type	Total Number of Licensed Facilities	Total Number of Licensed Beds
Community Residential Care Facility (CRCF)	480	21,643

**1. Village Inn Community Care Home – Graniteville, SC**

Inspections and Investigations: The Department conducted several inspections, follow-up inspections, investigations, and fire and life safety inspections and follow-up inspections, including April 2019, October 2019, December 2019, February 2020, April 2020, September 2020, November 2020, and December 2020, and found the facility repeatedly violated numerous regulatory requirements.

Violations: The Department found the facility violated Regulation 61-84, *Standards for Licensing Community Residential Care Facilities*, by failing to maintain documentation of staff in-service training in fire response, failing to maintain fire protection and suppression systems in accordance with codes adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshall, and failing to maintain all equipment and building components in good repair and operating condition. The Department further found that the facility failed to promote conditions that prevent the spread of infectious, contagious, and/or communicable diseases in compliance with guidelines from the Centers for Disease Control and Prevention (CDC). The facility failed to submit to the Department timely and acceptable Plans of Correction. Moreover, the facility failed to ensure the facility was free from vermin and failed to ensure safe storage of chemicals, cleaning materials, and supplies, which are indicated as harmful on the product label.

Enforcement Action: The parties agreed to resolve the matter with a consent order. The parties executed a consent order imposing a monetary penalty of \$15,600 against the facility. The facility is required to pay \$9,360 of the assessed monetary penalty in six (6) payments of \$1560. The facility agreed to schedule and attend a compliance assistance meeting with Department representatives within 45 days of executing the Consent Order.

Remedial Action: The facility paid the first required payment. The compliance assistance meeting is scheduled for early September.

Prior Actions: None in the past five years.

**Bureau of Radiological Health**

License Type	Total Number of Licensees
Radioactive Materials Industrial Licensee	137

**4. F&ME Consultants – Columbia, SC**

Inspections and Investigations: The Department conducted a routine inspection of the licensee and the licensee’s temporary jobsite in Chapin, S.C. in December 2020.

Violations: The Department found the licensee failed to comply with Regulation 61-63, *Radioactive Materials (Title A)*, by failing use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee. The facility used one chain to secure a gauge storage container instead of two independent physical controls. This is a repeat violation.

Enforcement Action: The parties agreed to resolve the matter with a consent order. The parties executed a consent order imposing a civil monetary penalty of five thousand dollars (\$5,000) against the licensee. The licensee was required to pay \$1,250 of the assessed penalty within thirty (30) days of executing the Consent Order.

Remedial Action: The licensee has made the required payment.

Prior Actions: None in the past five years.

SUMMARY SHEET  
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL  
September 9, 2021

\_\_\_\_\_ ACTION/DECISION

  X   INFORMATION

1. **TITLE:** Administrative and Consent Orders issued by the Office of Environmental Affairs.
2. **SUBJECT:** Administrative and Consent Orders issued by the Office of Environmental Affairs during the period July 1, 2021, through July 31, 2021.
3. **FACTS:** For the reporting period of July 1, 2021, through July 31, 2021, the Office of Environmental Affairs issued twenty-two (22) Consent Orders with total assessed civil penalties in the amount of sixty thousand, four hundred eighty-five dollars (\$60,485.00). Also, sixteen (16) Administrative Orders with total assessed civil penalties in the amount of one hundred six thousand, four hundred twenty-six dollars (\$106,426.00) were reported during this period.

Bureau and Program Area	Administrative Orders	Assessed Penalties	Consent Orders	Assessed Penalties
<b>Land and Waste Management</b>				
UST Program	4	\$41,240.00	2	\$2,000.00
Aboveground Tanks	0	0	0	0
Solid Waste	0	0	1	\$6,000.00
Hazardous Waste	1	\$60,686.00	2	\$15,750.00
Infectious Waste	0	0	0	0
Mining	0	0	0	0
<b>SUBTOTAL</b>	<b>5</b>	<b>\$101,926.00</b>	<b>5</b>	<b>\$23,750.00</b>
<b>Water</b>				
Recreational Water	0	0	9	\$5,735.00
Drinking Water	0	0	3	\$14,100.00
Water Pollution	1	0	3	\$14,900.00
Dam Safety	0	0	0	0
<b>SUBTOTAL</b>	<b>1</b>	<b>0</b>	<b>15</b>	<b>\$34,735.00</b>
<b>Air Quality</b>				
<b>SUBTOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Environmental Health Services</b>				
Food Safety	0	0	0	0
Onsite Wastewater	9	\$500.00	2	\$2,000.00
<b>SUBTOTAL</b>	<b>9</b>	<b>\$500.00</b>	<b>2</b>	<b>\$2,000.00</b>
<b>OCRM</b>				
<b>SUBTOTAL</b>	<b>1</b>	<b>\$4,000.00</b>	<b>0</b>	<b>0</b>
<b>TOTAL</b>	<b>16</b>	<b>\$106,426.00</b>	<b>22</b>	<b>\$60,485.00</b>

Submitted by:

Myra C. Reece  
Myra C. Reece  
Director of Environmental Affairs

**ENVIRONMENTAL AFFAIRS ENFORCEMENT REPORT  
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL  
September 9, 2021**

**BUREAU OF LAND AND WASTE MANAGEMENT**

**Underground Storage Tank Enforcement**

- 1)     Order Type and Number:           Administrative Order 21-0096-UST  
       Order Date:                    June 30, 2021  
       Individual/Entity:            **Shreenath Sai 2, LLC**  
       Facility:                        Quick Stop  
       Location:                       7673 Kershaw Camden Highway  
  Kershaw, SC 29067-1100  
  
       Mailing Address:            SAME  
       County:                         Lancaster  
       Previous Orders:             None  
       Permit/ID Number:          14024  
       Violations Cited:            The State Underground Petroleum  
  Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-  
  2-140(A) et seq. (2018); and South Carolina Underground Storage Tank Control  
  Regulation, 7 S.C. Code Ann., Regs 61-92, 280.34(c), 280.70(a), 280.70(c),  
  280.242(b)(3), 280.242(b)(4), and 280.243(a) (2012 & Supp 2019).

Summary: Shreenath Sai 2, LLC (Individual/Entity) owns and operates underground storage tanks (USTs) in Lancaster County, South Carolina. On January 21, 2021, the Department conducted an inspection and issued a Notice of Alleged Violation. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to maintain and operate a corrosion protection system on a temporarily closed UST system; failed to inspect an impressed current system every sixty (60) days; failed to validate that monthly requirements have been performed; failed to physically visit each assigned facility once a quarter; failed to provide records to the Department upon request; and failed to obtain supplemental Class A/B Operator training by May 26, 2020.

Action: The Individual/Entity is required to: submit either proof of a repaired and/or replaced cathodic protection system, current passing cathodic protection system test results, proof that an impressed current log is being maintained, proof that a Class A/B operator log is being maintained, and proof that all Class A/B operators have completed supplemental training by August 30, 2021 or submit a completed UST Tank and Sludge Disposal Form for the permanent closure of all USTs at the Facility by August 30, 2021; and if the Tank and Sludge Form is submitted, within sixty (60) days of the Department's approval of the UST Tank and Sludge Disposal Form, permanently close the USTs at the Facility and submit a UST Closure and Assessment Report to the Department. The Department has assessed a total civil penalty in the amount of four thousand, two hundred dollars (\$4,200.00). The Individual/Entity shall pay a civil penalty in the amount of four thousand, two hundred dollars (**\$4,200.00**) by August 30, 2021.

Update: The Individual/Entity did not file a Request for Review; therefore, the

effective date of the Order is July 15, 2021.

2) Order Type and Number: Administrative Order 21-0252-UST  
Order Date: June 30, 2021  
Individual/Entity: **Rafat Abudayya**  
Facility: Hot Zone Mart  
Location: 401 Lockemy Highway  
Dillon, SC 29536  
Mailing Address: SAME  
County: Dillon  
Previous Orders: None  
Permit/ID Number: 10297  
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-140(A) et seq. (2018); and South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs 61-92, 280.30(a), 280.31(a), 280.34(c), 280.36(a)(1)(ii), 280.40(a), 280.40(a)(2), 280.43(d), 280.45(b)(1), 280.50, 280.52, 280.243(c), and 280.245 (2012 & Supp 2019).

Summary: Rafat Abudayya (Individual/Entity) owns and operates underground storage tanks in Dillon County, South Carolina. On November 11, 2020, the Department conducted an inspection and issued a Notice of Alleged Violation (NOAV). On April 15, 2021, the Department issued a NOAV based on failing release detection operability, overfill prevention operability, spill bucket integrity, and cathodic protection system test results. The Individual/Entity violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to maintain and operate a corrosion protection system; failed to ensure that releases due to spilling or overfilling do not occur; failed to report a suspected release; failed to investigate and confirm a suspected release within a reasonable amount of time; failed to properly maintain release detection equipment; failed to conduct proper release detection using automatic tank gauge; failed to provide records to the Department upon request; failed to conduct annual walk-through inspection; failed to train Class C operators before they assume responsibility for the UST Facility; and failure to designate in writing a list of Class C operators and keep a copy at the Facility.

Action: The Individual/Entity is required to: submit proof the cathodic protection system has been repaired and a passing follow-up test result by August 30, 2021. If the cathodic protection system is repaired and passing follow-up test results are submitted, then within forty-five (45) days of those results: submit proof of repaired and/or replaced spill buckets for the regular #1, premium, and kerosene USTs and passing follow-up spill bucket integrity test results; submit site check results for the spill buckets for the regular #1, premium, and kerosene USTs; submit proof of repaired and/or replaced overfill prevention equipment for all USTs and passing follow-up test results; submit proof of repaired and/or replaced release detection operability test results for all USTs and passing follow-up test results; submit passing tank tightness test results for the regular #2 and the premium USTs and current passing automatic tank gauge results as proof of valid release detection method; submit a list of Class C operators trained and designated for the Facility; and submit proof that a walk-through inspection log is being maintained or submit a completed UST Tank and Sludge Disposal Form (D-2233) for the permanent closure of all USTs at the Facility by August 30, 2021, and then, within sixty (60) days of the Department's approval of the UST Tank and Sludge Disposal Form, permanently close the USTs at the Facility and

submit a UST Closure and Assessment Report to the Department. The Department has assessed a total civil penalty in the amount of sixteen thousand, three hundred sixty-five dollars (\$16,365.00). The Individual/Entity shall pay a civil penalty in the amount of sixteen thousand, three hundred sixty-five dollars (**\$16,365.00**) by August 30, 2021.

Update: The Individual/Entity did not file a Request for Review; therefore, the effective date of the Order is July 15, 2021.

- 3) Order Type and Number: Administrative Order 21-0208-UST  
Order Date: July 13, 2021  
Individual/Entity: **Mohammad Akeel Kashmiri**  
Facility: 3 Sons  
Location: 1758 Highway 1 North  
Cassatt, SC 29032  
Mailing Address: 1758-A Highway 1 North  
Cassatt, SC 29032  
County: Kershaw  
Previous Orders: None  
Permit/ID Number: 05377  
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), and South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs. 61-92, 280.21(c), 280.31(b)(1), and 280.70(c) (2012 and Supp. 2019).

Summary: Mohammad Akeel Kashmiri (Individual/Entity) is the owner of an underground storage tank (UST) located in Kershaw County, South Carolina. On September 17, 2020, the Department conducted a file review and issued a Notice of Alleged Violation. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to protect an operating UST system from corrosion; failed to have the cathodic protection system inspected by a qualified tester every three years; and failed to permanently close a UST system that has been temporarily out of service for greater than twelve (12) months and does not meet current corrosion protection standards.

Action: The Individual/Entity is required to submit: either a completed Tank and Sludge Disposal form for the permanent closure of the USTs at the Facility or proof that UST metal integrity testing has been initiated; If the Department receives a completed Tank and Sludge Disposal form, permanently close the UST within forty-five (45) days of the Department's approval of the Tank and Sludge Disposal form; and within sixty days after the USTs have been permanently closed, submit an UST Closure and Assessment Report. The Department has assessed a total civil penalty in the amount of seven thousand, seven hundred dollars (\$7,700.00). The Individual/Entity shall pay a civil penalty in the amount of seven thousand, seven hundred dollars (**\$7,700.00**) by September 11, 2021.

Update: None

- 4) Order Type and Number: Administrative Order 21-0262-UST  
Order Date: July 13, 2021  
Individual/Entity: **Ankur Patel**  
Facility: Little Mountain Corner Mart

Location: 2810 Highway 29 South  
Anderson, SC 29624  
Mailing Address: Post Office Box 4  
Piedmont, SC 29673  
County: Anderson  
Previous Orders: AO 20-0172-UST (\$4,575.00)  
Permit/ID Number: 15582  
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-140(A) et seq. (2018); and South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs 61-92, 280.21(a), 280.31(b), 280.34(c), 280.36(a)(1)(i), 280.36(a)(1)(ii), 280.70(a), 280.70(c), 280.242(b)(3), and 280.243(a) (2012 & Supp 2019).

Summary: Ankur Patel (Individual/Entity) owns and operates underground storage tanks (USTs) located in Anderson County, South Carolina. The Department issued Administrative Order 20-172-UST on March 26, 2021. The Department issued a Notice of Alleged Violation on April 12, 2021, based on a file review. The Individual/Entity violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to permanently close an UST system which does not meet the new UST system performance standards in Section 280.20; failed to have corrosion protection system tested by a certified tester at least once every three (3) years; failed to provide records to the Department upon request; failed to conduct monthly walk-through inspections; failed to conduct annual walk-through inspections; failed to continue operation and maintenance of corrosion protection on a temporarily closed UST system in accordance with Section 280.31; failed to properly abandon a temporarily closed system after twelve (12) months; failed to validate that monthly requirements have been performed; and failed to physically visit each facility once a quarter.

Action: The Individual/Entity is required to either submit: either passing metal integrity testing results, passing tank tightness test results, and passing cathodic protection system test results or a completed UST Tank and Sludge Disposal Form for the permanent closure of all USTs at the Facility and, within sixty (60) days of the Department's approval of the UST Tank and Sludge Disposal form, permanently closed the USTs at the Facility and submit an UST Closure and Assessment Report to the Department by September 12, 2021. If there are passing results for the metal integrity tests, tank tightness tests, and cathodic protection tests, the Individual/Entity is required to submit: proof that a Class A/B Operator log is being maintained; proof that a Walkthrough log is being maintained; and proof that Class C Operators have been trained and designated for the Facility. The Department has assessed a total civil penalty in the amount of twelve thousand, nine hundred seventy-five dollars (\$12,975.00). The Individual/Entity shall pay a civil penalty in the amount of twelve thousand, nine hundred seventy-five dollars (**\$12,975.00**) by September 12, 2021.

Update: The Individual/Entity did not file a Request for Review; therefore, the effective date of the Order is July 29, 2021.

5) Order Type and Number: Consent Order 21-0297-UST  
Order Date: July 16, 2021  
Individual/Entity: **Norway Gas and Auto Sales, LLC**  
Facility: Norway Gas and Auto Sales, LLC

Location: 8423 Savannah Highway  
Norway, SC 29113  
Mailing Address: SAME  
County: Orangeburg  
Previous Orders: None  
Permit/ID Number: 06966  
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), and South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs. 61-92, 280.41(b)(2)(i) (2012 and Supp. 2019).

Summary: Norway Gas and Auto Sales, LLC (Individual/Entity) is the owner of underground storage tanks (USTs) located in Orangeburg County, South Carolina. On June 7, 2021, the Department conducted a routine UST compliance inspection. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to equip pressurized line with automatic line leak detector.

Action: The Individual/Entity corrected all violations prior to the issuance of the Order. The Department has assessed a total civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand dollars (**\$1,000.00**) by July 15, 2021.

Update: The civil penalty has been paid and the Order has been closed.

6) Order Type and Number: Consent Order 21-0319-UST  
Order Date: July 28, 2021  
Individual/Entity: **R L Jordan Oil Company of North Carolina, Inc.**  
Facility: Hot Spot 4004  
Location: 2801 Gentry Memorial Highway  
Pickens, SC 29671  
Mailing Address: P.O. Box 2527  
Spartanburg, SC 29304  
County: Pickens  
Previous Orders: None.  
Permit/ID Number: 12157  
Violations Cited: The State Underground Petroleum Environmental Response Bank Act of 1988 (SUPERB Act), S.C. code Ann. § 44-2-60(A) et seq. (2018); and South Carolina Underground Storage Tank Control Regulation, 7 S.C. Code Ann., Regs 61-92, 280.20(c)(1)(ii) (2012 & Supp 2019).

Summary: R L Jordan Oil Company of North Carolina, Inc. (Individual/Entity) owns and operates underground storage tanks in Pickens County, South Carolina. The Department conducted an inspection on June 16, 2021 and issued a Notice of Alleged Violation. The Individual/Entity has violated the SUPERB Act and the South Carolina Underground Storage Tank Regulation, as follows: failed to maintain overfill prevention equipment.

Action: The Individual/Entity corrected all violations prior to issuance of the Order. The Department has assessed a total civil penalty in the amount of one thousand



dollars (\$1,000.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand dollars (**\$1,000.00**) by September 11, 2021.

Update: The civil penalty has been paid and this Order has been closed.

### **Solid Waste Enforcement**

- 7) Order Type and Number: Consent Order 21-03-SW  
Order Date: July 28, 2021  
Individual/Entity: **IMR Properties, LLC**  
Facility: IMR Recycling  
Location: 2186 Chesnee Highway  
Spartanburg, SC  
Mailing Address: Post Office Box 161802  
Boiling Springs, SC 29316  
County: Spartanburg  
Previous Orders: None  
Permit/ID Number: N/A  
Violations Cited: Pollution Control Act, S.C. Code Ann. § 48-1-10, et seq. (2008 & Supp. 2016) (Act).

Summary: IMR Properties, LLC (Individual/Entity), owns property located in Spartanburg, South Carolina. Based on a complaint, the Department conducted an inspection on March 5, 2020. The Individual/Entity has violated the Pollution Control Act as follows: failed to obtain a Department issued permit prior to directly or indirectly, discharging organic or inorganic matter into the environment.

Action: The Individual/Entity has corrected all violations prior to the issuance of the Order. The Department assessed a total civil penalty in the amount of six thousand dollars (\$6,000.00). The Individual/Entity shall pay a civil penalty in the amount of six thousand dollars (**\$6,000.00**) by September 11, 2021.

Update: None.

### **Hazardous Waste Enforcement**

- 8) Order Type and Number: Administrative Order 21-02-HW  
Order Date: June 11, 2021  
Individual/Entity: **Greenwood Rental Center, LLC**  
Facility: Greenwood Rental Center, LLC  
Location: 1902 Edgefield Street, Building #5,  
Greenwood, SC 29646  
Mailing Address: 250 Magnolia Street  
Spartanburg, SC 29306  
/ P.O. Box 137  
Greenwood, SC 29648  
County: Greenwood

Previous Orders: N/A  
Permit/ID Number: SCR 000 772 335  
Violations Cited: The South Carolina Hazardous Waste Management Act, S.C. Code Ann. §§ 44-56-10 et seq. (2018), and the South Carolina Hazardous Waste Management Regulation, 6 and 7 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2019).

Summary: Greenwood Rental Center, LLC (Individual/Entity) is a property management company that manages and owns properties that are rented or leased to tenants located in Greenwood County, South Carolina. The Department conducted an inspection at a facility owned and managed by the Individual/Entity on October 13, 2020. The Individual/Entity has violated the South Carolina Hazardous Waste Management Act and the Hazardous Waste Management Regulations as follows: stored discarded materials which were abandoned; failed to determine if a solid waste was a hazardous waste; failed to transfer hazardous waste from containers in poor condition to containers that were in good condition; failed to close containers during accumulation, except when adding and removing hazardous waste; failed to inspect the hazardous waste central accumulation areas weekly for leaking containers and for deterioration of containers caused by corrosion; failed to mark or label its containers with the words “Hazardous Waste,” an indication of the hazards of the contents, and the date upon which each period of accumulation began; failed to receive an extension from the Department granting hazardous waste to remain onsite for longer than ninety (90) days; failed to have a Contingency Plan for the facility; failed to submit a copy of the Contingency Plan to local emergency responders; failed to maintain and operate the facility to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste; and failed to equip the facility with the equipment necessary to prepare for and respond to emergencies.

Action: The Individual/Entity is required to: follow the Sampling and Analysis Plan (SAP) that was approved by the Department; label all containers of waste that have been determined to be hazardous by August 9, 2021; characterize and properly manage containers that are open, leaking, and in poor condition by August 24, 2021; begin the process of shipping both hazardous and solid wastes offsite for proper disposal starting August 24, 2021 and each successive shipment shall be within ninety (90) days of the previous shipment; submit analytical results, waste profiles, manifests, photographs, and disposal receipts to demonstrate compliance; submit a SAP to investigate, evaluate, and sample any potentially contaminated soil by November 9, 2021; within fifteen (15) days of receipt of any written comments or deficiencies from the Department’s review of the SAP, revise and resubmit for further review; submit a Remediation Plan contingent upon soil sampling results; respond to the Department’s written and e-mail correspondences within three (3) business days; and notify the Department in writing at least five (5) business days before a scheduled date, or within seventy-two (72) hours after an occurrence which causes or may cause a delay in meeting any scheduled deadlines. The Department assessed a total civil penalty in the amount of sixty thousand, six hundred eighty-six dollars (\$60,686.00). The Individual/Entity shall pay a civil penalty in the amount of sixty thousand, six hundred eighty-six dollars (**\$60,686.00**).

Update: The Individual/Entity did not file a Request for Review; therefore, the effective date of the Order is July 9, 2021. This Order has been referred to Office of General Counsel for further enforcement action.

9) Order Type and Number: Consent Order 21-03-HW

Order Date: July 16, 2021  
Individual/Entity: **Hubbell Power Systems, Inc.**  
Facility: Hubbell Power Systems, Inc.  
Location: 1850 Richland Avenue East  
Aiken, SC 29801  
Mailing Address: SAME  
County: Aiken  
Previous Orders: None  
Permit/ID Number: SCD 054 202 080  
Violations Cited: The South Carolina Hazardous Waste Management Act, S.C. Code Ann. §§ 44-56-10 et seq. (2018), and the South Carolina Hazardous Waste Management Regulation, 6 and 7 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2018).

Summary: Hubbell Power Systems, Inc. (Individual/Entity), specializes in rubber molding, fiberglass rod pultrusion, mechanical crimping, tensile testing, and high voltage testing at its facility located in Aiken County, South Carolina. The Department conducted an inspection on April 15, 2021. The Individual/Entity has violated the South Carolina Hazardous Waste Management Act and the Hazardous Waste Management Regulations as follows: failed to ensure that containers holding hazardous waste must be closed at all times during the accumulation, except: when adding, removing, or consolidating waste; failed to mark or label its containers with an indication of the hazards of the contents; failed to have a permit under these regulations for the “transportation,” “treatment,” “storage,” or “disposal” of any “hazardous waste” as identified or listed in 261; failed to demonstrate the length of time that the universal waste had been accumulated from the date it became a waste or was received; and failed to ensure that each lamp or a container or package in which such lamps are contained is labeled or marked clearly with one of the following phrases: “Universal Waste – Lamp(s),” or “Waste Lamp(s),” or “Used Lamp(s).”

Action: The Individual/Entity corrected all violations prior to the issuance of the Order. The Department assessed a total civil penalty in the amount of three thousand, seven hundred fifty dollars (\$3,750.00). The Individual/Entity shall pay a civil penalty in the amount of three thousand, seven hundred fifty dollars (**\$3,750.00**) by August 18, 2021.

Update: None.

10) Order Type and Number: Consent Order 21-04-HW  
Order Date: July 28, 2021  
Individual/Entity: **Adornus Manufacturing, LLC**  
Facility: Adornus Manufacturing, LLC  
Location: 1551 Highway 9 Bypass West  
Lancaster, SC 29720  
Mailing Address: SAME  
County: Lancaster  
Previous Orders: N/A  
Permit/ID Number: SCD 000 648 493  
Violations Cited: The South Carolina Hazardous Waste Management Act, S.C. Code Ann. §§ 44-56-10 et seq. (2018), and the South Carolina Hazardous Waste Management Regulation, 6 and 7 S.C. Code Ann. Regs. 61-79 (2012 and Supp. 2020).

Summary: Adornus Manufacturing, LLC (Individual/Entity) is a manufacturer and a distributor of frameless kitchen cabinets and bathroom vanities located in Lancaster County, South Carolina. The Department conducted an inspection at a facility on February 26, 2021. The Individual/Entity has violated the South Carolina Hazardous Waste Management Act and the Hazardous Waste Management Regulations as follows: failed to label closed containers of solvent-contaminated wipes with the words “Excluded Solvent-Contaminated Wipes”; failed to maintain a description of the process used to ensure solvent-contaminated wipes contain no free liquids; failed to determine if a solid waste was a hazardous waste; accumulated hazardous waste in excess of 55 gallons at or near the point of generation; failed to transfer hazardous waste from containers in poor condition to containers that were in good condition; failed to close containers during accumulation, except when adding and removing hazardous waste; failed to mark or label its containers with the words “Hazardous Waste,” an indication of the hazards of the contents, and the date upon which each period of accumulation began; failed to receive an extension from the Department granting hazardous waste to remain onsite for longer than ninety (90) days; failed to prepare and submit Quarterly Reports to the Department as required by the instructions included with the form; failed to maintain the job title for each position related to hazardous waste management at the facility and the name of the employee filling that position; failed to maintain a written description of the type and amount of both introductory and continuing training given to each person filling a position related to hazardous waste management; failed to equip the facility with an internal communication system and spill control equipment; failed to attempt to make arrangements with local emergency responders and maintain documentation documenting those arrangements; failed to describe and/or include the following in the facility’s Contingency Plan: actions personnel must take during an emergency situation, arrangements agreed to with local emergency responders, list of all emergency equipment, and an evacuation plan for the facility; failed to maintain lamps in a manner to prevent a release and to keep such containers closed; failed to label or mark clearly each container of universal lamps; and failed to demonstrate the length of time universal waste had been accumulated from the date it became a waste.

Action: The Individual/Entity corrected all violations prior to the issuance of the Order. The Department has assessed a total civil penalty in the amount of twelve thousand dollars (\$12,000.00). The Individual/Entity shall pay a civil penalty in the amount of twelve thousand dollars (**\$12,000.00**) in installments beginning August 15, 2021.

Update: The Individual/Entity submitted documentation between May 12, 2021 and June 16, 2021 that included Safety Data Sheets, photographs, job positions, job descriptions, solvent-contaminated wipes process, and a copy of the Contingency Plan as evidence of the corrective actions taken to correct the violations noted during the inspection.

## **BUREAU OF WATER**

### **Recreational Waters Enforcement**

11) Order Type and Number: Consent Order 21-017-RW

Order Date: July 2, 2021  
Individual/Entity: **Wildewood Community Partners Group, Inc.**  
Facility: The Wildewood Club  
Location: 99 Mallet Hill Road  
Columbia, SC 29223  
Mailing Address: SAME  
County: Richland  
Previous Orders: 21-013-RW; \$300.00  
Permit/ID Number: 40-1200C  
Violations Cited: S.C. Code Ann. Regs. 61-51.B.7

Summary: Wildewood Community Partners Group, Inc. (Individual/Entity) owns and is responsible for obtaining from the Department written approval to operate prior to operating a newly constructed pool located in Richland County, South Carolina. The Department issued a Notice of Alleged Violation/Notice of Enforcement Conference on June 8, 2021, as a result of review of Department records. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: failed to obtain written approval to operate from the Department prior to the operation of a pool.

Action: The Individual/Entity is required to: complete construction of the pool in accordance with the permit issued by the Department and obtain Department approval to operate the pool by August 2, 2021. The Department has assessed a total civil penalty in the amount of one thousand, four hundred dollars (\$1,400.00). The Individual/Entity shall pay a civil penalty in the amount of one thousand, four hundred dollars (**\$1,400.00**) by August 2, 2021.

Update: Written approval to operate the pool has been issued by the Department and the civil penalty has been paid.

12) Order Type and Number: Consent Order 21-018-RW  
Order Date: July 12, 2021  
Individual/Entity: **Raldex IV, Inc.**  
Facility: Hampton Inn & Suites  
Location: 1735 Stokes Road  
Florence, SC 29501  
Mailing Address: SAME  
County: Florence  
Previous Orders: None  
Permit/ID Number: 21-1019B  
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Raldex IV, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool located in Florence County, South Carolina. The Department conducted inspections on June 2, 2021, and June 24, 2021, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the water level was too low; the skimmers were missing weirs; the chlorine level was not within the acceptable range of water quality standards; and the bound and numbered logbook was not maintained a minimum of three times per week by the pool operator of record.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of six hundred eighty dollars (\$680.00). The Individual/Entity shall pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**) by July 28, 2021.

Update: The civil penalty has been paid.

- 13) Order Type and Number: Consent Order 21-019-RW  
Order Date: July 26, 2021  
Individual/Entity: **Tidemaster Owners Association, Inc.**  
Facility: Tidemaster Condominiums  
Location: 517 South Ocean Boulevard  
Myrtle Beach, SC 29577  
Mailing Address: P.O. Box 148  
Newton, NC 29658  
County: Horry  
Previous Orders: None  
Permit/ID Number: 26-G71-1  
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Tidemaster Owners Association, Inc, (Individual/Entity) owns and is responsible for the proper operation and maintenance of a kiddie pool located in Horry County, South Carolina. The Department conducted inspections on May 26, 2021, and June 30, 2021, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the chlorine and pH levels were not within the acceptable range of water quality standards; and the bound and numbered logbook was not maintained on a daily basis.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of six hundred eighty dollars (\$680.00). The Individual/Entity shall pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**) by August 15, 2021.

Update: The civil penalty payment has been paid.

- 14) Order Type and Number: Consent Order 21-020-RW  
Order Date: July 27, 2021  
Individual/Entity: **MTR Hotels, LLC**  
Facility: Days Inn  
Location: 60 Roper Mountain Road  
Greenville, SC 29611  
Mailing Address: 109 Destination Boulevard  
Anderson, SC 29621  
County: Greenville  
Previous Orders: None  
Permit/ID Number: 23-348-1  
Violations Cited: S.C. Code Ann. Regs. 61-51(K)(1)(c)

Summary: MTR Hotels, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool located in Greenville County, South Carolina.

The Department conducted an inspection on June 29, 2021, and July 2, 2021, and it was determined that the Department's yellow "No Swimming Allowed – Do Not Remove" sign had been removed and re-posted following the June 29, 2021 inspection. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the pool was operated prior to receiving Department approval.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of two hundred fifty-five dollars (\$255.00). The Individual/Entity shall pay a civil penalty in the amount of two hundred fifty-five dollars (**\$255.00**) by August 17, 2021.

Update: The civil penalty payment has been paid.

15) Order Type and Number: Consent Order 21-021-RW  
Order Date: July 27, 2021  
Individual/Entity: **Grande Shores Council of Co-Owners, Inc.**  
Facility: Grande Shores Ocean Resort  
Location: 201 77<sup>th</sup> Avenue N  
Myrtle Beach, SC 29572  
Mailing Address: Post Office Box 7706  
Myrtle Beach, SC 29572  
County: Horry  
Previous Orders: None  
Permit/ID Number: 26-R58-1  
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Grande Shores Council of Co-Owners, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a spa located in Horry County, South Carolina. The Department conducted inspections on May 26, 2021, and June 30, 2021, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the chlorine and pH levels were not within the acceptable range of water quality standards.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of six hundred eighty dollars (\$680.00). The Individual/Entity shall pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**) by August 16, 2021.

Update: The civil penalty has been paid.

16) Order Type and Number: Consent Order 21-022-RW  
Order Date: July 28, 2021  
Individual/Entity: **South Aiken Fitness, Inc.**  
Facility: Golds Gym Aiken  
Location: 101 Corporate Parkway  
Aiken, SC 29803  
Mailing Address: SAME  
County: Aiken  
Previous Orders: None

Permit/ID Number: 02-1014B  
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: South Aiken Fitness, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool located in Aiken County, South Carolina. The Department conducted inspections on June 4, 2021, and July 2, 2021, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: skimmers were missing weirs; the chlorine level was not within the acceptable range of water quality standards; the current pool operator of record information was not posted to the public; the facility could not produce current valid documentation of pool operator certification; and the bound and numbered logbook was not maintained on a daily basis.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of six hundred eighty dollars (\$680.00). The Individual/Entity shall pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**) by August 9, 2021.

Update: The civil penalty payment has been paid.

17) Order Type and Number: Consent Order 21-023-RW  
Order Date: July 30, 2021  
Individual/Entity: **Rosen Sea, LLC**  
Facility: Ocean Breeze Hotel  
Location: 2010 South Ocean Boulevard  
Myrtle Beach, SC 29577  
Mailing Address: SAME  
County: Horry  
Previous Orders: None  
Permit/ID Number: 26-233-1  
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Rosen Sea, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool located in Horry County, South Carolina. The Department conducted inspections on June 21, 2021, and July 12, 2021, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: the lifeline floats were not properly spaced; a ladder was not tight and secure; there was debris in the skimmer baskets; the pool floor was not clean; the drinking water fountain was not operating properly; the equipment room was not locked; the chlorine level was not within the acceptable range of water quality standards; only one “No Lifeguard On Duty – Swim At Your Own Risk” sign was posted; and the bound and numbered log book was not maintained on a daily basis.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of six hundred eighty dollars (\$680.00). The Individual/Entity shall pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**) by August 15, 2021.

Update: The civil penalty payment has been paid.

18) Order Type and Number: Consent Order 21-024-RW



Order Date: July 30, 2021  
Individual/Entity: **Canvasback Lake Association, Inc.**  
Facility: Canvasback Lake  
Location: 305 North Hillside Drive  
North Myrtle Beach, SC 29582  
Mailing Address: 3081 Deville Street  
Myrtle Beach, SC 29577  
County: Horry  
Previous Orders: None  
Permit/ID Number: 26-D19-1  
Violations Cited: S.C. Code Ann. Regs. 61-51(J)

Summary: Canvasback Lake Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool located in Horry County, South Carolina. The Department conducted inspections on May 24, 2021, and June 23, 2021, and violations were issued for failure to properly operate and maintain. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: there was debris in the skimmer baskets; the life ring was deteriorated; the “Shallow Water – No Diving Allowed” and “No Lifeguard On Duty – Swim At Your Own Risk” signs did not have the correct sized lettering; the bound and numbered log book was not maintained on a daily basis; a skimmer was missing a weir; and the chlorine level was not within the acceptable range of water quality standards.

Action: The Individual/Entity has corrected all violations. The Department has assessed a total civil penalty in the amount of six hundred eighty dollars (\$680.00). The Individual/Entity shall pay a civil penalty in the amount of six hundred eighty dollars (**\$680.00**) by August 19, 2021.

Update: The civil penalty has been paid.

19) Order Type and Number: Consent Order 21-028-RW  
Order Date: July 30, 2021  
Individual/Entity: **Aekta Motels, LLC**  
Facility: Red Roof Inn  
Location: 810 Radford Boulevard  
Dillon, SC 29536  
Mailing Address: SAME  
County: Dillon  
Previous Orders: None  
Permit/ID Number: 17-020-1  
Violations Cited: S.C. Code Ann. Regs. 61-51.J.22

Summary: Aekta Motels, LLC (Individual/Entity) owns and is responsible for the proper operation and maintenance of a pool located in Dillon County, South Carolina. The Department issued a Notice of Alleged Violation/Notice of Enforcement Conference on June 14, 2021, as a result of a review of inspection records. The Individual/Entity has violated the Public Swimming Pools Regulation as follows: failed to fill in or remove the pool, which has been permanently closed for a period in excess of twenty-four consecutive months.

Action: The Individual/Entity is required to: properly fill in the pool in accordance with the approved plan submitted to the Department and contact the Department to schedule an inspection to verify the completed work by September 1, 2021. The Department has assessed a total civil penalty in the amount of four hundred dollars (\$400.00). The Individual/Entity shall pay a **stipulated penalty** in the amount of four hundred dollars (**\$400.00**) should any requirement of the Order not be met.

Update: The Individual/Entity submitted a plan to fill in the pool and the plan was approved by the Department.

### **Drinking Water Enforcement**

20) <u>Order Type and Number:</u>	Consent Order 21-032-DW
<u>Order Date:</u>	July 7, 2021
<u>Individual/Entity:</u>	<b>Hickory Springs Bottling, Inc.</b>
<u>Facility:</u>	Hickory Springs Water
<u>Location:</u>	347 Old River Road Elloree, SC 29047
<u>Mailing Address:</u>	SAME
<u>County:</u>	Calhoun
<u>Previous Orders:</u>	None
<u>Permit/ID Number:</u>	0973001 & 35041-WS
<u>Violations Cited:</u>	S.C. Code Ann. Regs. 61-58.1.B(1) & 61-58.1.K(1)

Summary: Hickory Springs Bottling, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS) located in Calhoun County, South Carolina. The Department issued a Notice of Alleged Violation/Notice of Enforcement Conference on May 20, 2021, as a result of review of inspection records. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: failed to obtain a permit from the Department prior to modifying a PWS and failed to obtain written approval to operate from the Department prior to placing the modification into operation.

Action: The Individual/Entity is required to: submit documentation verifying operator certification by July 12, 2021; contact the Department to schedule an inspection to obtain written approval to operate the modification by August 6, 2021; and submit to the Department a standard operating procedure for obtaining permits and operational approvals by August 6, 2021. The Department has assessed a total civil penalty in the amount of eight thousand, five hundred dollars (\$8,500.00). The Individual/Entity shall pay a civil penalty in the amount of eight thousand, five hundred dollars (**\$8,500.00**) by August 6, 2021.

Update: The Individual/Entity has paid the penalty, submitted operator certification documentation, obtained a permit and written approval to operate from the Department, and submitted a standard operating procedure.

21) <u>Order Type and Number:</u>	Consent Order 21-033-DW
<u>Order Date:</u>	July 14, 2021

<u>Individual/Entity:</u>	<b>Edgewater Acres Homeowners Association, Inc.</b>
<u>Facility:</u>	Edgewater Acres
<u>Location:</u>	35 Riverfront Lane Simpsonville, SC 29681
<u>Mailing Address:</u>	SAME
<u>County:</u>	Greenville
<u>Previous Orders:</u>	None
<u>Permit/ID Number:</u>	2350024
<u>Violations Cited:</u>	S.C. Code Ann. Regs. 61-58.7 & 61-58.8.B & 61-58.7.D.2

Summary: Edgewater Acres Homeowners Association, Inc. (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS) located in Greenville County, South Carolina. The Department conducted an inspection of the PWS on March 22, 2021, and it was rated unsatisfactory for failure to properly operate and maintain, failure to provide an up-to-date emergency preparedness plan, and failure to provide an operator of the appropriate grade to visit the PWS as often as required. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: there were large openings on the casing vent screen; the sanitary seal and well casing were rusted; the piping brackets in the chemical feed room were not secured; the chlorine fill lines did not have an air gap separation; the centrifugal filter and one of the secondary bag filters was valved off; the drain valve was broken; the sample tap was threaded; there were no records of a current tank inspection; the outside of the hydro-pneumatic storage tank had areas with lichen; the chlorine readings recorded were not saved or stored; the electrical wiring on the sanitary seal and in electrical boxes was exposed; the insulation inside the well house was in disrepair and insulation was stored in the treatment building; a complete procedures manual with written programs and logs was not provided for Department review; an up-to-date emergency preparedness plan was not provided for Department review; and an operator of the appropriate grade was not provided as often as required.

Action: The Individual/Entity is required to: immediately provide a daily operator of the appropriate grade and remove the insulation stored in the treatment building; correct the deficiencies by September 30, 2021; have the hydro-pneumatic storage tank inspected by a professional tank servicing company by September 30, 2021; and complete the recommendations in the storage tank inspection report within ninety days of the date of the report. The Department has assessed a total civil penalty in the amount of twelve thousand, six hundred dollars (\$12,600.00). The Individual/Entity shall pay a civil penalty in the amount of five thousand, six hundred dollars (**\$5,600.00**) by September 30, 2021, and pay a stipulated penalty in the amount of seven thousand dollars (\$7,000.00) should any requirement of the Order not be met.

Update: None

22)	<u>Order Type and Number:</u>	Consent Order 21-034-DW
	<u>Order Date:</u>	July 27, 2021
	<u>Individual/Entity:</u>	<b>Rocky Creek Christian Retreat</b>
	<u>Facility:</u>	Rocky Creek Christian Retreat
	<u>Location:</u>	1124 Walker Road McCormick, SC 29835

Mailing Address: 336 Cobbleview Drive  
Lexington, SC 29072  
County: Edgefield  
Previous Orders: None  
Permit/ID Number: 1970675  
Violations Cited: S.C. Code Ann. Regs. 61-58.17.K(1)

Summary: Rocky Creek Christian Retreat (Individual/Entity) owns and is responsible for the proper operation and maintenance of a public water system (PWS) located in Edgefield County, South Carolina. On June 23, 2021, a violation was issued as a result of review of monitoring records. The Individual/Entity has violated the State Primary Drinking Water Regulation as follows: the PWS tested present for total coliform and E. coli, which resulted in a violation of the maximum contaminant level for E. coli.

Action: The Individual/Entity is required to: submit a corrective action plan with a schedule to address the causes of the total coliform present results at the PWS by August 26, 2021. The Department has assessed a total civil penalty in the amount of four thousand dollars (\$4,000.00). The Individual/Entity shall pay a **stipulated penalty** in the amount of four thousand dollars (**\$4,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity submitted a corrective action plan which stated that the well casing was cracked, and they have decided to drill a new well.

### **Water Pollution Enforcement**

23) Order Type and Number: Administrative Order 21-039-W  
Order Date: July 29, 2021  
Individual/Entity: **Mr. Kenneth Graham**  
Facility: Green Acres Swine Farm and  
Green Acres Dairy Farm  
Location: 2374 Hughey Ferry Road  
Pomaria, SC 29126  
Mailing Address: SAME  
County: Newberry  
Previous Orders: 18-005-W (\$1,650.00)  
Permit/ID Number: 5415 (Swine Farm)  
9132 (Dairy Farm)  
Violations Cited: Permitting of Agricultural Animal Facilities,  
S.C. Code Ann. Regs. 61-43, Part 100.40.B and Part 200.40.B, and Environmental  
Protection Fees, S.C. Code Ann. Regs. 61-30.C(2)(d)

Summary: Mr. Kenneth Graham (Individual/Entity) owns and is responsible for the proper operation and maintenance of swine and dairy farms located in Newberry County, South Carolina. The Individual/Entity failed to remit payment for annual operating fees for both farming operations for Fiscal Years 2019, 2020, and 2021. The Individual/Entity has violated the Permitting of Agricultural Animal Facilities and Environmental Protection Fees as follows: failed to remit payment for annual operating fees for Fiscal Years 2019, 2020, and 2021.

Action: The Individual/Entity is required to: remit payment to the Department for annual operating fees due for both the Swine Farm and Dairy Farm for FY 2019, FY 2020 and FY 2021, totaling one thousand, two hundred, thirty-seven dollars and fifty cents (\$1,237.50).

Update: None.

24) Order Type and Number: Consent Order 21-036-W  
Order Date: July 2, 2021  
Individual/Entity: Town of Winnsboro  
Facility: **Town of Winnsboro WWTF**  
Location: off Highway 321 Bypass, Winnsboro  
Fairfield County, SC  
Mailing Address: Post Office Box 209  
Winnsboro  
County: Fairfield  
Previous Orders: 19-074-W (\$3,400.00)  
Permit/ID Number: SC0020215  
Violations Cited: Pollution Control Act, S.C Code Ann § 48-1-110 (d) (2008 & Supp. 2020); Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.122.41 (a) and (d) (2011).

Summary: The Town of Winnsboro (Individual/Entity) owns and is responsible for the proper operation and maintenance of a wastewater treatment facility (WWTF) located in Fairfield County, South Carolina. On September 23, 2020, a Notice of Violation was issued as a result of chronic effluent toxicity (CTOX) violations reported on discharge monitoring reports submitted to the Department. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permit Regulations, as follows: failed to comply with the CTOX effluent limitations of its National Pollutant Discharge Elimination System Permit.

Action: The Individual/Entity is required to: submit written notification of the completion date for all corrective actions necessary to resolve the violations by August 2, 2021; conduct a six (6) monitoring event compliance confirmation period upon completion of corrective actions; and implement engineered upgrades to the facility as determined by a preliminary engineering report (PER) should additional violations be observed during the compliance confirmation period. The Department has assessed a total civil penalty in the amount of three thousand dollars (\$3,000.00). The Individual/Entity shall pay a civil penalty in the amount of three thousand dollars (**\$3,000.00**) by August 2, 2021.

Update: None.

25) Order Type and Number: Consent Order 21-037-W  
Order Date: July 13, 2021  
Individual/Entity: **Mr. Rafael Ochoa**  
Facility: Peninsula Pointe Phase 2 Lot #20  
Location: Lot 20 retreat Pointe Road  
West Union, SC 29696  
Mailing Address: 3307 Alcovy Club Court  
Dacula, GA 30019

County: Oconee  
Previous Orders: None  
Permit/ID Number: SCR10W291  
Violations Cited: Pollution Control Act, S.C Code Ann § 48-1-90 (a) (2008 & Supp. 2020); Water Pollution Control Permits, S.C. Code Ann Regs. 61-9.122.41 (a) and (e) (2011).

Summary: Mr. Rafael Ochoa (Individual/Entity) is responsible for land disturbing activity in Oconee County, South Carolina. On October 1, 2020, a Warning Letter was issued as a result of land disturbing activities being initiated without proper permit coverage. The Individual/Entity has violated the Pollution Control Act and Water Pollution Control Permits Regulations, as follows: failed to acquire an individual lot construction permit and allowing sediment to enter waters of the State.

Action: The Individual/Entity is required to: submit a complete individual lot construction permit application by August 13, 2021; submit a report signed by a Professional Engineer stating the Site is in compliance with the approved Stormwater Pollution Prevention Plan within thirty (30) days of permit issuance; and submit a Notice of Termination (NOT) within thirty (30) days of completion of permanent stabilization of the Site. The Department has assessed a total civil penalty in the amount of five thousand six hundred dollars (\$5,600.00). The Individual/Entity shall pay a civil penalty in the amount of five thousand six hundred dollars (**\$5,600.00**) in four (4) equal installment payments.

Update: The Individual/Entity has paid the permit application fee but the Department has not received the plans for the individual lot construction permit.

26) Order Type and Number: Consent Order 21-038-W  
Order Date: July 13, 2021  
Individual/Entity: **American Materials Company, LLC**  
Facility: Lynchess River Quarry WWTF  
Location: 3410 Highway 601  
Jefferson, SC 29718  
Mailing Address: 1410 Commonwealth Drive, Suite 201  
Wilmington, NC 28403  
County: Chesterfield  
Previous Orders: N/A  
Permit/ID Number: SC0048445  
Violations Cited: Pollution Control Act, S.C. Code Ann. § 48-1-110(d), Water Pollution Control Permits Regulation S.C. Code Ann. Regs. 61-9.122.41(a), and Part III.A. of NPDES Permit SC0048445

Summary: American Materials Company, LLC (Individual/Entity) owns and is responsible for a wastewater treatment facility (WWTF) located in Chesterfield County, South Carolina. On February 8, 2021, a Notice of Violation was issued as a result of total suspended solids (TSS) violations reported on discharge monitoring reports submitted to the Department. The Individual/Entity has violated the Pollution Control Act and the Water Pollution Control Permits Regulation, as follows: failed to comply with the TSS effluent limitations of its National Pollutant Discharge Elimination System (NPDES) permit.

Action: The Individual/Entity is required to: submit written notification of the completion date for all corrective actions necessary to resolve the violations by August 13, 2021; conduct a six (6) monitoring event compliance confirmation period upon completion of corrective actions; and implement engineered upgrades to the facility as determined by a preliminary engineering report (PER) should additional violations be observed during the compliance confirmation period. The Department has assessed a total civil penalty in the amount of six thousand, three hundred dollars (\$6,300.00). The Individual/Entity shall pay a civil penalty in the amount of six thousand, three hundred dollars (**\$6,300.00**) by August 13, 2021.

Update: None.

## **BUREAU OF ENVIRONMENTAL HEALTH SERVICES**

### **On-Site Wastewater Enforcement**

27) Order Type and Number: Administrative Order 21-033-OSWW  
Order Date: June 21, 2021  
Individual/Entity: **National Commerce Logistics, LLC**  
Facility: National Commerce Logistics, LLC  
Location: 53 Jenkins Park  
Clinton, SC 29325  
Mailing Address: 145 North Church Street, #120  
Spartanburg, SC 29306  
County: Laurens  
Previous Orders: None  
Permit Number: None  
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: National Commerce Logistics, LLC (Individual/Entity) owns property located in Laurens County, South Carolina. The Department conducted an investigation on May 5, 2021, and observed domestic wastewater discharging onto the surface of the ground. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to repair the OSWW system within five (5) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: On August 16, 2021, a referral was made to the Department's Office of General Counsel for a complaint to be filed in the Administrative Law Court.

28) Order Type and Number: Administrative Order 21-034-OSWW  
Order Date: June 21, 2021  
Individual/Entity: **Pine Cove MHP, LLC**  
Facility: Pine Cove MHP, LLC  
Location: 4920 Fox Tail Pine Drive  
Conway, SC 29526  
Mailing Address: Post Office Box 270  
Murrells Inlet, SC 29576  
County: Horry  
Previous Orders: None  
Permit Number: None  
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Pine Cove MHP, LLC (Individual/Entity) owns property located in Horry County, South Carolina. The Department conducted an investigation on April 5, 2021, and observed domestic wastewater discharging onto the surface of the ground. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to repair the OSWW system within five (5) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has submitted all requirements of the Order. This Order has been closed.

29) Order Type and Number: Administrative Order 21-035-OSWW  
Order Date: June 21, 2021  
Individual/Entity: **Jose Perez-Lopez and Leonor Sierra**  
Facility: Jose Perez-Lopez and Leonor Sierra  
Location: 215 Old Jones Road  
Duncan, SC 29334  
Mailing Address: 123 West Fox Ridge  
Lyman, SC 29365  
County: Spartanburg  
Previous Orders: None  
Permit Number: None  
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Jose Perez-Lopez and Leonor Sierra (Individual/Entity) own property located in Spartanburg County, South Carolina. The Department conducted an investigation on February 10, 2021, and observed domestic wastewater discharging onto the surface of the ground. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank



effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to repair the OSWW system within five (5) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has submitted all requirements of the Order. This Order has been closed.

30)	<u>Order Type and Number:</u>	Administrative Order 21-040-OSWW
	<u>Order Date:</u>	July 13, 2021
	<u>Individual/Entity:</u>	<b>Deborah Blackwell</b>
	<u>Facility:</u>	Deborah Blackwell
	<u>Location:</u>	338 Little Crowe Creek Road Pickens, SC 29671
	<u>Mailing Address:</u>	SAME
	<u>County:</u>	Pickens
	<u>Previous Orders:</u>	None
	<u>Permit Number:</u>	None
	<u>Violations Cited:</u>	S.C. Code Ann. Regs. 61-56

Summary: Deborah Blackwell (Individual/Entity) owns property located in Pickens County, South Carolina. The Department conducted an investigation on June 3, 2021, and observed domestic wastewater discharging into an unapproved wastewater system and to the surface of the ground. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to install the permitted OSWW system within ten (10) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the unpermitted OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: On August 5, 2021, Department personnel spoke with the Individual/Entity who provided the name of a contractor, and Department personnel have confirmed with this contractor that the OSWW system will be installed. The contractor is having issues obtaining materials at this time. Department personnel has continued to follow-up and encourage the Individual/Entity to seek other contractors who might be able to get the Site in compliance sooner. The Individual/Entity has stated she will only use this one contractor.

31)	<u>Order Type and Number:</u>	Administrative Order 21-043-OSWW
	<u>Order Date:</u>	July 13, 2021

Individual/Entity: **Richard Baird, Jr.**  
Facility: Richard Baird, Jr.  
Location: 374 Little Crowe Creek Road  
Pickens, SC 29671  
Mailing Address: SAME  
County: Pickens  
Previous Orders: None  
Permit Number: None  
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Richard Baird, Jr. (Individual/Entity) owns property located in Pickens County, South Carolina. The Department conducted an investigation on June 3, 2021, and observed domestic wastewater discharging onto the surface of the ground as well as unapproved systems for domestic wastewater treatment. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to install an OSWW system within ten (10) days of the permit to construct being issued to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: On August 27, 2021, Department personnel spoke with the OSWW contractor who stated he had received all the materials to install the OSWW systems and has scheduled an install date of September 13, 2021.

32) Order Type and Number: Administrative Order 21-032-OSWW  
Order Date: July 14, 2021  
Individual/Entity: **Doug Hayes, dba DHG**  
Facility: Doug Hayes, dba DHG  
Location: 4105 Glenn Springs Road  
Pauline, SC 29374  
Mailing Address: 20 Shady Acres  
Spartanburg, SC 29307  
County: Spartanburg  
Previous Orders: None  
Permit Number: None  
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Doug Hayes, dba DHG (Individual/Entity) holds a Department issued license to construct and repair OSWW systems. The Department conducted an investigation on November 30, 2021 and determined that the OSWW system was not installed as stated on the permit. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that the OSWW system for which he was responsible was installed according to the permit issued by the Department and installed an OSWW system outside the area specified on the permit.

Action: The Individual/Entity is required to cease and desist installing OSWW systems outside the specifications of the Department issued permit. The Department has assessed a total civil penalty in the amount of five hundred dollars (\$500.00). The Individual/Entity shall pay a civil penalty in the amount of five hundred dollars (**\$500.00**) by August 14, 2021.

Update: The Individual/Entity has submitted all requirements of the Order and paid the civil penalty. This Order has been closed.

33) Order Type and Number: Administrative Order 21-036-OSWW  
Order Date: July 14, 2021  
Individual/Entity: **Stephanie Stubbs**  
Facility: Stephanie Stubbs  
Location: 105 Valeview Circle  
Marietta, SC 29661  
Mailing Address: Same as Location  
County: Greenville  
Previous Orders: None  
Permit Number: None  
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Stephanie Stubbs (Individual/Entity) owns property located in Greenville County, South Carolina. The Department spoke with the Individual/Entity on May 28, 2021 and determined that domestic wastewater was discharging onto the surface of the ground. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to repair the OSWW system within five (5) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: On August 30, 2021, a referral was made to the Department's Office of General Counsel for a complaint to be filed in the Administrative Law Court.

34) Order Type and Number: Administrative Order 21-037-OSWW  
Order Date: July 14, 2021  
Individual/Entity: **19 Polite Drive**  
Facility: 19 Polite Drive  
Location: 19 Polite Drive  
Beaufort, SC 29902  
Mailing Address: SAME  
County: Beaufort  
Previous Orders: None  
Permit Number: None

Violations Cited:

S.C. Code Ann. Regs. 61-56

Summary: 19 Polite Drive (Individual/Entity) owns property located in Beaufort County, South Carolina. The Department conducted an investigation on April 6, 2021, and observed domestic wastewater discharging onto the surface of the ground. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to repair the OSWW system within five (5) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: On August 27, 2021, the Department issued a legal demand letter to the Individual/Entity via certified and first-class mail requiring compliance with the Administrative Order.

35) <u>Order Type and Number:</u>	Administrative Order 21-041-OSWW
<u>Order Date:</u>	July 14, 2021
<u>Individual/Entity:</u>	<b>Evelyn King</b>
<u>Facility:</u>	Evelyn King
<u>Location:</u>	124 Woodbine Trail Easley, SC 29651
<u>Mailing Address:</u>	516 Brewington Road Laurens, SC 29360
<u>County:</u>	Pickens
<u>Previous Orders:</u>	None
<u>Permit Number:</u>	None
<u>Violations Cited:</u>	S.C. Code Ann. Regs. 61-56

Summary: Evelyn King (Individual/Entity) owns property located in Pickens County, South Carolina. The Department conducted an investigation on April 14, 2021, and observed domestic wastewater discharging onto the surface of the ground. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to repair the OSWW system within five (5) days to effectively stop the discharging of septic tank effluent, domestic wastewater, or sewage to the surface of the ground; or immediately vacate the residence to eliminate the flow of domestic wastewater to the OSWW system. The Department has assessed a total civil penalty in the amount of five thousand dollars (\$5,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of five thousand dollars (**\$5,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has submitted all requirements of the Order. This Order has been closed.

36) Order Type and Number: Consent Order 21-038-OSWW  
Order Date: July 27, 2021  
Individual/Entity: **Joey Oliver, dba Oliver Environmental Services**  
Facility: Joey Oliver, dba Oliver Environmental Services  
Location: 843 Eubanks Road  
Jefferson, SC 29718  
Mailing Address: P.O. Box 291  
Ruby, SC 29741  
County: Chesterfield  
Previous Orders: None  
Permit Number: None  
Violations Cited: S.C. Code Ann. Regs. 61-56

Summary: Joey Oliver, dba Oliver Environmental Services (Individual/Entity) installed an OSWW system at property located in Chesterfield County, South Carolina. The Department conducted an investigation on March 16, 2021 and determined that the drainlines of the OSWW system were installed deeper than allowed on the Department issued permit to construct. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: failed to ensure that all systems for which the licensee is responsible are constructed, repaired, and cleaned in accordance with S.C. Regulation 61-56 and permits issued by the Department.

Action: The Individual/Entity is required to cease and desist failing to ensure that all systems for which the licensee is responsible are constructed, repaired, and cleaned in accordance with S.C. Regulation 61-56 and permits issued by the Department. The Department has assessed a total civil penalty in the amount of one thousand dollars (\$1,000.00). The Individual/Entity shall pay a **suspended penalty** in the amount of one thousand dollars (**\$1,000.00**) should any requirement of the Order not be met.

Update: The Individual/Entity has submitted all requirements of the Order. This Order has been closed.

37) Order Type and Number: Consent Order 21-039-OSWW  
Order Date: July 27, 2021  
Individual/Entity: **Bobby Wayne Mishoe, individually and dba BM Plumbing**  
Facility: Bobby Wayne Mishoe, individually and dba BM Plumbing  
Location: 30 Kent Road  
Georgetown, SC 29440  
Mailing Address: 471 Highway 67 West  
Loris, SC 29569  
County: Georgetown  
Previous Orders: None  
Permit Number: None

Violations Cited:

S.C. Code Ann. Regs. 61-56

Summary: Bobby Wayne Mishoe, individually and dba BM Plumbing (Individual/Entity) does not hold a Department issued license to pump OSWW systems. The Department conducted an investigation on June 3, 2021, and determined that a pump truck belonging to the Individual/Entity discharged domestic wastewater into a sewer pump station and onto the ground around the sewer pump station cap. The Individual/Entity has violated the South Carolina Onsite Wastewater (OSWW) Systems Regulation as follows: they have engaged in the business of cleaning onsite sewage treatment systems without first applying for, receiving, and subsequently maintaining a valid license to conduct such activities, as required by the Department; and failed to ensure that no septic tank effluent, domestic wastewater, or sewage was discharged to the surface of the ground without an appropriate permit from the Department.

Action: The Individual/Entity is required to cease and desist engaging in the business of cleaning onsite sewage treatment systems without applying for, receiving, and subsequently maintaining a valid license to conduct such activities, as required by the Department; and obtain an appropriate permit from the Department before discharging septic tank effluent, domestic wastewater, or sewage to the surface of the ground. The Department has assessed a total civil penalty in the amount of two thousand dollars (\$2,000.00). The Individual/Entity shall pay a civil penalty in the amount of two thousand dollars (**\$2,000.00**) by August 27, 2021.

Update: If payment is not received by September 1, 2021, Department personnel will issue a Demand Letter giving ten (10) days to pay the civil penalty before the case is referred to the Department's Office of General Counsel.

**OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT**

38) Order Type and Number: Administrative Order AF-0000342  
Order Date: June 2, 2021  
Individual/Entity: **Tezza Joint Revocable Trust**  
Location: 3209 Marshall Boulevard  
Sullivan's Island, SC 29482  
Mailing Address: 565 N. Saint Marys Lane NW  
Marietta, GA 30064  
County: Charleston  
Previous Orders: None  
Permit/ID Number: N/A  
Violations Cited: S.C. Code Ann. §48-39-130(A) and S.C. Code Ann. Regs. 30-2(B); S.C. Code Ann. Regs. 30-13(N)(3)(c).

Summary: Peter and Lillian Tezza are trustees of the Tezza Joint Revocable Trust (Individual/Entity) and are the current owners of certain property located seaward of the setback line and abutting the Atlantic Ocean. An inspection was conducted on November 19, 2019 and Department staff observed that rock had been added to the existing revetment at the Site. A Notice of Alleged Violation/Admission Letter was issued on March 26, 2020.

The Individual/Entity has violated the S.C. Coastal Zone Management Act (Act) and Coastal Division Regulations (Regulations) by altering the revetment at the Site without first submitting required documentation to the Department and enlarging and strengthening the revetment in the beaches and beach/dune system critical areas at the Site.

Action: The Individual/Entity is required to: submit a Corrective Action Plan (CAP) to the Department within 15 days of the effective date of the Order. This CAP is required to detail the steps that will need to be taken to return the revetment at the Site to a location and dimensions compliant with the Act and Regulations, and subsequently remedy the violations at the Site in accordance with the approved CAP. The Department has assessed a total civil penalty in the amount of four thousand dollars (\$4,000.00). The Individual/Entity shall pay a civil penalty in the amount of four thousand dollars **(\$4,000.00)** to be paid within thirty (30) days of the effective date of this Order.

Update: The Individual/Entity has provided notice to the Department of a Request for Contested Case filing with the Administrative Law Court.

\* Unless otherwise specified, "Previous Orders" as listed in this report include orders issued by Environmental Affairs Programs within the last five (5) years.

**SUMMARY SHEET**  
**SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL**

September 9, 2021

( X ) ACTION/DECISION

( ) INFORMATION

**I. TITLE:** Request for Placement of 4,4'- DMAR in Schedule I for Controlled Substances in South Carolina

**II. SUBJECT:** Placement of 4,4'- DMAR in Schedule I for Controlled Substances

**III. FACTS:**

Controlled substances are governed by the South Carolina Controlled Substances Act (“CSA”), Title 44, Chapter 53 of the South Carolina Code of Laws. Schedule I substances are listed in Section 44-53-190 of the South Carolina Code of Laws. Pursuant to Section 44-53-160, titled “Manner in which changes in schedule of controlled substances shall be made,” controlled substances are generally designated by the General Assembly upon recommendation by the Department. Section 44-53-160(C) provides a process for the Department to expeditiously designate a substance if the federal government has so designated.

South Carolina Section 44-53-160(C) states:

If a substance is added, deleted, or rescheduled as a controlled substance pursuant to federal law or regulation, the department shall, at the first regular or special meeting of the South Carolina Board of Health and Environmental Control within thirty days after publication in the federal register of the final order designating the substance as a controlled substance or rescheduling or deleting the substance, add, delete, or reschedule the substance in the appropriate schedule. The addition, deletion, or rescheduling of a substance by the department pursuant to this subsection has the full force of law unless overturned by the General Assembly. The addition, deletion, or rescheduling of a substance by the department pursuant to this subsection must be in substance identical with the order published in the federal register effecting the change in federal status of the substance. Upon the addition, deletion, or rescheduling of a substance, the department shall forward copies of the change to the Chairmen of the Medical Affairs Committee and the Judiciary Committee of the Senate, the Medical, Military, Public and Municipal Affairs Committee, and the Judiciary Committee of the House of Representatives, and to the Clerks of the Senate and House, and shall post the schedules on the department's website indicating the change and specifying the effective date of the change.

On August 12, 2021, the Drug Enforcement Administration (“DEA”) published a final rule which places 4,4'- dimethylaminorex (common name: 4,4'- DMAR) including its salts, isomers, and salts of isomers, in schedule I of the Controlled Substances Act (“CSA”). This final rule imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle 4,4'- DMAR. This final rule was published August 12, 2021 with an effective date of September 13, 2021, *Federal Register*, Volume 86, Number 153, pages 44270-44273; <https://www.govinfo.gov/content/pkg/FR-2021-08-12/pdf/2021-17052.pdf>.



#### **IV. ANALYSIS:**

4,4'-Dimethylaminorex (common name: 4,4'-DMAR; other names: 4,5- dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine; 4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol2-amine) is a synthetic stimulant drug structurally related to 4-methylaminorex (4-MAR), a schedule I substance in the United States and a Schedule I substance in the 1971 Convention. In November 2015, the Director-General of the World Health Organization recommended the Secretary-General of the United Nations ("UN Secretary General") place 4,4'-DMAR in Schedule II of the 1971 Convention, as 4,4'-DMAR produces a spectrum of pharmacological effects similar to psychomotor stimulants listed in Schedule II of the 1971 Convention, and has dependence and abuse potential. In May 2016, the UN Secretary-General advised the Secretary of State of the United States ("U.S. Secretary of State") that the Commission on Narcotic Drugs ("CND") voted to place 4,4'-dimethylaminorex (4,4'-DMAR) in Schedule II of the 1971 Convention (CND Dec/59/5) during its 59th Session in March 2016.

On October 12, 2018, Health and Human Services ("HHS") provided to DEA a scientific and medical evaluation and scheduling recommendation for 4,4'-DMAR. DEA subsequently reviewed HHS' evaluation and recommendation for schedule I placement and all other relevant data, and conducted its own analysis under the eight factors stipulated in 21 U.S.C. 811(c). DEA found, under 21 U.S.C. 812(b)(1), that this substance warrants control in schedule I.

On April 7, 2020, DEA published a notice of proposed rulemaking ("NPRM") entitled "Schedules of Controlled Substances: Placement of 4,4'-DMAR in schedule I of the CSA." 85 FR 19401. The NPRM provided an opportunity for interested persons to file a request for hearing, in accordance with DEA regulations, on or before June 8, 2020. No requests for such a hearing were received by DEA. The NPRM also provided an opportunity for interested persons to submit comments on the proposed rule on or before June 8, 2020.

After consideration of the public comments, the scientific and medical evaluations and accompanying recommendation of HHS, and conducting an independent eight-factor analysis, DEA finds substantial evidence of potential for abuse of 4,4'-DMAR. As such, DEA is permanently scheduling 4,4'-DMAR as a controlled substance under the CSA.

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for HHS and review of all other available data, the Administrator of DEA, pursuant to 21 U.S.C. 811(a) and 812(b)(1), finds that:

- 1) 4,4'-DMAR has a high potential for abuse. This potential is comparable to other schedule I substances (e.g., aminorex and 3,4- methylenedioxymethamphetamine) or schedule II substances (e.g., d-amphetamine).
- 2) 4,4'-DMAR has no currently accepted medical use in treatment in the United States.
- 3) There is a lack of accepted safety for use of 4,4'-DMAR under medical supervision.

#### **V. RECOMMENDATION:**

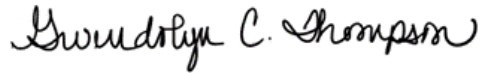
Pursuant to S.C. Code Section 44-53-160(C), the Department recommends placing 4,4'- dimethylaminorex (common name: 4,4'- DMAR) in Schedule I in the same manner as the federal Drug Enforcement Administration. The listing includes its including its salts, isomers, and salts of isomers to schedule I for controlled substances in South Carolina and the amendment of Section 44-53-190(F) of the South Carolina Controlled Substances Act to include:

( ) 4,4'-Dimethylaminorex (4,4'-DMAR; 4,5-dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine; 4-methyl-5-(4- methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine).

Submitted by:



Lisa Thomson  
Director, Bureau of Drug Control



Gwen Thompson  
Director for Healthcare Quality

Attachment:

*Federal Register*, Volume 86, Number 153, August 12, 2021

omitted in good faith in conformity with this interpretive rule, notwithstanding that after such act or omission has occurred, the interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.<sup>18</sup>

As an interpretive rule, this rule is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.<sup>19</sup> Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.<sup>20</sup> The Bureau has determined that this interpretive rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.<sup>21</sup>

Pursuant to the Congressional Review Act,<sup>22</sup> the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a "major rule" as defined by 5 U.S.C. 804(2).

#### IV. Signing Authority

The Acting Director of the Bureau, David Uejio, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

Dated: August 5, 2021.

**Laura Galban,**

*Federal Register Liaison, Bureau of Consumer Financial Protection.*

[FR Doc. 2021-17050 Filed 8-11-21; 8:45 am]

**BILLING CODE 4810-AM-P**

<sup>18</sup> 15 U.S.C. 1640(f); *see also* 12 U.S.C. 2617(b), 12 CFR 1024.4 (similar protection conferred by the Real Estate Settlement Procedures Act from certain liability).

<sup>19</sup> 5 U.S.C. 553(b).

<sup>20</sup> 5 U.S.C. 603(a), 604(a).

<sup>21</sup> 44 U.S.C. 3501 *et seq.*

<sup>22</sup> 5 U.S.C. 801 *et seq.*

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Part 1308

[Docket No. DEA-498]

#### Schedules of Controlled Substances: Placement of 4,4'-DMAR in Schedule I

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** With the issuance of this final rule, the Drug Enforcement Administration places 4,4'-dimethylaminorex (common name: 4,4'-DMAR) including its salts, isomers, and salts of isomers, in schedule I of the Controlled Substances Act. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle 4,4'-DMAR.

**DATES:** *Effective date:* September 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362-3249.

#### SUPPLEMENTARY INFORMATION:

##### Legal Authority

The United States is a party to the 1971 United Nations Convention on Psychotropic Substances (1971 Convention), February 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175, as amended. Procedures respecting changes in drug schedules under the 1971 Convention are governed domestically by 21 U.S.C. 811(d)(2-4). When the United States receives notification of a scheduling decision pursuant to Article 2 of the 1971 Convention adding a drug or other substance to a specific schedule, the Secretary of the Department of Health and Human Services (HHS),<sup>1</sup> after

<sup>1</sup> As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518 (March 8, 1985).

consultation with the Attorney General, shall first determine whether existing legal controls under subchapter I of the Controlled Substances Act (CSA) and the Federal Food, Drug, and Cosmetic Act meet the requirements of the schedule specified in the notification with respect to the specific drug or substance. 21 U.S.C. 811(d)(3). In the event that the Secretary of HHS (Secretary) did not so consult with the Attorney General, and the Attorney General did not issue a temporary order, as provided under 21 U.S.C. 811(d)(4), the procedures for permanent scheduling are set forth in 21 U.S.C. 811(a) and (b). Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, add to such a schedule or transfer between such schedules any drug or other substance, if he finds that such drug or other substance has a potential for abuse, and makes with respect to such drug or other substance the findings prescribed by 21 U.S.C. 812(b) for the schedule in which such drug or other substance is to be placed. The Attorney General has delegated this scheduling authority to the Administrator of the Drug Enforcement Administration (DEA Administrator or Administrator). 28 CFR 0.100.

#### Background

4,4'-Dimethylaminorex (common name: 4,4'-DMAR; other names: 4,5-dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine; 4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine) is a synthetic stimulant drug structurally related to 4-methylaminorex (4-MAR), a schedule I substance in the United States and a Schedule I substance in the 1971 Convention. In November 2015, the Director-General of the World Health Organization recommended the Secretary-General of the United Nations (UN Secretary-General) place 4,4'-DMAR in Schedule II of the 1971 Convention, as 4,4'-DMAR produces a spectrum of pharmacological effects similar to psychomotor stimulants listed in Schedule II of the 1971 Convention, and has dependence and abuse potential. In May 2016, the UN Secretary-General advised the Secretary of State of the United States (U.S. Secretary of State) that the Commission on Narcotic Drugs (CND) voted to place 4,4'-dimethylaminorex (4,4'-DMAR) in Schedule II of the 1971 Convention (CND Dec/59/5) during its 59th Session in March 2016.

The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

## DEA and HHS Eight Factor Analyses

On October 12, 2018, in accordance with 21 U.S.C. 811(b), and in response to DEA's March 21, 2017 request, HHS provided to DEA a scientific and medical evaluation and a scheduling recommendation for 4,4'-DMAR. DEA subsequently reviewed HHS' evaluation and recommendation for schedule I placement and all other relevant data, and conducted its own analysis under the eight factors stipulated in 21 U.S.C. 811(c). DEA found, under 21 U.S.C. 812(b)(1), that this substance warrants control in schedule I. Both DEA and HHS analyses are available in their entirety in the public docket for this rule (Docket Number DEA-498) at <http://www.regulations.gov> under "Supporting Documents."

## Notice of Proposed Rulemaking to Schedule 4,4'-DMAR

On April 7, 2020, DEA published a notice of proposed rulemaking (NPRM) entitled "Schedules of Controlled Substances: Placement of 4,4'-DMAR in schedule I of the CSA." 85 FR 19401. The NPRM provided an opportunity for interested persons to file a request for hearing in accordance with DEA regulations on or before June 8, 2020. No requests for such a hearing were received by DEA. The NPRM also provided an opportunity for interested persons to submit comments on the proposed rule on or before June 8, 2020.

## Comments Received

DEA received two comments on the proposed rule to control 4,4'-DMAR in schedule I of the CSA.

*Support for rulemaking:* One commenter recognized the dangers and public health risks, and supported the placement of 4,4'-DMAR in schedule I.

*DEA Response:* DEA appreciates the comment in support of this rulemaking.

*Dissent for rulemaking:* One commenter stated that the number of 4,4'-DMAR related deaths reported in Europe is small relative to its population, and evidence supporting scheduling is anecdotal. The commenter stated that schedule I control would restrict the ability to conduct research, and suggested that additional research with 4,4'-DMAR should take place first before clamping down. This commenter questioned the appropriateness of control of 4,4'-DMAR as a schedule I substance and suggested schedule II control for this substance.

*DEA Response:* DEA does not agree. As discussed above, in May 2016, the Secretary-General advised the U.S. Secretary of State that the CND voted in March 2016 to place 4,4'-DMAR in

Schedule II of the 1971 Convention. As the CSA recognizes, under 21 U.S.C. 801(7), the United States is a party to international conventions, including the 1971 Convention, and is obligated to maintain appropriate control provisions related to the drugs that are covered by the treaty. In addition, DEA conducted an eight-factor analysis pursuant to 21 U.S.C. 811(c), and based its scheduling determination on a comprehensive evaluation of all available data, not just the number of deaths and anecdotal data. As stated in the proposed rulemaking, after careful review of all data, DEA concurred with HHS' assessment that 4,4'-DMAR has abuse potential comparable to other schedule I (e.g. aminorex and 3,4-methylenedioxyamphetamine) or II (*d*-amphetamine) substances, and is therefore promulgating this final rule placing 4,4'-DMAR in schedule I under the CSA.

With regard to the commenter's statement that placement of 4,4'-DMAR in schedule I would restrict research on this substance, DEA notes that placing a substance in schedule I does not prohibit research on that substance. Persons interested in conducting research with 4,4'-DMAR can do so provided that they have a DEA schedule I researcher registration and meet all other statutory and regulatory criteria. This registration can be obtained by submitting an application for schedule I registration in accordance with 21 CFR 1301.11, 1301.13, 1301.18, and 1301.32. The CSA provides the specific administrative process for the Attorney General (as delegated to the Administrator), in consultation with the Secretary, to approve the registration for the bonafide research with schedule I drug substances. 21 U.S.C. 823(f); see 21 CFR 1301.18. Thus, DEA believes that adding 4,4'-DMAR in the list of schedule I substances will not restrict any legitimate research.

With regard to the commenter's suggestion that 4,4'-DMAR be placed under schedule II, as DEA has stated in prior scheduling petitions, "Congress established only one schedule, schedule I, for drugs of abuse with 'no currently accepted medical use in treatment in the United States' and 'lack of accepted safety for use . . . under medical supervision.'" 21 U.S.C. 812(b)." 76 FR 40552 (2011); 66 FR 20038 (2001). As stated by HHS in its scientific and medical evaluation of 4,4'-DMAR, there are currently no Food and Drug Administration (FDA)-approved drug products containing 4,4'-DMAR for any clinical indication, nor are there clinical studies or petitioners that claim an accepted medical use in the United

States. Thus, 4,4'-DMAR currently has no accepted medical use in treatment in the United States.<sup>2</sup> Therefore, placement of 4,4'-DMAR in schedule I of the CSA is appropriate.

## Scheduling Conclusion

After consideration of the public comments, the scientific and medical evaluations and accompanying recommendation of HHS, and conducting an independent eight-factor analysis, DEA finds substantial evidence of potential for abuse of 4,4'-DMAR. As such, DEA is permanently scheduling 4,4'-DMAR as a controlled substance under the CSA.

## Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for HHS and review of all other available data, the Administrator of DEA, pursuant to 21 U.S.C. 811(a) and 812(b)(1), finds that:

(1) 4,4'-DMAR has a high potential for abuse. This potential is comparable to other schedule I substances (e.g., aminorex and 3,4-methylenedioxyamphetamine) or schedule II substances (e.g., *d*-amphetamine);

(2) 4,4'-DMAR has no currently accepted medical use in treatment in the United States; and

(3) There is a lack of accepted safety for use of 4,4'-DMAR under medical supervision.

Based on these findings, the Administrator concludes that 4,4'-DMAR, including its salts, isomers, and salts of isomers, warrants control in schedule I of the CSA. 21 U.S.C. 812(b)(1).

## Requirements for Handling 4,4'-DMAR

4,4'-DMAR is subject to the CSA's schedule I regulatory controls and

<sup>2</sup> Although there is no evidence suggesting that 4,4'-DMAR has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by FDA, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. The drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. 57 FR 10499 (1992), pet. for rev. denied, *Alliance for Cannabis Therapeutics v. DEA*, 15 F.3d 1131, 1135 (D.C. Cir. 1994).

administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, exporting, research, and conduct of instructional activities, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses), or who desires to handle 4,4'-DMAR, must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Any person who currently handles 4,4'-DMAR and is not registered with DEA must submit an application for registration and may not continue to handle 4,4'-DMAR, unless DEA has approved that application, pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of stocks.* Any person unwilling or unable to obtain a schedule I registration must surrender all quantities of currently held 4,4'-DMAR, or may transfer all quantities of currently held 4,4'-DMAR to a person registered with DEA. 4,4'-DMAR is required to be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and tribal laws.

3. *Security.* 4,4'-DMAR is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821 and 823 and in accordance with 21 CFR 1301.71–1301.76. Non-practitioners handling 4,4'-DMAR must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of 4,4'-DMAR must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

5. *Quota.* Only registered manufacturers are permitted to manufacture 4,4'-DMAR in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

6. *Inventory.* Every DEA registrant who possesses any quantity of 4,4'-DMAR, must take an inventory of 4,4'-DMAR on hand pursuant to 21 U.S.C. 827 and 958 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

Any person who registers with DEA must take an initial inventory of all stocks of controlled substances (including 4,4'-DMAR) on hand on the date the registrant first engages in the handling of controlled substances,

pursuant to 21 U.S.C. 827, 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b).

After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including 4,4'-DMAR) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant must maintain records and submit reports with respect to 4,4'-DMAR, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1312, and 1317. Manufacturers and distributors must submit reports regarding 4,4'-DMAR to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

8. *Order Forms.* Every DEA registrant who distributes 4,4'-DMAR must comply with the order form requirements, pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305.

9. *Importation and Exportation.* All importation and exportation of 4,4'-DMAR must comply with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving 4,4'-DMAR not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

#### Regulatory Analyses

*Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)*

In accordance with 21 U.S.C. 811(a), this final scheduling action is subject to formal rulemaking procedures performed “on the record after opportunity for a hearing,” which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563.

*Executive Order 12988, Civil Justice Reform*

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard

for affected conduct, and promote simplification and burden reduction.

*Executive Order 13132, Federalism*

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

This rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*Regulatory Flexibility Act*

The Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–602, has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities.

DEA is placing the substance 4,4'-DMAR, including its salts, isomers, and salts of isomers, in schedule I of the CSA. This action is being taken to enable the United States to meet its obligations under the 1971 Convention. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle 4,4'-DMAR.

Based on the review of HHS' scientific and medical evaluation and all other relevant data, DEA determined that 4,4'-DMAR has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks accepted safety for use under medical supervision. DEA's research confirms that there is no legitimate commercial market for 4,4'-DMAR in the United States. Therefore, DEA estimates that no United States entity currently handles 4,4'-DMAR and does not expect any United States entity to handle 4,4'-DMAR in the foreseeable future. DEA concludes that no legitimate United States entity would be affected by this rule. As such, this rule will not have a

significant effect on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.*, DEA has determined and certifies that this action would not result in any Federal mandate that may result “in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year \* \* \*.” Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

*Congressional Review Act*

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However,

(4) 4,4'-Dimethylaminorex (4,4'-DMAR; 4,5-dihydro-4-methyl-5-(4-methylphenyl)-2-oxazolamine; 4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine) .....

1595

\* \* \* \* \*

Anne Milgram,  
Administrator.

[FR Doc. 2021-17052 Filed 8-11-21; 8:45 am]

BILLING CODE 4410-09-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket Number USCG-2021-0545]

RIN 1625-AA08

**Special Local Regulation; Great South Bay, Brightwaters, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation of certain navigable waters of Great South Bay, from Gilbert Park, Brightwaters, NY to Fire Island Lighthouse, NY for the Maggie Fischer Memorial Cross Bay Swim event. This action is necessary to provide the safety of life on these navigable waters during the swim event on Thursday, August 12, 2021. This rulemaking will prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Long Island Sound or a designated representative.

**DATES:** This rule is effective from 8 a.m. through 12:30 p.m. on Thursday, August 12, 2021.

pursuant to the CRA, DEA is submitting a copy of this final rule to the Government Accountability Office, the House, and the Senate under the CRA.

*Paperwork Reduction Act of 1995*

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501-3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control,

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0545 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MST1 Chris Gibson, Waterways Management Division, U.S. Coast Guard; telephone 203-468-4565, email [Chris.A.Gibson@uscg.mil](mailto:Chris.A.Gibson@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR Code of Federal Regulations  
COTP Captain of the Port Long Island Sound  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a

Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is amended as follows:

**PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES**

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, redesignate paragraphs (f)(4) through (8) as (f)(5) through (9) and add a new paragraph (f)(4) to read as follows:

**§ 1308.11 Schedule I.**

\* \* \* \* \*  
(f) \* \* \*

notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. We must establish the temporary special local regulation by August 12, 2021 and insufficient time exists to execute the full NPRM process. Further, the expeditious implementation of this rule is in the public interest because it will help ensure the safety of those involved in the swim event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because the temporary special local regulation must be established on August 12, 2021 to ensure the safety of spectators and vessels during the swim event.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Long Island Sound (COTP) has determined that potential hazards associated with the Maggie Fischer Memorial Cross Bay Swim marine event for any persons or vessels operating within certain waters of the Great South Bay, NY. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the special local regulated area during the Maggie Fischer Memorial Cross Bay Swim marine event.

# **ADMINISTRATIVE RECORD**



2827

**Spring Street Senior Housing  
OPCO, LLC d/b/a Spring Street  
Health Center  
Charleston County**

Construction for the establishment of  
a 23-bed skilled nursing facility at a  
total project cost of \$7,703,284.





# LIBERTY Senior Living

2334 S. 41<sup>st</sup> Street • Wilmington, NC 28403  
(910) 815-3122 • FAX: (910) 815-3111

SCDHEC  
Received:  
NOV 22 2020  
Certificate of Need Program

November 19, 2020

Louis Eubank, MSW, MPH  
Director, Certificate of Need Program  
S.C. Department of Health & Environmental Control  
2600 Bull Street  
Columbia, SC 29201

RE: **APPLICATION SUBMISSION** – Certificate of Need Application

Dear Mr. Eubank,

Please let this letter serve as the **application submission notification** for Spring Street Senior Housing OPCO, LLC to file a Certificate of Need application to operate a 23-bed non-institutional nursing home.

The nursing home facility will be part of a larger healthcare building, which Spring Street Senior Housing OPCO, LLC is proposing to operate as “Spring Street Health Center” using this as its “doing business as” (d/b/a) name. The healthcare building will be located on a +/- 1 acre campus at 194 Spring St. Charleston, SC 29403 and the nursing home facility will be on the fifth floor. In addition to the 23-bed nursing home, the building is expected to include 77 assisted living (adult care) beds (including 21 memory care units). The assisted and memory care units do not require a CON.

Thank you in advance for your time and consideration in this matter.

The CON initial filing fee check of \$500.00 is included with the Application and Exhibits.

Sincerely,

Timothy Walsh  
Senior Financial Analyst  
[TWalsh@LibertySeniorLiving.com](mailto:TWalsh@LibertySeniorLiving.com)  
(910) 332-1982

Enclosed:

- CON Application
- CON Exhibits
- CON Initial Filing Fee

**Certificate of Need Application to  
Construct and Operate a Nursing Home  
with 23 Non-Institutional Beds  
in Charleston County, SC**

*Submitted to*

South Carolina Department of Health  
and Environmental Control

*Submitted by*

Spring Street Senior Housing OPCO, LLC  
d/b/a "Spring Street Health Center"  
One Town Center Road, Suite 300  
Boca Raton, Florida 33486  
(Business Address)

*Prepared by*

Timothy Walsh  
2334 South 41<sup>st</sup> Street  
Wilmington, NC 28403

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## APPLICATION CERTIFICATION

### APPLICATION FOR CERTIFICATION OF NEED FOR A HEALTH FACILITY OR SERVICE

Proposal Prepared By:

Name: Timothy Walsh

Title: Senior Financial Analyst

Organization: Liberty Senior Living

Address: 2334 South 41st Street

City: Wilmington

State: North Carolina

Zip Code: 28403

Email: TWalsh@libertyseniorliving.com

Telephone

Number: 910.512.9191

Fax: [All documents should be scanned/emailed]

The applicant hereby certifies that the information contained in this Application, including all assurances and attachments, are correct to the best of his knowledge and belief.

Signature: 

Date: 11/19/2020

Forward to:

**Bureau of Health Facilities and Services Development  
S.C. Department of Health and Environmental Control  
2600 Bull Street, Columbia, S.C. 29201**

APPLICATION FOR CERTIFICATION OF NEED  
FOR A HEALTH FACILITY OR SERVICE

NOTE: A "complete" application shall include a written narrative report by the applicant (Regulation 61-15, Section 202).

<b>PART A - QUESTIONNAIRE</b>
<b>1. Name of Facility</b> <b>Spring Street Senior Housing OPCO, LLC (d/b/a Spring Street Health Center)</b>
<b>2. Address, City, County, State, Zip Code</b> <b>194 Spring Street, Charleston (Charleston County), SC 29403</b> <b>(This is an undeveloped site and does not have a working mailing address)</b>

<b>3. Type of Facility (Circle)</b>		
A. Hospital	<input checked="" type="radio"/> B. Nursing Home	C. Psychiatric Facility
D. Rehabilitation Facility	E. Substance Abuse Facility	F. Ambulatory Surgery Facility
G. Other (Specify)		

<b>4. Purpose of Review (Circle)</b>		
<input checked="" type="radio"/> A. New Facility	B. Change of Licensure	C. Addition to Existing Facility
D. Renovation of Existing Facility	E. Change of Services	
F. Other (Specify)		

<b>5. Management</b>		
A. Name of Administrator <b>Cindy Stancil (A SC licensed nursing home administrator will be employed prior to licensing)</b>		B. Address, City, State, Zip Code <b>2334 South 41<sup>st</sup> Street Wilmington, NC 28403</b>
C. Telephone <b>910.332.1783</b>	D. Fax Number <b>Scan/Email Only</b>	E. Email <b>CStancil@libertyseniorliving.com</b>

<b>6. Licensee</b>	
A. Name of Licensee <b>Spring Street Senior Housing OPCO, LLC (d/b/a Spring Street Health Center)</b>	
B. Address, City, State, Zip Code <b>One Town Center Road, Suite 300 Boca Raton, Florida 33486 (Corporate Office)</b>	

<b>7. Ownership or Control of the Facility</b> (Attach a list of names and addresses of the owners of the facility, indicating percent of ownership of each owner, the person responsible for the proposal, and the attorney(s) representing the proposal). Circle the appropriate information regarding ownership.			
A. Individual	B. Partnership	<input checked="" type="radio"/> C. Corporation	D. Proprietary
E. Non-Profit	F. Government (Specify)		
G. Other (Specify)			

<b>8. Proposed Site of the Property</b>	
A. Owned	<input checked="" type="radio"/> B. Leased
C. Length of Site Lease <b>5 years with options for two 5-year extensions</b>	
D. Option	E. Length of Option
F. Name and Address of Owner(s) of Real Property <b>Spring Street Senior Housing PROPCO, LLC</b>  <b>One Town Center Road, Suite 300</b> <b>Boca Raton, Florida 33486</b> <b>(Business Address)</b>	

<b>9. Total Bed Capacity for Which Application is Made</b>				
	New Facility Only	Existing Facilities		
		Existing Beds	# Gained or Lost	Bed Total
Type of Beds				
A. Medical/Surgical				
B. Obstetrics				
C. Pediatrics				
D. Substance Abuse				
E. Psychiatric				
F. Rehabilitation				
G. Nursing Care	<b>23</b>			<b>23</b>
H. RTFs				
I. ICU/CCU				
J. Other				
K. TOTAL	<b>23</b>			<b>23</b>

<b>10. Construction and Site</b>	
A. Type of Construction <b>I-B, Concrete and Metal</b>	B. Number of Buildings Pertaining to Project <b>1</b>
C. Number of Stories Pertaining to Project <b>One SNF Floor (Fifth Floor)</b>	D. Size of the Site in Acres <b>+/- 1 acres</b>
E. Size of the Project Site in Acres <b>+/- 1 acres</b>	F. Square Footage of the Project <b>85,693 SF Total for Building</b> <b>14,233 SF Total for Nursing Home</b>
G. Anticipated Date of Beginning Construction <b>June, 2020</b>	H. Anticipated Date of Licensing or Project Completion <b>October, 2022</b>
I. Anticipated Date for Submission of Final Completion Report <b>November, 2022</b>	

**11. Zoning of Construction Site – Planned Development; see C.6 for documentation.**

<b>12. Costs (Provide Estimated Signed Cost Statement from Either the Architect or Engineer)</b>	
A. Land Cost <b>\$1,047,324</b>	B. Construction Cost <b>\$4,787,175</b>
C. Architect's/Engineer's Fee <b>\$230,378</b>	D. Equipment Costs (to include taxes) <b>\$402,545 Fixed &amp; Moveable</b> 1) Fixed Equipment  2) Movable Equipment
E. Financing Cost During Construction <b>\$589,197</b>	F. Other Costs (Specify) <b>\$646,666 (See budget in B.3)</b>
G. Total Project Cost <b>\$7,703,284</b>	H. Construction and Equipment Cost [4,787,175+402,545 = 5,189,720] 1) Per Square Foot – <b>14,233 SF = \$364.63/SF</b>  2) Per Bed – <b>23 beds = \$225,640/bed</b>

## PART B—ADDITIONAL INFORMATION

(1) *Document that the applicant has published notification of this project in a local newspaper as required by Section 201 of these Regulations.*

**Response:**

**Exhibit 1** presents proof that public notification was placed in the *Post & Courier*, the local daily newspaper serving Charleston County. The public notification was placed in the newspaper for three consecutive days beginning within 20 days of the submission of this application.

(2) *Describe the project setting forth the proposed change in services or facilities in as much detail as possible. State whether the project will change the existing licensed or survey bed capacity, will encompass the development of a new service, or result in the discontinuance of an existing service. If a new facility is proposed, list all services to be provided.*

**Response:**

This Certificate of Need (CON) application outlines the proposal by Spring Street Senior Housing OPCO, LLC to construct and operate a 23-bed non-institutional nursing home in Charleston, SC.

The nursing home facility will be part of a larger healthcare building, which Spring Street Senior Housing OPCO, LLC is proposing to operate as “Spring Street Health Center” using this as its “doing business as” (d/b/a) name. The healthcare building will be located on a +/- 1 acre campus at 194 Spring St. Charleston, SC 29403 and the nursing home facility will be on the fifth floor.

In addition to the 23-bed nursing home, the building is expected to include 77 assisted living (adult care) beds (including 21 memory care units). The number of assisted and memory care units, which do not require a CON, are not completely finalized, so there is a possibility of minor changes to the overall quantity.

The skilled nursing center will be Medicare certified, but will not participate in the state Medicaid program. In this application, “skilled nursing facility”, “SNF” and “nursing home” are considered the same service and are used interchangeably. Additionally “Spring Street” and “Spring Street Health Center” are used to refer to the applicant.

The proposed project complies with the South Carolina Department of Health and Environmental Control Regulation No. 61-15, “Certificate of Need for Health Facilities and Services” effective May 25, 2012. This application fully satisfies the stipulated criteria for this type of project and is fully consistent with the *2020 South Carolina Health Plan* (enacted March 13, 2020 for all by Chapter 3, which was enacted June 12, 2020) which includes specific standards relative to home health care services.

This application fully describes the proposed project, documents the need, and demonstrates the financial viability of the project.

(3) *Provide the total cost of the project, indicating design fees, land cost, interest cost, construction cost, equipment cost, and any other cost involved in the project. Provide an estimate of the construction cost from a licensed architect or engineer; in the case of equipment, valid/current estimate from a vendor is acceptable.*



**Response:**

Since Spring Street Health Center is being designed, financed, and constructed as one large project, we are presenting the total project budget and breaking it out into its two major components: Skilled Nursing (23-bed) and Assisted Living (AL or ACH). Only the SNF portion is subject to CON review. The SNF budget is documented in the spreadsheet.

<b>Project Budget</b>			
	<b>SNF</b>	<b>ACH</b>	<b>TOTAL</b>
A. Land	\$1,047,324	\$5,258,325	\$6,305,649
B. Construction Costs			
1. Construction	\$4,581,029	\$23,000,094	\$27,581,123
2. Contingency (4.5%)	\$206,146	\$1,035,005	\$1,241,151
Subtotal Construction Costs:	\$4,787,175	\$24,035,099	\$28,822,274
C. Design Fees			
1. A/E Fees	\$143,338	\$719,662	\$863,000
2. Other Design/License/Permit Fees	\$87,039	\$437,001	\$524,040
Subtotal Design	\$230,378	\$1,156,662	\$1,387,040
D. Furniture & Equipment (Fixed & Moveable)			
1. Equipment (Fixed & Moveable)	\$369,308	\$1,854,192	\$2,223,500
2. Sales Tax (9.0% for Charleston County, SC)	\$33,238	\$166,877	\$200,115
Subtotal F&E	\$402,545	\$2,021,070	\$2,423,615
Subtotal- Construction, Design, and Equipment	\$5,420,098	\$27,212,831	\$32,632,929
E. Financing Costs During Construction	\$589,197	\$2,958,195	\$3,547,392
F. Other Costs			
1. Legal / Professional Fees	\$267,140	\$1,341,236	\$1,608,376
3. CON Fee	\$15,000		\$15,000
4. Developer Fee (5%)	\$364,526	\$1,830,186	\$2,194,712
Subtotal for Other Costs	\$646,666	\$3,171,422	\$3,818,088
<b>GRAND TOTAL</b>	<b>\$7,703,284</b>	<b>\$38,600,773</b>	<b>\$46,304,058</b>

Unless stated otherwise, project costs were allocated between the elements based on the square footage of each level of care (skilled nursing or assisted living).

- A. Land. The land cost was the cost agreed upon in the joint venture agreement.
- B. Construction Cost. The estimated cost of construction is documented in **Exhibit 2**, which presents a letter from McMillan Pazdan Smith, the architectural firm working with Spring Street.
- C. Design Fees. The costs of the design services are stated in the architect's letter referenced above.
- D. Furniture & Equipment. The budget for furniture, fixtures, and equipment is based on the applicant's experience, which includes thirty-five nursing homes, seven assisted living facilities, two independent living communities, five Continuing Care Retirement Communities, a home health and hospice company with twenty-five locations servicing

various urban and rural counties in North Carolina, South Carolina, and Virginia, a durable medical equipment company, as well as a retail and a long-term care pharmacy. This includes Shem Creek Health Center, a combination community apart of South Bay at Mt. Pleasant. We included sales tax for Charleston County at the 9%.

- E. Financing Costs during Construction. This is our estimate of the interest incurred on money borrowed during construction.
- F. Other Costs. This represents costs associated with 1) Legal / Professional Fees, 2) CON Fee, and 3) Developer Fee (5% of all costs minus sales tax and the CON fee).

*(4) State the specific location of the facility or service and/or equipment, including, where applicable, specific areas of an existing facility to be affected by the project. Provide room numbers of all patient rooms affected. Sufficient detail should be provided to allow the Department to visually inspect the site. The number of private and semi-private patient rooms shall be identified.*

**Response:**

The location is 194 Spring St. Charleston, SC 29403. This is new construction that does not affect any existing facility or patient rooms. This proposal is for a new facility that will include 19 private patient rooms and 2 semi-private patient rooms for a total of 21 SNF patient rooms and 23 SNF beds.

*(5) Provide details regarding any proposed construction and/or renovations. Discuss alternatives to new construction and why these alternatives were rejected. For a multi-floor project, construction and/or renovation must be described, by floor, to include any additions and/or deletions made to each floor. Provide evidence that the applicant has adequately planned for any temporary move or relocation of any department, facility, or services, which may be necessary during the construction period. Document that plans exist to assure adequate protection (from fire, noise, dust, etc.) and continuation of all services during the proposed construction period.*

**Response:**

The nursing home will be a part of a larger multi-story building. Nursing homes must meet institutional occupancy and it is generally not feasible to renovate existing structures for this use. Moreover, this proposed nursing home is an integral part of a larger development and, thus, requires new construction. Since this is new construction, there are no issues with temporary moves, relocations, or any issues relating to continuation of existing services.

*(6) If a replacement facility or ancillary service is being constructed, describe plans for disposition of the existing facility or ancillary service area upon completion of the project.*

**Response:**

Not applicable since no space is being replaced.

*(7) Provide a timetable for development and completion of the project to include, at a minimum, the date of site acquisition, date of architectural contract, architectural design schedule, date of closing for financing, date of valid construction contract, date that all necessary permits (grading, building, sewer, etc.) will be obtained, and date of start of*

construction. The timetable shall be presented in one month increments commencing with the month following receipt of the Certificate of Need and ending with the execution of a contract or purchase order for equipment only projects.

**Response:**

The following timeline is anticipated for the project:

#	Year	Month	Project Status
1	2018	February	Start A/E Design
2	2019	June	Completion of A/E Design
3	2020	February	Completion of Construction bidding
4	2020	June	Begin Construction*
5	2020	November	Apply for CON
6	2021	May	Receive CON
7	2022	August	Complete Construction
8	2022	September	Install furniture & equipment
9	2022	October	Receive DHEC license and begin accepting patients

\*Applicants began Construction on the overall building in June 2020. The 5<sup>th</sup> floor was designed to be either memory care or skilled nursing. Due to the need in Charleston County, the Applicants decided to make the floor skilled nursing. The plans were designed to be compliant with I-1, Condition 2 memory care or I-2, Condition 1 skilled nursing. They were reviewed on this basis and granted final approval from Elie Macaron, Jr, Director of Administration for Division of Health Facilities Construction/Office of Fire and Life Safety, pending CON approval for conversion to skilled nursing beds.

(8) Provide the following ownership information:

(a) Proposed name of facility.

**Response:**

Spring Street Health Center

(b) Name and address of licensee or prospective licensee. (Note: The licensee is defined as the legal entity who, or whose governing body, has the ultimate responsibility and authority for the conduct of the facility or service the owner of the business. The licensee must be the entity to whom the Certificate of Need is issued.)

**Response:**

The licensee will be Spring Street Senior Housing OPCO, LLC (d/b/a Spring Street Health Center), One Town Center Road, Suite 300 Boca Raton, Florida 33486. This is the business address. The nursing home will use a local mailing address in Charleston, SC, once construction is complete. **Exhibit 3** presents the Certificate of Formation in Delaware and its Certificate of Authority from South Carolina.

(c) Complete title of the licensee's governing body.

**Response:**

**Exhibit 4** presents the organization chart of Spring Street Senior Housing OPCO, LLC.

(d) Name, title and mailing address of presiding officer of the governing body.

**Response:**

S. David Selznick, Vice President, Spring Street Senior Housing OPCO, LLC, One Town Center Road, Suite 300 Boca Raton, Florida 33486

- (e) *Name and mailing address of all persons and/or legal entities having any ownership interest or owner's equity of the licensee to include a schedule of percent and type ownership claim of each.*

**Response:**

Spring Street Senior Housing OPCO, LLC is wholly owned by Spring Street Senior Housing JV OPCO, LLC. Please refer to **Exhibit 4**, which presents the origination chart as well as ownership percentages of upstream ownership information. The business address is One Town Center Road, Suite 300 Boca Raton, Florida 33486.

- (f) *Name and mailing address of all persons and/or legal entities claiming liabilities of the licensee or of the facility or service for which this Certificate of Need is requested to include a schedule of percent and type of claim of each.*

**Response:**

Spring Street Senior Housing OPCO, LLC is wholly owned by Spring Street Senior Housing JV OPCO, LLC. Please refer to **Exhibit 4**, which presents the origination chart as well as ownership percentages of upstream ownership information.

- (g) *Provide a listing which identifies all officers of the licensee.*

**Response:**

Spring Street Senior Housing OPCO, LLC is wholly owned by Spring Street Senior Housing JV OPCO, LLC. Please refer to **Exhibit 4**, which presents the origination chart as well as ownership percentages of upstream ownership information.

- (h) *Is the land and/or building on/in which the proposed facility or service is to be conducted owned by the applicant?    YES   X   NO. If no, provide information on the land and building similar to that required in (b) through (g) above.*

**Response:**

Spring Street Senior Housing PROPCO, LLC, owns the land and subsequent building. **Exhibit 3** presents Spring Street Senior Housing PROPCO, LLC's Certificate of Formation in Delaware and its Certificate of Authority from South Carolina.

The building will be constructed by the Spring Street Senior Housing PROPCO, LLC and will be leased to Spring Street Senior Housing OPCO, LLC. **Exhibit 5** presents a Letter of Intent to Lease between the two parties.

1. *Name and address of the owner of the land and building:*

**Response:**

Spring Street Senior Housing PROPCO, LLC  
One Town Center Road, Suite 300  
Boca Raton, Florida 33486.

2. *Complete title of building owner's governing body:*

**Response:**

**Exhibit 4** presents the organization chart of Spring Street Senior Housing PROPCO, LLC.

3. *Name, title, and mailing address of presiding officer of governing body:*

**Response:**

S. David Selznick, Vice President, Spring Street Senior Housing PROPCO, LLC, One Town Center Road, Suite 300 Boca Raton, Florida 33486

4. *Name and mailing address of all persons and/or legal entities having any ownership interest or owner's equity of the building owner to include a schedule of percent and type ownership claim of each.*

**Response:**

Spring Street Senior Housing PROPCO, LLC is wholly owned by Spring Street Senior Housing JV PROPCO, LLC. Please refer to **Exhibit 4**, which presents the origination chart as well as ownership percentages of upstream ownership information. The business address is One Town Center Road, Suite 300 Boca Raton, Florida 33486.

5. *Name and mailing address of persons and/or legal entities claiming liabilities of the building owner for which this Certificate of Need is requested to include a schedule of percent and type of claim of each.*

**Response:**

Spring Street Senior Housing PROPCO, LLC is wholly owned by Spring Street Senior Housing JV PROPCO, LLC. Please refer to **Exhibit 4**, which presents the origination chart as well as ownership percentages of upstream ownership information. The business address is One Town Center Road, Suite 300 Boca Raton, Florida 33486.

6. *Provide a listing which identifies all officers of the building owner.*

**Response:**

Spring Street Senior Housing PROPCO, LLC is wholly owned by Spring Street Senior Housing JV PROPCO, LLC. Please refer to **Exhibit 4**, which presents the origination chart as well as ownership percentages of upstream ownership information.

- (i) *Has the licensee engaged an entity other than an employee of the licensee to manage or operate the facility or service? X YES \_\_\_ NO. If yes, provide information similar to that required in (b) through (g) above.*

**Response:**

Spring Street Senior Housing OPCO, LLC will enter into a management agreement with 190 Spring Street Management, LLC to operate the healthcare community.

190 Spring Street Management, LLC is wholly owned by Liberty Senior Living, LLC. Liberty Senior Living, LLC is wholly owned by Liberty Healthcare Group, LLC. John A. McNeill Jr. and Ronald B. McNeill are the members/managers of Liberty Healthcare Group, LLC. Please see **Exhibit 6**, which displays the upstream ownership of 190 Spring Street Management, LLC and describes the Liberty Healthcare organization services.

- (j) *Is there any agreement, contract, option, understanding, intent or other arrangement that will effect a change in any of the information requested and/or provided in (b) through (g) above. \_\_\_ YES X NO. If yes, provide information similar to that required in (b) through (g) above.*

**Response:**

There will not be any agreement, contract, option, understanding, intent or other arrangement that will effect a change in any of the information requested and/or provided in (b) through (g) above.

- (k) *Provide a complete listing of all existing licensed health care facilities and/or services and Certificates of Need in which the proposed licensee currently has an ownership interest, to include names and addresses of each facility or service. In the cases of Certificates of Need for undeveloped facilities and services, provide the name, address, and telephone number of a contact person representing the authority which issued the Certificate of Need.*

**Response:**

Spring Street Senior Housing OPCO, LLC does not currently hold any facility licenses or CON's.

However, the Liberty organization (affiliate of the Applicant) includes: thirty-five nursing homes, eight assisted living facilities, two independent living communities, five Continuing Care Retirement Communities, and a home health and hospice company with twenty-nine locations servicing various urban and rural counties in North Carolina, South Carolina, and Virginia. As you can see, the Applicant has extensive health care experience. **Exhibit 7** presents a listing of the 35 nursing homes and other healthcare services.

- (l) *Should the licensee be a subsidiary corporation, provide a diagram of the licensee's relationship to the parent corporation and list the name and address of the parent corporation as well as the corporation which has ultimate control. In addition, please provide the name and mailing address of all persons and/or legal entities having ownership interest of 5 percent or more or any person with any agreement, contract, option, arrangement, or intent to acquire ownership interest of 5 percent or more, of all corporations in the corporate organizational structure which have ultimate control of the licensee.*

**Response:**

As previously noted, Spring Street Senior Housing OPCO, LLC is wholly owned by Spring Street Senior Housing JV OPCO, LLC. Please refer to **Exhibit 4**, which presents the origination chart as well as ownership percentages of upstream ownership information.

- (9) *Provide documentation that the applicant has sought cooperative agreements such as transfer agreements with other facilities, as applicable.*

**Response:**

**Exhibit 8** presents a letter from Medical University of South Carolina (MUSC), which has expressed a willingness to enter into a transfer agreement with Spring Street should the project be issued a CON.

- (10) *Indicate the means by which a person will have access to the facility's services (i.e. physician referral, self-admission, etc.). Identify the specific facilities or agencies the applicant expects to receive referrals from (i.e. hospitals, home health agencies, etc.). Describe any limitations placed on admissions.*

**Response:**



Admission to Spring Street Health Center's nursing home will be under orders of a physician duly licensed in the State of South Carolina. It is anticipated that the following facilities will serve as a source of referral:

Assisted living centers in the area:

- Agape Assisted Living at North Charleston
- Ashley River Plantation
- Brookdale Charleston
- Dayspring Assisted Living
- Franke Home
- Palmettos of Charleston
- Sandpiper Courtyard Assisted Living
- Savannah Hall Assisted Living
- Somerby of Mount Pleasant
- Sweetgrass Court Senior Living

Hospitals in Charleston County:

- Bon Secours-St Francis Xavier Hospital
- East Cooper Medical Center
- Healthsouth Rehabilitation Hospital of Charleston
- Mount Pleasant Hospital
- MUSC Medical Center
- Palmetto Lowcountry Behavioral Health
- Roper Hospital
- Trident Medical Center
- Vibra Hospital of Charleston

There are additionally seventeen home health agencies licensed to serve Charleston County and numerous in-home care providers.

The applicant's "Indigent Care Plan" is addressed in C(1) in this application.

*(11) Demonstrate that the proposed project is needed or projected as necessary to meet an identified need of the public. This shall address at a minimum: identification of the target population; the degree of unmet need; projected utilization of the proposed facility or service; utilization of existing facilities and services; past utilization of existing similar services within the facility; and justification that the proposed project will not unnecessarily duplicate existing entities. The applicant must show all assumptions, data sources, and methodologies used. The applicant must use population statistics consistent with those generated by the State Demographer, State Budget and Control Board.*

**Response:**

Target Population. Spring Street's target population for this application includes all of the residents of Charleston County.

Service Area. Spring Street's proposed service area is Charleston County. A map of Charleston County is presented as **Exhibit 9**.

Population and Demographic Information. The population of Charleston County is shown in the table below. This table displays the population and growth among Charleston County residents who are 65 years or older. This information was found through utilizing Spotlight population facts by Environics Analytics. The additional people and growth columns were added to the table and were calculated by the applicant. The number of additional people was calculated by subtracting the current census population from the last census population. Growth was then calculated by dividing additional people from the current census estimate and multiplying the result by 100 to find the percentage of growth. **Exhibit 10** presents the population and demographic data on Charleston County, which is compiled using Spotlight population fact by Environics Analytics.

According to the National Center for Health Statistics (NCHS), National Study of Long-Term Care Providers, 83.5% of nursing home residents were 65 years of age or older<sup>1</sup>. This is important to note as this population represents the most significant demographic in need of the proposed nursing home beds.

Population and Growth among Charleston County Residents 65+				
Population by age	Spotlight pop-facts by Environics analytics, Charleston County			
	Population	% of Population	Additional People	Growth
<b>2010 Census Estimate</b>	350,209	100.00		
Age 65 - 74	25,010	7.14		
Age 75 - 84	13,869	3.96		
Age 85+	5,842	1.67		
Age 18+	277,551	79.25		
Age 21+	259,930	74.22		
Age 65+	44,721	12.77		
<b>2020 Estimated Total</b>	414,835	100.00	64,626	15.58%
Age 65 - 74	44,588	10.75	19,578	43.91%
Age 75 - 84	18,962	4.57	5,093	26.86%
Age 85+	7,146	1.72	1,304	18.25%
Age 18+	331,452	79.90	53,901	16.26%
Age 21+	314,874	75.90	54,944	17.45%
Age 65+	70,696	17.04	25,975	36.74%
<b>2025 Estimated Total</b>	444,165	100.00	29,330	6.60%
Age 65 - 74	55,404	12.47	10,816	19.52%
Age 75 - 84	22,692	5.11	3,730	16.44%
Age 85+	7,998	1.80	852	10.65%
Age 18+	353,362	79.56	21,910	6.20%
Age 21+	335,376	75.51	20,502	6.11%
Age 65+	86,094	19.38	15,398	17.89%

1 SOURCES: NCHS, National Study of Long-Term Care Providers and Table VIII in Appendix III.



Project Need. There is an unmet need for long-term care (“LTC”) beds for the residents of Charleston County. The *2020 South Carolina Health Plan* shows a long-term care bed deficit of 836 beds for Charleston County. Spring Street’s proposal for 23 LTC beds in Charleston County is an ideal location for the local residents. The site is geographically accessible and expands the diversity of healthcare options available to county residents.

**2020 South Carolina Health Plan LTC Bed Need Methodology.** According to the *2020 SC Health Plan*, Charleston County has a need for 836 additional long-term care beds. The basic assumptions of the method are:

- A ratio of 10 beds/1,000 population age 65-74 and a ratio of 58 beds/1,000 population aged 75 and over.
- For each county, these needs are calculated separately. The individual age-group needs are then added together, and the existing bed count subtracted from that total to determine the deficit or (surplus) of beds.

The table below provides projected bed utilization data for Charleston County based on the *2020 South Carolina Health Plan* bed need methodology.

Region IV	2022 Pop 65-74 (000)	Bed Need (Pop x 10)	2022 Pop 75+ (000)	Bed Need (Pop x 58)	Existing Beds	Total # Beds to be Added
Charleston	48.06	481	31.70	1,839	1,483	836

The applicant also conducted research and analysis on Charleston County. Using data found utilizing Spotlight by Environics Analytics, the applicant acquired population data for Charleston County. This population data analysis was based on 2010 Census, 2020 Census Estimate, and 2025 Census projections and estimates. The table below provides population data by age (65+) for Charleston County, which can also be found in **Exhibit 10**.

Total Population by Age	2010 Census Population	2020 Census Estimate	2025 Census Projection
Age 65 - 74	25,010	44,588	55,404
Age 75 - 84	13,869	18,962	22,692
Age 85+	5,842	7,146	7,998
Age 75+	19,711	26,108	30,690
Age 65+	44,721	70,696	86,094

Using the *2020 South Carolina Health Plan* bed methodology in conjunction with the population data found through Spotlight, the applicants have identified the county’s bed need for 2020 and 2025 within Charleston County. The table’s below provide the 2020 and 2025 (respectively) Spotlight by Environics Analytics population data in conjunction with SC Health Plan bed methodology.

Region IV	2020 Pop 65-74 (000)	Bed Need (Pop x 10)	2020 Pop 75+ (000)	Bed Need (Pop x 58)	Existing Beds	Total # Beds to be Added
Charleston	44.59	445	26.11	1,514	1,483	476
Region IV	2025 Pop 65-74 (000)	Bed Need (Pop x 10)	2025 Pop 75+ (000)	Bed Need (Pop x 58)	Existing Beds	Total # Beds to be Added
Charleston	55.04	550	30.69	1,780	1,483	847

The facility will have 23 long-term care beds that will be available to the general public. Having all the beds available to the public will give the applicants maximum flexibility in its operations and its ability to serve the community at large. Many first experience nursing home services for rehabilitation care and upon discharge step down to a less intensive level of care.

Utilization. Based on the expected build-up of admissions, the following patient days, average daily census (ADC), and percent occupancy (of the 23 beds) are projected:

	Year 1	Year 2	Year 3
Patient Days	4,625	7,665	7,665
Average Daily Census	13	21	21
Percent Occupancy	55%	91%	91%

The patient day projections are based on the experience of the applicant in the start-up and operation of its extensive experience in existing nursing homes through affiliated communities. The average daily census (ADC) was determined by dividing the patient days by the total number of days in the year and the percent occupancy was determined by dividing the ADC by the number of beds.

Current SC Health Plan Standards for Nursing Home Services. In terms of CON application review, the following specific standards are listed:

1. *Bed need is calculated on a county basis. Additional beds may be approved in counties with a positive bed need up to the need indicated.*

**Response:**

The plan shows a severe need for additional nursing home beds in Charleston County.

2. *When a county shows excess beds, additional beds will not be approved, except to allow an individual nursing facility to add some additional beds in order to make more economical nursing units. These additions are envisioned as small increments in order to increase the efficiency of the nursing home. This exception for additional beds will not be approved if it results in a three bed ward. A nursing facility may add up to 16 additional beds per nursing unit to create either 44 or 60 bed nursing units, regardless of the projected bed need for the county. The nursing facility must document how these additional beds will make a more economical unit(s).*

**Response:**

Not applicable since there is a significant shortage, not an excess.

3. *Some Institutional Nursing Facilities are dually licensed, with some beds restricted to residents of the retirement community and the remaining beds are available to the general public. The beds restricted to residents of the retirement community are not eligible to be certified for Medicare or Medicaid. Should such a facility have restricted beds that are inadvertently certified, the facility will be allowed to apply for a Certificate of Need to convert these beds to general nursing home beds, regardless of the projected bed need for that county.*

**Response:**

Not applicable since this is a new facility and Spring Street is applying for 23 non-institutional nursing home beds.

*(12) Discuss alternative facilities and/or services considered including the advantages and disadvantages of each alternative. Include a statement as to why this project alternative was adopted.*

**Response:**

The following alternatives were considered:

Do Nothing. Some healthcare communities do not provide nursing home services. In fact, the Applicant began Construction on the overall building in June 2020. The 5th floor was designed to be either memory care or skilled nursing. Due to the need in Charleston County, the Applicants decided to make the floor skilled nursing. A full range of healthcare – including skilled nursing services – would be appropriate given the severe need for additional nursing home beds in Charleston County.

Lease or buy an existing nursing home. The applicant could attempt to purchase a nursing home or lease beds from an existing facility. However, existing nursing homes in Charleston County do not have unused capacity to lease. Thus, this option of providing additional nursing home services offsite is neither feasible nor desirable.

Construct a New Nursing Home. This is the preferred alternative so that skilled nursing services can be provided on campus. And this alternative will help reduce the severe shortage of nursing home beds in Charleston County.

*(13) Discuss any serious problems, such as costs, availability, or accessibility in obtaining care of the type proposed, experienced by patients in the absence of this project.*

**Response:**

The approval of a new 23-bed skilled nursing facility will create accessibility for admissions to the general population. DHEC has determined there is a significant need for additional nursing home beds in Charleston County and this project will help address this serious problem.

*(14) Where a project affects an increase or decrease in bed capacity, provide annual occupancy rates for the facility based on licensed beds, for the past three years by category (i.e. general acute, psychiatric, obstetric, nursing home, etc.).*

**Response:**

Not applicable; this is a new facility.

*(15) Identify the method of financing the cost of the project, including the start-up costs. Provide documentation that the applicant can obtain such financing. Alternative sources and/or methods of financing should be identified and the method chosen demonstrated to be the most feasible option.*

**Response:**

Street Senior Housing PROPCO, LLC, the owner of the building, has already secured a construction loan agreement with South State Bank to fund 70% of the project. Please see **Exhibit 11**, which is a copy of the construction loan agreement.

*(16) For an addition to an existing facility or service, provide a current annual budget and at least a three fiscal year projected budget for both the overall facility and the proposed project. The projections must be developed by an accountant. For a new facility or service, provide a projected annual budget for not less than three fiscal years following the completion of the proposed project. The projections must be attested to by an accountant. These budgets must at a minimum include how proposed charges, proposed cost of service, utilization, depreciation, reimbursement rates, and contractual adjustments were calculated. Any assumptions made in the application must be specifically noted shown.*

**Response:**

**Exhibit 12** presents the utilization, revenue, operating cost, and income statement projections as well as assumptions for the first three years for the skilled nursing facility as well as the assisted living/memory care. The exhibit also includes a letter from a qualified accountant that attests to the reasonableness of the projections.

The exhibit is broken out as follows:

- Form A – Utilization Assumptions and projections
- Form B.1 – Revenue Assumptions and Projections
- Form B.2 – Operating Costs Assumptions and Projections
- Form B.3 – Income Statement

*(17) Provide a list of proposed charges for the project. The charges provided may be used for comparison with the average charges in the final completion report as required in Section 607.3.b.*

**Response:**

The expected average daily room and board charge will be:

- Medicare SNF = \$542.00/day (includes typical rehabilitation services)
- Private SNF = \$420.00/day (blended rate)

These will be compared with the actual charges in the final completion report required by DHEC.

Rates are assumed to increase annually on January 1 account for inflation as a normal part of the annual budgeting process. The blended rates above have been projected for that assumption.

*(18) Document that the proposed project is economically feasible, both immediately and long-term. In the case of existing facilities, what impact will the proposed project have on patient charges and cost per unit of service.*

**Response:**

As shown in the revenue and expense projections referenced in B(16), Spring Street has a positive net income in Year 1 for the overall facility and a positive net income in Year 2 for the skilled nursing facility. Therefore, this project is financially viable both immediately and long-term for the overall project. Spring Street assumes a rate increase annually on January 1 to account for inflation as a normal part of the annual budgeting process.

*(19) State how the project will foster cost containment and improve quality of care through the promotion of such services as ambulatory and home health care, preventive health care, promotion of shared services, economies of scale, and design and construction economies.*

**Response:**

Economies of scale are achieved by the use of shared FTE's, laundry, food services, and so forth. The construction of the Skilled Nursing Center as a part of a larger project provides construction that is more economical.

*(20) In the case of projects involving additional long-term care beds, discuss how the plans of other agencies, organizations, or programs responsible for providing and financing long-term care have been considered.*

**Response:**

Spring Street will provide a comprehensive set of health care services to promote the optimal health of its residents. Home health care and hospice agencies are used to allow residents to avoid institutionalization. Spring Street is aware that the Skilled Nursing Center is unable to access Medicaid funds for long-term care.

*(21) Provide a three-year projected manpower budget in full-time equivalents (FTE's) detailing the existing and proposed nursing, other professional, and non-professional personnel required for the staffing of the new project.*

**Response:**

The manpower budget in full-time equivalents (FTEs) for the nursing home is provided in **Exhibit 13**. Since this project is for a combination community (AL and SNF), the manpower budget for the entire community is provided, as many employees will be cross-utilized.

*(22) Provide the number of existing and proposed medical staff by specialty, to include physicians and dentists employed by, or with admission privileges to the facility. Include the name of the Chief of the Medical Staff, if available.*

**Response:**

Nursing homes do not have a formal medical staff. A medical director will be recruited and appointed prior to licensing.

*(23) Indicate those physicians who have expressed a willingness to utilize the proposed services or to refer patients to the facility for the provision of services.*

**Response:**

Letters of support from physicians who support this project are presented in **Exhibit 14**.

*(24) Discuss the availability of health manpower resources for the provision of the proposed services, including the contemplated program and plan for recruiting and training personnel.*

**Response:**

Spring Street does not anticipate any difficulties in recruiting the staff required for this proposed project. The Liberty companies have over 5,000 employees and the corporate office includes an in-house recruiting department that will assure Spring Street is properly staffed. Liberty is also well versed in the Charleston market, having operated Shem Creek at South Bay at Mt. Pleasant.

*(25) Describe the previous experience of the applicant in the proposed health care field. If the applicant has no prior experience, specify the anticipated sources of technical assistance, either from specific individuals or organizations.*

**Response:**

The Applicant does not currently hold any facility licenses or CON's. However, the Liberty organization (affiliate of the Applicant) includes: thirty-five nursing homes, eight assisted living facilities, two independent living communities, five Continuing Care Retirement Communities, and a home health and hospice company with twenty-nine locations servicing various urban and rural counties in North Carolina, South Carolina, and Virginia. As you can see, the Applicant has extensive health care experience, especially in the proposed health care field (skilled nursing).

**Exhibit 7** presents a listing of the 35 nursing homes and other healthcare services.

*(26) Discuss the impact of the project on the clinical training programs of health professional schools, particularly the extent to which these schools will have access to the services for training.*

**Response:**

Spring Street will gladly support clinical training in the universities, technical colleges, and secondary career schools in Charleston County and its surrounding area. These include, but are not limited to Medical University of South Carolina, Trident Technical College, Charleston Southern University, and the College of Charleston.

*(27) Provide documentation of policies and procedures to assure the quality of healthcare services by addressing patient safety and quality indicators as applicable. Documents may include, but are not limited to, measures of patient care, patient safety, healthcare-acquired infections and the following of best practices established by recognized organizations. Applicable quality standards in the South Carolina Health Plan must be addressed.*

**Response:**

Spring Street will have an extensive quality assurance program and will follow the successful program and policies and procedures used at Liberty's other facilities. The following addresses National Patient Safety Goals as they apply to nursing homes:

- 1) *Improve the accuracy of patient identification;*

All patients will be visually and verbally identified. Patients will be identified using the two resident identifiers: Name and Date of Birth. In a Skilled Nursing Center, the staff becomes very familiar with the residents.

- 2) *Improve the effectiveness of communications among caregivers;*



The staff functions within close proximity. There will be direct, immediate communications on resident-related issues. Written reports will be faxed promptly. For verbal or telephone orders from a physician or telephone reporting of critical test values, the caregiver will verify the complete order or verify by reading the order or results back to the physician or medical professional to verify accuracy. Each area will utilize a 24 hour report system to communicate shift to shift occurrences.

*3) Improve the safety of using medications;*

Medication use is carefully monitored. Each nursing area will record and pass along correct information about a resident's medicines. The nursing center will compare those medicines the resident is taking to new medicines given to the resident. The resident will be informed on the importance of bringing their up-to-date list of medicines every time they visit a doctor.

*4) Reduce the risk of healthcare associated infections.*

Each nursing area will be responsible and held accountable for its role in the Infection Control Program. In addition to reporting isolation cases, suspected infections and positive cultures, as well as providing required follow-up information, each department will be responsible for full and timely cooperation with the Infection Control Committee to develop and implement remedial / corrective action. Specific assignments will be made to committees, departments and individual personnel and, where assigned, the completion of these assignments will be expected in a timely yet thorough manner.

*5) Accurately and completely reconcile medications across the continuum of care.*

The Facility Quality Improvement Committee manages a Medication Management system to ensure medication used within the organization is conducted in a safe and optimal manner. The Committee will also review Medication Error Report Forms, which are used to identify possible trends with medication errors. The Medication Error Report Forms identify risk points (including medication errors and adverse drug reactions) and identifies areas to improve resident safety as well as the overall use of medications throughout the organization.

*6) Reduce the risk of patient harm resulting from falls.*

All residents will be assessed on admission and continuing throughout their stay using the fall assessment guidelines. AHT Falls Report:

- All incident reports should be keyed into AHT.
- A monthly report should be printed. This report is used to track falls by shift, location and other variables.

*7) Reduce the risk of influenza and pneumococcal disease in institutionalized older adults.*

Upon admission all residents' immunization status will be identified. If appropriate, we request permission to administer flu / pneumonia vaccines.

Influenza vaccine will be offered with appropriate consents per CDC guidelines.

8) *Encourage patients' active involvement in their own care as a patient safety strategy.*

Spring Street patients will be encouraged to take an active role in their own safety. Family, Staff and Resident Satisfaction Surveys will be developed with direct input from the resident and the clinical team. The surveys are reviewed in detail with the resident to ensure understanding and that appropriate problems and interventions are included.

9) *Prevent health care-associated pressure ulcers (decubitus ulcers).*

Weekly meetings will be conducted to discuss issues such as pressure ulcers, weight loss, falls, elopement, restraints, dehydration, and other areas that impact resident care. Monthly meetings will also be held to discuss overall facility performance. The Quality of Life plan will address problems, goals and interventions directed toward prevention of pressure ulcers and / or skin integrity concerns identified.

10) *The organization identifies safety risks inherent in its patient population.*

The Safety and Health Program provides a systematic, coordinated and continuous approach to the maintenance and improvement of resident safety. It includes the establishment of mechanisms that support effective responses to actual occurrences; ongoing proactive reduction in medical / health care errors; and integration of resident safety priorities into the new design and redesign of all relevant organization processes, functions and services related to our resident characteristics.

The Safety and Health Committee shall consist of at least one half non-managerial employees and in representative numbers as defined by the policy. The committee shall evaluate the effectiveness of the facility's ongoing Safety and Health Program.

**Exhibit 15** presents the Quality Assurance and Performance Improvement Plan for Spring Street.

*(28) Provide any additional information that would assist the department in evaluating this project.*

**Response:**

No additional information necessary at this time.



## PART C—PROGRAMMATIC DOCUMENTS

Provide adequate programmatic documents in support of the various elements of the proposed project. These documents will include as appropriate:

- (1) *An Indigent Care Plan as required by the Board of Health and Environmental Control. It shall address at a minimum, the following:*
  - (a) *The existing and proposed admission and treatment policies of the facility or agency with regard to race, sex, creed, national origin, and ability to pay.*
  - (b) *The proposed admission and treatment policies of the facility or agency with respect to admission and care of indigent patients including those patients unable to pay at the time of admission and those whose benefits expire while in the care of the facility or agency.*
  - (c) *In existing facilities or agencies, provide the amount, in dollars and percent of gross revenues, that the facility or agency provided in indigent care during the past three fiscal years. NOTE: Indigent care does not include bad debt; contractual adjustments; or care which is reimbursed by a governmental program (Medicare, Medicaid, county indigent program), church, or philanthropic organization.*
  - (d) *Provide the proposed amount of indigent care the facility or agency projects to provide during the existing fiscal year and next fiscal year. This projection should be expressed in both dollars and a percent of gross revenues.*
  - (e) *A discussion of why the above figures are adequate or inadequate for the needs of the community; the need of indigent care within the proposed service area; and any solutions, remedial plans or proposals by the facility or agency to better address the indigent care problem in the service area. Include any initiatives or undertakings the facility or agency has begun to address the indigent care problem in the proposed service area.*
  - (f) *Describe any Board or Advisory Board established to implement or control the indigent problem at the facility or agency. Include the Board's functions, responsibilities, and limitations.*

**Response:**

Spring Street's Indigent Care Plan and answers to the preceding questions are presented in **Exhibit 16.**

- (2) *A map of sufficiently large scale to be meaningful, indicating the location of the project site and its geographical area.*

**Response:**

**Exhibit 17** are maps identifying the project location.

- (3) *A plot plan of the project site showing existing buildings, roads, parking areas, walks, service and entrance courts, existing utilities (electricity, telephone, water, railroads, sewer, gas, etc.) and other natural land features necessary for adequate analysis of site conditions.*

**Response:**

**Exhibit 18** presents a plot plan of the project location.

\*Note: Site is labeled "Poinsette" which was the previously working dba name.

*(4) A legal description of the project site indicating its physical characteristics and existing easements.*

**Response:**

**Exhibit 19** presents the deed for Spring Street, which includes the legal description of the project site.

*(5) A square foot program of space and/or equipment elements, and scale drawings describing the existing space and proposed alterations and additions.*

**Response:**

**Exhibit 20** presents a letter regarding the program area breakdown (in square feet) and **Exhibit 21** presents a schematic drawing of the space for the skilled nursing facility. The nursing home will be located on the fifth floor.

*(6) Documentation from the appropriate zoning authorities that the proposed site is or can be zoned for the intended use.*

**Response:**

**Exhibit 22** documents the site is zoned appropriately.

*(7) Documentation from appropriate sources that utilities supplied to the site are adequate for the project to include electricity, gas, water, and sewerage.*

**Response:**

**Exhibit 23** provides documentation of utility services provided to the site.

*(8) Endorsement from the community that the project is desirable. This may include but is not limited to members of the medical community, citizen's groups, governmental elected officials and other health and social service disciplines in the community.*

**Response:**

Spring Street has requested letters of support from community representatives. **Exhibit 24** presents the letters that have been received to date. Additional letters will be forwarded when received.

*(9) Documentation that the proposed project has been approved by the health facility's planning committee and governing body.*

**Response:**

**Exhibit 25** is the approval by the Spring Street governing body for the proposed project.

*(10) For the facilities or services not licensed by the Department of Health and Environmental Control, provide documentation of coordination and support from the appropriate licensing agency.*

**Response:**

Spring Street will be licensed by SC DHEC.

## **PART D—ASSURANCES**

*The applicant must furnish written assurance of each of the following where applicable:*

- (1) That the applicant has or will have a fee simple title or such other estate or interest in the site including necessary easements and rights-of-way, sufficient to assure use and possession for the purpose of the construction and operation of the facility.*
- (2) That approval by the department of the final drawings and specifications, which will be prepared by an architect and/or engineer legally registered under the laws of the State of South Carolina, will be obtained.*
- (3) That the applicant will submit to the Department for prior approval, changes that substantially alter the scope of work, function, utilities, major items of equipment, safety or cost of the facility during construction.*
- (4) That the applicant will cause the project to be completed in accordance with the Certificate of Need application.*
- (5) That the applicant will cause the project to be completed in accordance with approved plans and specifications by maintaining competent and adequate architectural and engineering services throughout the construction administration phase of the project. That, at the completion of the project, the architect of record shall be required to issue a statement that to the best of his knowledge and belief, based upon available records, supplemental documents, and periodic observation of the work, the project was constructed according to those documents approved by the Department.*
- (6) That the facility will be operated and maintained in accordance with the standards prescribed by law and regulations for the maintenance and operation of such facilities.*
- (7) That the applicant understands that the Certificate of Need shall become void at the end of the specified time period from the date of issuance unless otherwise extended under Chapter 6 of these regulations.*
- (8) That the Department or its authorized representatives may at any time during the course of construction and upon the completion of the project make an on-site inspection of the construction and equipment to check for compliance of the construction in accordance with the application for which the Certificate of Need was issued.*
- (9) That the controlling interest in any health care facility shall not be sold or leased or otherwise disposed of unless the Certificate of Need has been fulfilled.*
- (10) That the applicant will notify the Department in writing that the contractual agreement has been completed. For a construction project, the letter shall indicate that a construction contract specifying the beginning and completion dates of the project, has been signed by*

*both parties. For services projects, the letter must indicate that equipment purchase orders with estimated delivery dates have been properly negotiated.*

*(11) That the applicant will notify the Department in writing of the date that a new or expanded services has been implemented, completed or terminated.*

*(12) That the applicant will provide monthly progress reports and a final completion report which contain the information required by Section 607 of these regulations.*

**Response:**

Spring Street Senior Housing OPCO, LLC d/b/a Spring Street Health Center will comply with the requirements set forth herein, as applicable.

## Spring Street Health Center Certificate of Need - Exhibits

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# **EXHIBIT 1**

## **Proof of Public Notification in the *Post* & *Courier***

Timothy Walsh Spring Street Senior Housing OPCO, LLC  
2334 S 41st Street  
WILMINGTON NC 28403

# AFFIDAVIT OF PUBLICATION

## The Post and Courier

State of South Carolina

County of Charleston

Personally appeared before me the undersigned advertising clerk of the above indicated newspaper published in the city of Charleston, county and state aforesaid, who, being duly sworn, says that the advertisement of

(copy attached)

appeared in the issues of said newspaper on the following day(s):

11/09/20 Mon PC                      11/11/20 Wed CNW  
11/10/20 Tue PC  
11/11/20 Wed PC  
11/09/20 Mon CNW  
11/10/20 Tue CNW

at a cost of                      \$244.98  
Account#                        367547  
Order#                            1906425  
P.O. Number:

Subscribed and sworn to before me this 11th day of November A.D. 2020

[Signature]  
advertising clerk

[Signature]  
NOTARY PUBLIC, SC  
My commission expires



Within 20 days of this notice, Spring Street Senior Housing OPCO, LLC (doing business as "Spring Street Health Center"), intends to file an application to the South Carolina Department of Health & Environmental Control for a Certificate of Need for the construction of a twenty-three (23) bed skilled nursing home located at 194 Spring Street, Charleston, SC 29403. The nursing home will provide non-institutional beds that are open to the public. Spring Street Health Center is a planned combination healthcare community on a +/- 1 acre campus and will include the 23-bed nursing home as well as assisted living (adult care) beds (including a memory care unit). The nursing home component contains 14,233 square feet of new construction at a total project cost of approximately \$7,703,284. For additional information contact: Timothy Walsh, Liberty Senior Living, 2334 South 41st Street, Wilmington, NC 28403. AD#1906425



# **EXHIBIT 2**

## **Architecture's Letter Documenting Cost of Construction**

October 29, 2020

Mr. Timothy Walsh, Senior Financial Analyst  
Liberty Senior Living  
2334 S 41<sup>st</sup> St  
Wilmington, NC 28403

Re: **Spring Street Health Center, CON Application, McMillan Pazdan Smith  
Architecture Project No. IN1338.01**

Dear Mr. Walsh,

In accordance with the SCDHEC requirements for a letter as part of the Certificate of Need Application and Process, we offer the following information:

Project Description:

The proposed project is a new healthcare community located at 194 Spring Street in Charleston, SC. The project is 85,693 square feet, with an overall construction cost of \$28,822,274.

The proposed community will include 92 healthcare units including 21 memory care units, 50 Assisted Living Units, and 21 Skilled Nursing Units. The community will include a few double occupancy units, so the total bed count will comprise of 100 total beds including 23 memory care beds, 54 assisted living beds, and 23 skilled nursing beds.

Specific to this CON application, the skilled nursing floor will have 14,233 square feet, with dedicated dining (1,103 Sf), and sitting (243 SF) spaces.

The project is being constructed as a Type 1-B building where the main structural components are pile-driven concrete foundation with post-tensioned concrete superstructure. In-fill walls are predominantly metal studs with limited areas of CMU masonry construction. Exterior cladding is brick with some metal panels and a low-slope modified bitumen roof system.

Project Construction Budget:

Skilled Nursing Facility only:	
New Building Construction:	\$4,581,029
Contingency (4.5%)	\$206,146
Sub-Total:	\$4,787,175

Project Construction Budget:

Other Construction Projects:	
Assisted Living/Memory Care Construction:	\$24,035,099
<b>Total Construction:</b>	<b>\$28,822,274</b>



Refer to the project budget included in this application for the overall magnitude of costs for all projects.

Project Schedule:

The project schedule for the Skilled Nursing Facility is as follows:

- Start of A/E Design in February, 2018
- Completion for the Skilled Nursing Facility Contract Documents was June, 2019
- Completion for bidding was February, 2020
- Start of construction was June, 2020
- Construction completion for the Skilled Nursing Facility is estimated to be October, 2022

The plans were designed to be compliant with I-1, Condition 2 memory care or I-2, Condition 1 skilled nursing. They were reviewed on this basis and granted final approval from Elie Macaron, Jr, Director of Administration for Division of Health Facilities Construction/Office of Fire and Life Safety, pending CON approval for conversion to skilled nursing beds.

The total Design Fees for the overall project outlined is \$1,337,040. The A/E compensation for the overall project is \$863,000.

Refer to the project budget included in this application for the overall magnitude of costs for all projects.

Please do not hesitate to contact me should you require additional information.

Sincerely,

Stuart Barber, AIA, LEED AP  
Associate Principal  
McMillan Pazdan Smith Architecture



# **EXHIBIT 3**

**Spring Street Senior Housing OPCO,  
LLC & Spring Street Senior Housing  
PROPCO, LLC Certificate of  
Formation and Certificate of  
Authority**

# Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "SPRING STREET SENIOR HOUSING OPCO, LLC", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF FEBRUARY, A.D. 2020, AT 2:09 O`CLOCK P.M.



  
Jeffrey W. Bullock, Secretary of State

7873578 8100  
SR# 20201639512

Authentication: 202482024  
Date: 02-28-20

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

**CERTIFICATE OF FORMATION**

**OF**

**SPRING STREET SENIOR HOUSING OPCO, LLC**

The undersigned, an authorized natural person, for the purpose of forming a limited liability company under the provisions and subject to the requirements of the State of Delaware (particularly Chapter 18, Title 6 of the Delaware Code and the acts amendatory thereof and supplemental thereto, and known, identified and referred to as the "Delaware Limited Liability Company Act"), hereby certifies that:

**FIRST.** The name of the limited liability company (hereinafter called the "Limited Liability Company") **SPRING STREET SENIOR HOUSING OPCO, LLC.**

**SECOND.** The address of the registered office and the name and address of the registered agent of the Limited Liability Company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act are c/o National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904. The name of its registered agent at that address is National Registered Agents, Inc.

Executed on February 27, 2020.

/s/ Meegan T. Motisi

Meegan T. Motisi, Authorized Person

STATE OF SOUTH CAROLINA  
SECRETARY OF STATE

APPLICATION FOR A CERTIFICATE OF AUTHORITY BY A FOREIGN LIMITED LIABILITY COMPANY  
TO TRANSACT BUSINESS IN SOUTH CAROLINA

The following Foreign Limited Liability Company applies for a Certificate of Authority to Transact Business in South Carolina in accordance with Section 33-44-1002 of the 1976 S.C. Code of Laws, as amended.

1. The name of the foreign limited liability company which complies with Section 33-44-1005 of the 1976 S.C. Code of Laws, as amended is:

Spring Street Senior Housing OPCO, LLC

2. The name of the State or Country under whose law the company is organized is Delaware

3. The street address of the Limited Liability Company's principal office is

One Town Center Road, Ste 300

(Street Address)

Boca Raton, FL 33486

(City, State, Zip Code)

4. The address of the Limited Liability Company's current designated office in South Carolina is

2 Office Park Court, Suite 103

(Street Address)

Columbia, SC 29223

(City, State, Zip Code)

5. The street address of the Limited Liability Company's initial agent for service of process in South Carolina is

2 Office Park Court, Suite 103

(Street Address)

Columbia

(City)

South Carolina 29223

(Zip Code)

And the name of the Limited Liability Company's agent for service of process at the address is:

National Registered Agents, Inc.

(Name)

By: National Registered Agents, Inc.

(Signature of Agent)

*[Handwritten Signature]*  
*JOANNE CASWELL, Asst. Secy*

6.  Check this box only if the duration of the company is for a specified term, and if so, the period specified

[Empty box for Name of Limited Liability Company]

Name of Limited Liability Company

7.  Check this box if the company is manager-managed. If so, list the names and business addresses of each manager.

(a)

Spring Street Senior Housing JV OPCO, LLC

(Name)

One Town Center Road, Suite 300

(Address)

Boca Raton, FL 33486

(City, State, Zip Code)

(b)

(Name)

(Address)

(City, State, Zip Code)

8.  Check this box if one or more of the members of the foreign limited liability company are to be liable for the company's debt and obligation under a provision similar to Section 33-44-303(c) of the 1976 S.C. Code of Laws, as amended.

Date: 03/17/2020

Signature

S. David Selznick

Name

Vice President of Spring Street Senior Housing JV OPCO, LLC, it's Manager

Capacity/Title



# Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "SPRING STREET SENIOR HOUSING OPCO, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE SEVENTEENTH DAY OF MARCH, A.D. 2020.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "SPRING STREET SENIOR HOUSING OPCO, LLC" WAS FORMED ON THE TWENTY-SEVENTH DAY OF FEBRUARY, A.D. 2020.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN ASSESSED TO DATE.



7873578 8300

SR# 20202192399

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature in black ink, appearing to read "JBULLOCK", written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed in a small font.

Authentication: 202602920

Date: 03-17-20

# Delaware

Page 1

The First State

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Jeffrey W. Bullock, Secretary of State

7873603 8100  
SR# 20201640083

Authentication: 202482228  
Date: 02-28-20

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

**CERTIFICATE OF FORMATION**

**OF**

**SPRING STREET SENIOR HOUSING PROPCO, LLC**

The undersigned, an authorized natural person, for the purpose of forming a limited liability company under the provisions and subject to the requirements of the State of Delaware (particularly Chapter 18, Title 6 of the Delaware Code and the acts amendatory thereof and supplemental thereto, and known, identified and referred to as the "Delaware Limited Liability Company Act"), hereby certifies that:

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**SECOND.** The address of the registered office and the name and address of the registered agent of the Limited Liability Company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act are c/o National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904. The name of its registered agent at that address is National Registered Agents, Inc.

Executed on February 27, 2020.

/s/ Meegan T. Motisi  
Meegan T. Motisi, Authorized Person

STATE OF SOUTH CAROLINA  
SECRETARY OF STATE

APPLICATION FOR A CERTIFICATE OF AUTHORITY BY A FOREIGN LIMITED LIABILITY COMPANY  
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South Carolina 29223

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And the name of the Limited Liability Company's agent for service of process at the address is:

National Registered Agents, Inc.

(Name)

By: National Registered Agents, Inc.

(Signature of Agent)

(Signature of Agent)

*[Handwritten Signature]* + *Donna Caswell, Asst. Secy.*

6.  Check this box only if the duration of the company is for a specified term, and if so, the period specified

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Name of Limited Liability Company

7.  Check this box if the company is manager-managed. If so, list the names and business addresses of each manager.

(a)

Spring Street Senior Housing JV PROPCO, LLC

(Name)

One Town Center Road, Suite 300

(Address)

Boca Raton, FL 33486

(City, State, Zip Code)

(b)

(Name)

(Address)

(City, State, Zip Code)

8.  Check this box if one or more of the members of the foreign limited liability company are to be liable for the company's debt and obligation under a provision similar to Section 33-44-303(c) of the 1976 S.C. Code of Laws, as amended.

Date: 03/17/2020

Signature

S. David Selznick

Name

Vice President of Spring Street Senior Housing JV PROPCO, LLC, it's Manager

Capacity/Title

Form Revised by South Carolina Secretary of State, August 2016 F0008

# Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "SPRING STREET SENIOR HOUSING PROPCO, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE SEVENTEENTH DAY OF MARCH, A.D. 2020.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "SPRING STREET SENIOR HOUSING PROPCO, LLC" WAS FORMED ON THE TWENTY-SEVENTH DAY OF FEBRUARY, A.D. 2020.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN ASSESSED TO DATE.



7873603 8300

SR# 20202192438

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature in black ink, appearing to read "JBULLOCK", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed in a small font.

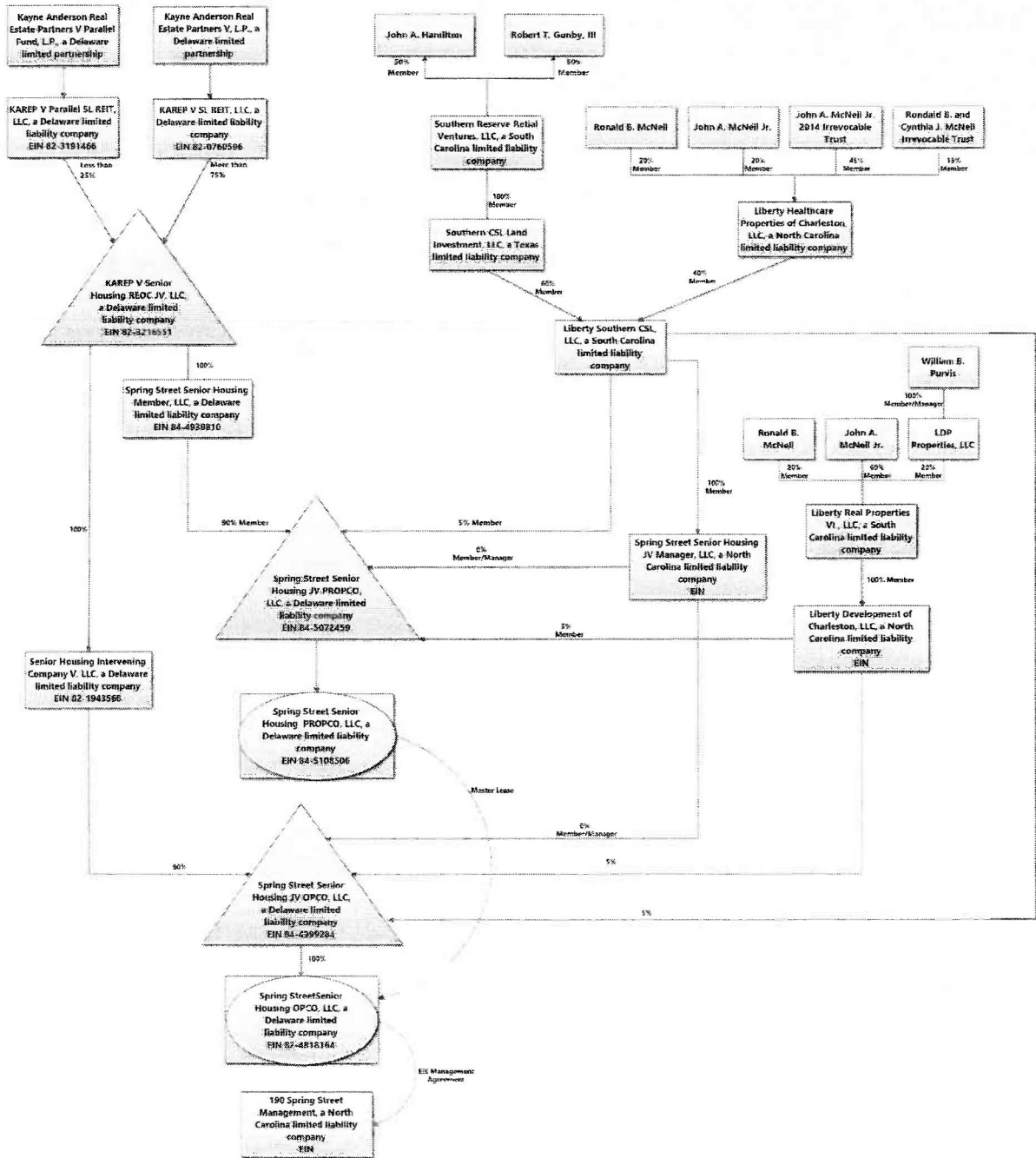
Authentication: 202602935

Date: 03-17-20

# **EXHIBIT 4**

## **Ownership Organization Chart**

Poinsette - Charlotte, SC





# **EXHIBIT 5**

## **Letter of Intent to Lease and Draft Lease Agreement**



LIBERTY  
Senior Living

2334 S. 41<sup>st</sup> Street • Wilmington, NC 28403  
(910) 815-3122 • FAX: (910) 815-3111

November 11, 2020

Louis Eubank, MSW, MPH  
Director, Certificate of Need Program  
S.C. Department of Health and Environmental Control  
Mailing address:  
2600 Bull Street  
Columbia, SC 29201  
SUBJECT: Letter of Intent to Lease

Dear Mr. Eubank:

Spring Street Senior Housing PROPCO, LLC, hereinafter referred to as “Landlord”, and Spring Street Senior Housing OPCO, LLC, hereinafter referred to as “Tenant”, intend to enter into an operating lease agreement regarding the overall healthcare community, which included the skilled nursing facility with twenty-three (23) beds.

We have included a sample draft regarding the anticipated lease agreement.

Best Regards,

Timothy Walsh  
Senior Financial Analyst  
Liberty Senior Living  
[TWalsh@libertyseniorliving.com](mailto:TWalsh@libertyseniorliving.com)  
(910) 332-1982

## OPERATING LEASE AGREEMENT

([Name of Project])

**THIS OPERATING LEASE AGREEMENT** (hereinafter referred to as this “**Lease**”) is made and entered into on \_\_\_\_\_, 20\_\_\_, by and between **SPRING STREET SENIOR HOUSING PROPCO, LLC**, a Delaware limited liability company (hereinafter referred to as “**Landlord**”), and **SPRING STREET SENIOR HOUSING OPCO, LLC**, a Delaware limited liability company (hereinafter referred to as “**Tenant**”).

### WITNESSETH:

**WHEREAS**, Landlord is the owner of (i) that certain tract of land, together with the buildings and improvements located thereon, located at 194 Spring Street in Charleston, South Carolina, commonly known as “Charleston Spring Street Assisted Living,” and more particularly described in Exhibit “A” attached hereto and made a part hereof (hereinafter referred to as the “**Premises**”) and (ii) all furnishings, furniture, fixtures, equipment, and supplies owned by Landlord and located on the Premises (collectively, the “**Personal Property**”); and

**WHEREAS**, Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises, together with the right to use the Personal Property, all upon the terms and conditions of this Lease.

**NOW THEREFORE**, in consideration of the premises, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the terms, conditions and provisions of this Lease.

### ARTICLE

#### 1.

### DEFINITIONS

The terms defined in this Article shall, for all purposes of this Lease and all agreements supplemental hereto, have the meaning herein specified.

(1) “**Mortgage**” shall mean collectively any and all mortgages, deeds of trust or other like instruments which currently encumber or in the future will encumber the Premises; including, but not limited to, that certain mortgage captioned Mortgage, Assignment of Rents and Security Agreement executed by Landlord and all other documents, instruments and agreements executed in connection therewith.

(2) “**Mortgagee**” shall mean the holder of any Mortgage together with their respective successors and assigns, including without limitation, any successor, assign or transferee of the rights of Mortgagee under any Mortgage in accordance with the terms thereof. As of the date of this Lease, the term “Mortgagee” shall refer to South State Bank.

(3) All other terms used herein shall be as defined in other sections of this Lease.

ARTICLE

2.

PREMISES AND PERSONAL PROPERTY

2.1 Landlord, for and in consideration of the rents, covenants and agreements hereinafter reserved, mentioned and contained on the part of the Tenant, its successors and assigns, to be paid, kept and performed, does hereby lease unto Tenant the Premises and the Personal Property for the term hereinafter specified.

2.2 Such Premises and Personal Property shall be used by Tenant for operation therein and thereon of an assisted living and memory care facility (the "**Facility**"). Tenant shall not use the Premises and Personal Property for any other purpose without the prior written consent of Landlord, which consent may be withheld in the sole discretion of Landlord.

ARTICLE

3.

CONVEYANCES

Landlord assigns to Tenant all rights and interests to any and all contracts entered into by Landlord relating to the operation, maintenance, management, repairs, or any other service provided in connection with the operation of the Facility.

ARTICLE

4.

TERM OF LEASE

4.1 The term of the Lease shall be for a period of five (5) years commencing on the date hereof (hereinafter referred to as the "**Commencement Date**") and shall continue through the last day of the sixtieth (60th) full calendar month following the Commencement Date, if not sooner terminated pursuant to the terms hereof. Each period of twelve (12) consecutive months commencing on the Commencement Date is hereinafter referred to as a "**Lease Year**"; provided, if the Commencement Date occurs on any day other than the first day of the month, the first Lease Year shall be the period from the Commencement Date through the last day of the calendar month in which the Commencement Date occurs and the succeeding twelve-calendar month period thereafter (and such partial month shall be prorated accordingly).

ARTICLE

5.

RENT

5.1 Tenant shall pay to Landlord, or as Landlord shall direct, base rent ("**Base Rent**") during each Lease Year for the Premises and the Personal Property (in addition to all other and additional payments to be made by Tenant as provided in this Lease) at the annual rates set forth below, payable in equal monthly installments. The amount of each monthly installment of Base Rent for less than a full month falling within the term shall be prorated between the parties.

Lease Year	Annual Base Rent	Monthly Base Rent
1		
2		
3		
4		
5		

5.2 If Tenant's monthly Gross Revenues (as defined below) during any month in a Lease Year exceeds the Monthly Breakpoint 1 applicable in such Lease Year (as set forth below), then Tenant shall pay to Landlord percentage rent based on such Gross Revenues ("**Tier 1 Percentage Rent**"), in arrears and in addition to all other payments to be made by Tenant as provided in this Lease, in an amount equal to the product of (A) thirty five percent (35%) multiplied by (B) that portion of Gross Revenues for such month equal to or greater than the Monthly Breakpoint 1 but less than the Monthly Breakpoint 2. In addition to the foregoing, if Tenant's aggregate Gross Revenues during any month in a Lease Year exceeds Monthly Breakpoint 2 applicable in such Lease Year (as set forth below), then Tenant shall pay to Landlord percentage rent based on such Gross Revenues ("**Tier 2 Percentage Rent**"), in arrears and in addition to all other payments to be made by Tenant as provided in this Lease, in an amount equal to the product of (A) forty five percent (45%) multiplied by (B) that portion of Gross Revenues for such month equal to or greater than Monthly Breakpoint 2. The Tier 1 Percentage Rent and Tier 2 Percentage Rent are collectively referred to as the "**Percentage Rent**" herein. Once the Percentage Rent becomes payable with respect to any month, the applicable Percentage Rent for the month in which the same becomes payable shall be due and payable on the tenth (10<sup>th</sup>) day of the immediately following month.

For purposes of this Lease, the term "**Gross Revenues**" means and includes the dollar aggregate of the entire amount of receipts and income (both cash and credit, net of any fee therefor) derived from the operation of the Facility during any month, including, without limitation, monthly occupancy fees, service income, all other fees and payments whatsoever received from residents of the Facility; income from food and beverage and catering sales; income from vending machines; and proceeds, if any, from rental or business interruption insurance (but only to the extent it reimburses Landlord for lost income and not for additional or other expenses); and amounts recovered in any legal action or proceeding or settlement thereof which arose out of the operation of the Facility and which would have been included in "Gross Revenues" if collected without the need for such legal action or proceeding, less all actual out-of-pocket costs of collection. "Gross Revenues" shall not include (i) federal, state or municipal excise, sales or use taxes or similar taxes at the point of sale and collected directly from residents or guests of the Facility or included as part of the sales price of any goods or services; (ii) proceeds from the sale of Personal Property or any other capital asset; (iii) proceeds of any financing or refinancing of the Facility or any portion thereof; (iv) proceeds of any insurance policy (except loss of income insurance as provided above) or condemnation; (v) proceeds from any sale of Tenant's leasehold interest in the Facility or any other capital transaction; (vi) resident funds on deposit or security deposits until such time as the same are applied to current fees due for services rendered for the Facility; (vii) awards of damages, settlement proceeds and other payments received by Landlord in respect of any litigation other than litigation to collect fees due for services rendered from the Facility; and (viii) payments under any policy of title insurance

Notwithstanding anything contained herein to the contrary, at Landlord's election, Landlord may direct Tenant not to pay Percentage Rent on a monthly basis, and instead, Percentage Rent payments due to Landlord shall accrue, and be paid by Tenant on an annual basis or at such other time as directed by Landlord. Tenant acknowledges that Percentage Rent is intended to be calculated on an annual basis, and is based on the amount that Tenant's aggregate Gross Revenues during any Lease Year exceed the Breakpoints for such Lease Year. Accordingly, if necessary, and as soon as practicable after the end of each Lease Year, the monthly Percentage Rent paid or accrued for such Lease Year shall be reviewed by Landlord and Tenant on an annual basis, and shall be adjusted between Landlord and Tenant, based on the amount that Tenant's aggregate Gross Revenues during such Lease Year exceed the Breakpoints for such Lease Year (*i.e.*, Tenant's Percentage Rent obligation is an amount equal to the product of thirty five percent (35%) multiplied by that portion of annual Gross Revenues for such Lease Year equal to or greater than the Annual Breakpoint 1 but lower than the Annual Breakpoint 2, and if applicable, an amount equal to the product of forty five percent (45%) multiplied by that portion of annual Gross Revenues for such Lease Year equal to or greater than Annual Breakpoint 2.) Any overpayment or deficiency in Tenant's payment of monthly Percentage Rent for each Lease Year shall be adjusted between Landlord and Tenant, and Landlord and Tenant hereby agree that Tenant shall pay Landlord, or Landlord shall credit to Tenant's account, or pay directly to Tenant, as the case may be, upon demand, such amount as may be necessary to effect such adjustment to the agreed Percentage Rent.

**"Breakpoint 1"** shall mean collectively, Annual Breakpoint 1 and Monthly Breakpoint 1 for the applicable Lease Year, which are as follows:

Lease Year	Annual Breakpoint 1	Monthly Breakpoint 1
1		
2		
3		
4		
5		

**"Breakpoint 2"** shall mean collectively, Annual Breakpoint 2 and Monthly Breakpoint 2, for the applicable Lease Year, which are as follows:

Lease Year	Annual Breakpoint 2	Monthly Breakpoint 2
1		
2		
3		
4		
5		

**"Breakpoints"** shall mean collectively, Breakpoint 1 and Breakpoint 2.

5.3 Tenant shall utilize, or cause to be utilized, an accounting system for the Premises in accordance with its usual and customary practices, and in accordance with generally accepted accounting principles consistently applied, that will accurately record all data necessary to compute Percentage Rent, and Tenant shall retain, for at least four years after the expiration of each Lease Year, reasonably adequate records conforming to such accounting system showing all data necessary to compute Percentages Rent for the applicable Lease Years. Landlord, at its expense (except as provided herein below), shall have the right from time to time by its accountants or representatives to audit and examine all Tenant's records including supporting data and sales representatives to audit and examine all Tenant's records (including supporting data and sales and exercise tax returns) reasonably required to verify Percentage Rent, subject to any prohibitions or limitations on disclosure of any such data under legal requirements. If any such audit discloses a deficiency in the payment of Percentage Rent, and either Tenant agrees with the result of such audit or the matter is otherwise determined or compromised, Tenant shall forthwith pay to Landlord the amount of the deficiency, as finally agreed or determined, together with interest at the Default Rate (as defined in Section 11.1) from the date when said payment should have been made to the date of payment thereof; provided, however, that as to any audit that is commenced more than two years after the date Percentage Rent for any Lease Year is reported by Tenant to Landlord, the deficiency, if any, with respect to such Percentage Rent shall bear interest at the Default Rate only from the date such determination of deficiency is made unless such deficiency is the result of gross negligence or willful misconduct on the part of Tenant, in which case interest at the Default Rate will accrue from the date such payment should have been made to the date of payment thereof. If any such audit discloses that the actual Percentage Rent for any Lease Year exceeds that reported by Tenant by more than three percent (3%), Tenant shall pay the cost of such audit and examination. Any proprietary information obtained by Tenant pursuant to the provisions of this Section shall be treated as confidential, except that such information may be used, subject to appropriate confidentiality safeguards, in any litigation between the parties and except further that Tenant may disclose such information to prospective lenders or as required to comply with applicable legal requirements, including without limitation, reporting requirements under state and federal securities laws. The obligations of Tenant contained in this Section shall survive the expiration or earlier termination of this Lease.

5.4 All rental payments, together with all tax and other deposits provided for in this Lease shall be paid in advance on the first day of each month. Unless otherwise notified in writing, all checks shall be made payable to the order of Landlord and shall be sent to Landlord at: One Town Center Road, Suite 300, Boca Raton, Florida 33486.

5.5 This Lease is and shall be deemed and construed to be a "net lease" and Tenant shall pay to Landlord, without notice, through the term of this Lease, the Base Rent and the Percentage Rent, absolutely net, free of any expense, charge or deduction whatsoever with respect to the Premises and Personal Property or the ownership, leasing, operation, management, maintenance, repairs, improving, use or occupancy thereof, including any and all taxes and insurance premiums. Tenant shall pay all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises and the Personal Property, including, but not limited to any applicable sales and use taxes or other similar taxes, if any, now or hereafter levied or imposed by any city, state, county or other governmental body having authority, such payments to be in addition to all other payments required to be paid to Landlord by Tenant under this Lease and paid concurrently with the payment of Additional Rent, which may arise or become due during the term of the Lease (collectively, the "**Additional Rent**" and together with the Base Rent and the Percentage Rent, the "**Rent**").



5.6 The parties acknowledge and agree that the Base Rent and Breakpoints for each Lease Year set forth above have been estimated by the parties based on projected cash flows, leasing, occupancy, expenses and other relevant factors projected as of the Commencement Date and that the Base Rent and Breakpoints set forth above may be adjusted by the parties after the date hereof as agreed upon by the parties once the parties have more information to better refine estimates or actual payments.

5.7 The Base Rent and Percentage Rent payable by Tenant for Lease Years 6 through 15 shall be based on and consistent with the Fair Market Rental for such Lease Years. Landlord and Tenant shall commence the process of agreeing to or determining the Base Rent and Percentage Rent payable for Lease Years 6 through 10 not less than nine (9) months prior to the first day of Lease Year 5 and the Base Rent and Percentage Rent payable for Lease Years 11 through 15 not less than nine (9) months prior to the first day of Lease Year 10. As used herein, the term "Fair Market Rental" shall mean, as of any relevant date, the then-annual fair market rental value of the Premises and the Personal Property, as agreed to by Landlord and Tenant, or if the parties cannot so agree, as determined in accordance with the appraisal procedures set forth in Article 34 below, this definition assuming the same is exposed on the open market at the time of the appraisal, but specifically excluding brokerage commissions and other Landlord payments that do not directly inure to the benefit of Tenant.

ARTICLE  
6.  
LATE CHARGES

If payment of any sums required to be paid or deposited by Tenant to Landlord under this Lease, and payments made by Landlord under any provision hereof for which Landlord is entitled to reimbursement by Tenant, shall become overdue beyond the date on which they are due and payable as provided in this Lease, a late charge equal to five percent (5%) of the amount of such payment shall become immediately due and payable to Landlord as liquidated damages for Tenant's failure to make prompt payment, and not as a penalty, and said late charges shall be payable by Tenant within five (5) days of receipt of notice from Landlord of the amount of such charge. If non-payment of any late charges shall occur, Landlord shall have, in addition to all other rights and remedies, all the rights and remedies provided for herein and by law in the case of nonpayment of rent. No failure by Landlord to insist upon the strict performance by Tenant of Tenant's obligations to pay late charges shall constitute a waiver by Landlord of its rights to enforce the provisions of this Article 6 in any instance thereafter occurring and nothing contained herein shall be deemed to be a waiver or limitation of the right of Landlord to declare a default of Tenant hereunder because of the failure to make any payment due hereunder when such payment was due.

ARTICLE  
7.  
PAYMENT OF TAXES AND ASSESSMENTS

7.1 Tenant will pay or cause to be paid, as provided herein, as Additional Rent, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all taxes, assessments, licenses and permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which during the term of this Lease may have been, or may be assessed, levied, confirmed, imposed upon or become due and payable out of or in respect of, or become a lien on the Premises and/or Personal Property or



any part thereof (hereinafter collectively referred to as “**Taxes and Assessments**”). Notwithstanding, anything to the contrary contained herein, to the extent any funds deposited by Tenant with Landlord in accordance with Article 8 hereof are used by Mortgagee for the payment of Taxes and Assessments or insurance premiums, said payments shall be deemed to be in partial satisfaction of Tenant’s obligations under Articles 7 and 10 hereof.

7.2 Any Taxes and Assessments relating to a fiscal period of any authority, a part of which is included within the term of this Lease and a part of which is included in the period of time before or after the term of this Lease, shall be adjusted pro rata between Landlord and Tenant and each party shall be responsible for its pro rata share of any such Taxes and Assessments.

7.3 Nothing herein contained shall require Tenant to pay income taxes assessed against Landlord, or capital levy, franchise, estate, succession or inheritance taxes of Landlord.

7.4 Tenant shall have the right to contest the amount or validity, in whole or in part, of any Taxes and Assessments by appropriate proceedings diligently conducted in good faith, but only after payment of such Taxes and Assessments, unless the nonpayment is approved, in writing, by Landlord and such payment would operate as a bar to such contest or interfere materially with the prosecution thereof, in which event, Tenant may postpone or defer such payment only if:

(1) Neither the Premises nor any part thereof would by reason of such postponement or deferment be in danger of being forfeited or lost; and

(2) Tenant shall have deposited with Landlord, to be held in escrow, cash or security reasonably satisfactory to Landlord in an amount equal to not less than 125% of the amount of such Taxes and Assessments which at such time shall be actually due and payable, and such additional amounts from time to time as may be necessary to keep on deposit at all times an amount equal to 125% of such Taxes and Assessments at any time actually due and payable, together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises or any part thereof in such proceedings. If Tenant shall deposit cash with Landlord, then such deposit shall be held in a segregated interest bearing account with the interest to accrue for the benefit of Tenant. The cash or securities so deposited shall be held by Landlord until the Premises or any part thereof shall have been released and discharged and shall thereupon be returned to the Tenant, less the amount of any loss, cost, damage and reasonable expense (including, without limitation, investment expense), that Landlord may sustain in connection with the Taxes and Assessments so contested.

7.5 Upon the termination of any such proceedings, Tenant shall promptly pay the amount of such Taxes and Assessments or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees, interest, penalties, or other liabilities in connection therewith, and such payment, at Tenant’s request, shall be made by Landlord out of the amount deposited with respect to such Taxes and Assessments as aforesaid. In the event such amount is insufficient, then the balance due shall be promptly paid by Tenant.

7.6 Landlord shall not be required to join in any proceedings referred to in this Article 7, unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by and/or in the name of Landlord, in which event Landlord shall (at Tenant’s expense) join in such proceedings or permit the same to be brought in its name. Landlord

shall not ultimately be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and Tenant will indemnify, defend and save harmless Landlord from any such costs and expenses. Tenant shall be entitled to any refund of any taxes and penalties or interest thereon received by Landlord but previously reimbursed in full by Tenant.

7.7 If any income, profits or revenue tax shall be levied, assessed or imposed upon the income, profits or revenue arising from rents payable hereunder, partially or totally in lieu of or as a substitute for real estate or personal property taxes imposed upon the Premises or Personal Property, then Tenant shall be responsible for the payment of such tax.

## ARTICLE

### 8.

#### TAX AND INSURANCE DEPOSITS

In addition to the Base Rent and Percentage Rent required to be paid by Tenant to Landlord in accordance with Section 5.2 hereof, Tenant shall deposit with Landlord, concurrently with the payment of Base Rent, an amount equal any deposit or escrow required by any Mortgage for the payment of real estate taxes, impositions or insurance premiums. Said amounts shall be paid by Landlord to Mortgagee and shall be held by Mortgagee in accordance with the terms of any Mortgage and Landlord shall have no liability to Tenant with respect thereto. Tenant shall be entitled to interest on such deposits only if such deposits are held by a Mortgagee and Landlord is being paid interest thereon and then only in such amounts, and at such times, as Landlord receives interest thereon. If the total amount of said monthly payments shall be insufficient to pay the Taxes and Assessments, Impositions or insurance premiums when and as due, Tenant shall, on demand, immediately pay to Landlord the amount necessary to make up the deficiency and shall pay the deficiency on demand.

## ARTICLE

### 9.

#### USE AND OCCUPANCY

9.1 During the term of this Lease, the Premises shall be used and occupied by Tenant for an assisted living and memory care facility and for no other purpose without the prior written consent of Landlord. Tenant shall at all times maintain in good standing all the licenses, certificates, certifications, permits, waivers and approvals issued by the State of South Carolina and any other governmental agencies permitting the operation of the Premises.

9.2 Tenant will not suffer any act to be done or any condition to exist on the Premises which may be dangerous or which may, in law, constitute a public or private nuisance or which may void or make voidable any insurance then in force on the Premises.

9.3 Upon termination of this Lease, Tenant will return to Landlord the Premises and Personal Property in substantially the same condition as existed on the Commencement Date, reasonable wear and tear excepted, and qualified and sufficient for licensing by the State of South Carolina and all governmental agencies having jurisdiction over the Premises to the extent it is used as an assisted living or memory care facility with a state license in full force and good standing for an assisted living facility.

ARTICLE  
10.  
INSURANCE

10.1 Tenant shall, at its sole cost and expense, during the full term of this Lease, maintain fire and casualty insurance with extended coverage endorsement both on the Premises and the Personal Property and Comprehensive Business Insurance on South Carolina standard forms with a responsible company or companies approved by Landlord, which approval (subject to the approval of a Mortgagee) will not be unreasonably withheld. Such insurance shall, at all times, be maintained (without any co-insurance clause, if commercially reasonable) in an amount as may be required by the terms of any Mortgage, or, absent such requirement, in an amount sufficient to prevent Landlord and Tenant from becoming co-insurers under applicable provisions of the insurance policies. Such insurance shall at all times be payable to Landlord and Tenant as their interests may appear, and unless otherwise requested by Landlord, shall contain a loss payable clause to the holder of any Mortgage, as said Mortgagee's interest may appear.

10.2 Tenant shall also, at Tenant's sole cost and expense, cause to be issued and shall maintain during the entire term of this Lease:

(1) A public liability policy naming Landlord and Tenant, as insured, and insuring them against claims for bodily injury, or property damage occurring upon, in or about the Premises, or in or upon the adjoining streets, sidewalks, passageways and areas, such insurance shall afford minimum protection of not less than \$2,000,000.00 with respect to personal injury or death occurring or resulting from one occurrence and \$500,000.00 with respect to property damage;

(2) Boiler explosion insurance, if applicable, in the amount of not less than \$100,000.00 under the terms of which Landlord and Tenant will be indemnified, as their interests may appear, against any loss or damage which may result from an accident or casualty in connection with any boiler used in the Premises, whereby an person or persons may be injured or killed or property damaged in or about the Premises;

(3) Professional malpractice insurance in the amount of \$500,000.00; and

(4) Such other insurance and such increases in amounts of coverage as may be required by any Mortgage.

10.3 All policies of insurance shall provide:

(1) They are carried in favor of Landlord, Tenant, and any Mortgagee, as their respective interests may appear, and any loss shall be payable as therein provided, notwithstanding any act or negligence of Landlord or Tenant, which might otherwise result in forfeiture of insurance;

(2) They shall not be canceled, terminated, reduced or materially modified without at least ten (10) days' prior written notice to Landlord; and

(3) A standard mortgagee clause in favor of any Mortgagee, and shall contain, if obtainable, a waiver of the insurer's right of subrogation against funds paid under the standard mortgagee endorsement which are to be used to pay the cost of any repairing, rebuilding, restoring or replacing.

10.4 The originals of all insurance policies or binders required by this Article shall be delivered to Landlord on or before the Commencement Date.

10.5 Tenant shall at all times keep in effect business interruption insurance with loss of rents endorsement naming Landlord as an insured in an amount at least sufficient to cover:

(1) The aggregate of the cost of all Taxes and Assessments due during the period of the next succeeding twelve (12) months following the occurrence of the business interruption; and

(2) The cost of all insurance premiums for insurance required to be carried by Tenant hereunder for such twelve (12) month period; and

(3) The aggregate of the amount of the Base Rent and Percentage Rent for the next succeeding twelve (12) month period. All proceeds of any business interruption insurance shall be applied, first to the payment of any and all Base Rent for the next succeeding twelve (12) months; second, to the payment of any Taxes and Assessments and insurance premiums required for the next succeeding twelve (12) months; third, after all necessary repairing, rebuilding, restoring or replacing has been completed as required by this Lease and the pertinent provisions of any Mortgage, if applicable, to the payment of any and all Percentage Rent for the next succeeding twelve (12) months; and any remaining balance of such proceeds shall be paid over to Tenant.

10.6 Subject to the rights of the holder of any Mortgage on the Premises, such insurance proceeds as may be paid to Landlord, shall be deposited with Landlord to be held and disbursed for the repairing, rebuilding, restoring or replacing of the Premises or any portion thereof, or any improvements from time to time situated thereon or therein in accordance with the pertinent provisions of any Mortgage.

10.7 In the event Tenant is responsible under the terms of this Lease for any such repairing, rebuilding, restoring or replacing of the Premises or any portion thereof, no sums shall be paid by Landlord toward such repairing, rebuilding, restoring or replacing, unless it shall be first made to appear to the reasonable satisfaction of Landlord that the amount of money necessary to provide for any such repairing, rebuilding, restoring or replacing (according to any plans or specifications which may be adopted therefor) in excess of the amount received from any such insurance policies, has been expended or provided by Tenant for such repairing, rebuilding, restoring or replacing, and that the total amount available will be sufficient to complete such repairing, rebuilding, restoring or replacing in accordance with any Mortgage, and any plans and specifications submitted in connection therewith, free from any liens or encumbrances of any kind whatsoever and the funds shall be disbursed only upon the presentment of architect's or general contractor's certificates, waivers of lien, contractor's sworn statements, and other evidence of cost and payments as may be reasonably required.

10.8 Prior to making any such repairs, if so requested by Landlord, Tenant shall make such arrangements with Landlord, as Landlord may reasonably require to protect its interest in the Premises and as may be required pursuant to any Mortgage, including but not limited to: the submission of complete plans and specifications for such repairs prepared by an architect or general contractor; submission of a contract made with a reputable and responsible builder or contractor, providing for the completion and payment for all work, labor and materials necessary to complete such repairs; and the disbursement of such funds as may be required to complete said repairs by a national title insurance company or other responsible escrowee to the contractor or contractors

making such repairs in installments as such work progresses and upon presentment of such certificates, waivers of lien, sworn statements and other documents as may be required by such escrowee.

10.9 Landlord and Tenant agree to have all fire and extended coverage and other property damage insurance which may be carried by either of them endorsed with a clause providing that any release from liability of or waiver of claim for recovery from the other party entered into in writing by the insured thereunder prior to any loss or damage shall not affect the validity of said policy or the right of the insured to recover thereunder, and providing further that the insurer waives all rights of subrogation which such insurer might have against the other party. Without limiting any release or waiver of liability or recovery set forth elsewhere in this Lease, and notwithstanding anything in this Lease which may appear to be to the contrary, each of the parties hereto waives all claims for recovery from the other party for any loss or damage to any of its property insured under valid and collectible insurance policies to the extent of any recovery collected under such insurance policies. Notwithstanding the foregoing or anything contained in this Lease to the contrary, any release or waiver of claims shall not be operative, nor shall the foregoing endorsements be required, in any case where the effect of such release or waiver is to invalidate insurance coverage or invalidate the right of the insured to recover thereunder or increase the cost thereof (provided that in the case of increased cost the other party shall have the right, within ten (10) days following written notice, to pay such increased cost keeping such release or waiver in full force and effect).

#### ARTICLE

#### 11.

#### LANDLORD'S RIGHT TO PERFORM

11.1 Should Tenant fail to perform any of its covenants herein agreed to be performed, Landlord may, upon three (3) days' notice (unless an emergency situation exists, in which event no notice shall be necessary), but shall not be required to, make such payment or perform such covenants, and all sums so expended by Landlord thereon shall immediately be payable by Tenant to Landlord, with interest thereon, at the rate of five percent (5%) per annum above the base rate of interest as announced from time to time by the Mortgagee from the date thereof until paid (the "Default Rate"). In addition, Tenant shall reimburse Landlord for Landlord's reasonable expenses in enforcing or performing such covenants, including reasonable attorney's fees, which expenses shall be payable by Tenant with interest thereon as set forth above. Any such costs or expenses incurred or payments made by Landlord shall be deemed to be Additional Rent payable by Tenant and collectible as such by Landlord.

11.2 Performance of and/or payment to discharge Tenant's obligations shall be optional with Landlord and such performance and payment shall in no way constitute a waiver of, or a limitation upon Landlord's other rights or remedies hereunder.

#### ARTICLE

#### 12.

#### REPAIRS AND MAINTENANCE

12.1 Throughout the term of this Lease, Tenant, at its sole cost and expense, will keep and maintain, or cause to be kept and maintained, the Premises (including the grounds, sidewalks and curbs abutting the same) and the Personal Property in good order and condition without waste and in a suitable state of repair at least comparable to that which existed immediately prior to the



Commencement Date (ordinary wear and tear excepted), and will make or cause to be made, as and when the same shall become necessary, all structural and nonstructural, exterior and interior, replacing, repairing and restoring necessary to that end. Notwithstanding the foregoing, Tenant shall not be responsible for the performance of any structural repairs to the Premises unless arising out of Tenant's use or operations of the Premises, any act or omissions of Tenant or its employees, agents or contractors, or any improvement, alteration, addition or other work to the Premises made by Tenant or its employees, agents or contractors. All replacing, repairing and restoring required of Tenant shall be (in the reasonable opinion of Landlord) of first class quality at least equal to the original work and shall be in compliance with all standards and requirements of law, licenses and municipal ordinances. Tenant shall keep and maintain the Premises and Personal Property in substantial compliance with all rules, regulations and requirements of any governmental body regarding the condition of the Premises and Personal Property, whether existing or later enacted, or foreseen or unforeseen or whether involving any change in governmental policy. All damage or injury to the Premises resulting from moving property in or out of the Facility, construction in the Facility, the installation or removal of Personal Property, or resulting from fire, explosion, air conditioning unit or system, short circuits, flow or leakage of water, steam, illuminating gas, sewer gas, sewerage or odors or by frost or by bursting or leaking of pipes or plumbing works or gas, or from any other cause of any other kind or nature whatsoever due to carelessness, omission, neglect, improper conduct or other cause of Tenant, its servants, employees, contractors, agents, visitors or licensees, shall be repaired, restored or replaced promptly by Tenant at its sole cost and expense to the reasonable satisfaction of Landlord.

12.2 Subject to Section 10.9, and except for repairs, restorations or replacements hereinabove provided to be made by Tenant, Landlord shall, at its expense, make all structural repairs and replacements necessary or desirable in order to keep in good order and repair (the need for which Landlord shall have knowledge) all structural portions of the Facility. Tenant agrees to notify Landlord of the necessity of repairs of which Tenant may have knowledge, for which Landlord may be responsible under the provisions of the preceding sentence. There shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Facility or the Personal Property therein.

12.3 If the Premises (including machinery or equipment used in its operation) shall be damaged by fire or other casualty then Landlord shall, subject to the limitations set forth below and any other restrictions or requirements imposed by Mortgagee, repair or restore such damage with reasonable promptness, subject to reasonable delays for insurance adjustments and delays caused by matters beyond Landlord's reasonable control. Notwithstanding anything to the contrary herein set forth, (a) Landlord shall have no duty to repair or restore any portion of any alterations, additions or improvements owned or made by Tenant in the Premises or to expend for any repair or restoration amounts in excess of insurance proceeds paid to Landlord and available for such repair or restoration; (b) Landlord shall not be obligated to repair or restore any portion of the Premises if such damage was caused directly or indirectly by the acts or omissions of Tenant, Tenant's agents, contractors, employees, licensees or invitees. If continuation of Tenant's business from the Premises (or a portion thereof) is not practical pending reconstruction of the Premises, and Tenant is not collecting (i) rent ("Resident Fees") from residents of the Premises pursuant to resident leases, nor (ii) insurance proceeds for lost rent, then Rent due and payable hereunder shall equitably abate for the portion of the Premises for which Tenant is not collecting Resident Fees or insurance proceeds for lost rents, for the period commencing with the date of such casualty until the earlier of the date that reconstruction is substantially completed or that Tenant resumes the conduct of its business from such portion of the

Premises. If there is damage or destruction to the Premises, to the extent that Landlord reasonably determines that the Premises, cannot be fully repaired or restored within one-hundred eighty (180) days from the date of Landlord's receipt of insurance proceeds with respect to such casualty, said determination to be delivered to Tenant in writing within sixty (60) days of Landlord's receipt of such insurance proceeds, Landlord and (solely in the event that the Premises is materially damaged or destroyed) Tenant shall have the option, upon written notice delivered to the other party within fifteen (15) days of Landlord's written notice, to terminate this Lease. If Landlord determines that the Premises can be fully repaired or restored within such one-hundred eighty (180) day period, or if it is determined that such repair or restoration cannot be made within such period, but neither party elects to terminate this Lease within the aforementioned fifteen (15) days, this Lease shall remain in full force and effect and Landlord shall, at Tenant's sole cost and expense, repair and restore all alterations and, to the extent of insurance proceeds recovered with respect to said casualty, shall repair and restore the damage or destruction to all other portions of the Premises. Notwithstanding anything contained herein to the contrary, if the damage or destruction of a material portion of the Premises is not fully covered by the insurance proceeds received by Landlord, or if there are insufficient proceeds after any required payments to Mortgagee, Landlord may, within sixty (60) days of such casualty, terminate this Lease by written notice to Tenant, effective as of the date of such casualty. If Landlord does not elect to terminate this Lease, this Lease shall remain in full force and effect and the Premises shall be diligently repaired and restored by Landlord in accordance herewith. Landlord shall have no liability to Tenant whatsoever, and, Tenant shall not be entitled to terminate this Lease, by virtue of any delays in completion of repairs and restoration. To the extent Tenant is not collecting (i) Resident Fees or (ii) insurance proceeds for lost rent, Base Rent, Percentage Rent and Additional Rent shall abate equitably, as to those portions of the Premises as are, from time to time, untenable as a result of such damage until the date such repairs and restorations are completed. In addition, Landlord shall have no liability to Tenant for inconvenience, loss of business, or annoyance arising from any repairs or restoration.

12.4 Tenant acknowledges that Landlord shall be entitled to the full proceeds of any insurance coverage, whether carried by Landlord or Tenant, for damage to those items or decorations which Landlord is obligated to repair. If the Premises are not repaired or reconstructed, all proceeds of insurance, whether carried by Landlord or Tenant, shall be payable to Landlord.

12.5 This Article 12 is subject in all respects to the terms and conditions provided in the Mortgage and shall not be construed in any manner contrary thereto.

## ARTICLE

### 13.

#### ALTERATIONS AND DEMOLITION

Tenant will not remove or demolish the Premises, or any portion thereof or allow the same to be removed or demolished, without the prior written consent of Landlord and any Mortgagee, if applicable. Tenant further agrees that it will not make, authorize or permit to be made any changes or alterations in or to the Premises which are (i) prohibited by any Mortgage, (ii) cost in excess of \$100,000.00 in the aggregate during any consecutive 12 month period, or (iii) constitute structural changes or alterations, without first in each instance obtaining Landlord's prior written consent thereto. All alterations, improvements and additions to the Premises shall be in quality and class at least equal to the original work and shall become the property of the Landlord and shall meet all building, zoning and fire codes, and all other applicable codes, rules, regulations, laws and ordinances. If required by Landlord, prior to the commencement of any such repairs or alterations,

Tenant shall deposit the estimated cost thereof with Landlord, and such alterations and payments therefore shall be made according to the terms specified in Section 10.7 hereof.

## ARTICLE

### 14.

#### COMPLIANCE WITH LAWS AND ORDINANCES

14.1 Throughout the term of this Lease, Tenant, at its sole cost and expense, will obey, observe and promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of any federal, state and municipal governmental agency or authority having jurisdiction over the Premises (the “**Governmental Authority**”) and the operation thereof to the extent the Premises is used as an assisted living facility, which may be applicable to the Personal Property, the assisted living facility or the Premises.

14.2 Tenant shall likewise observe and comply with the requirements of all policies of public liability and fire insurance and all other policies of insurance at any time in force with respect to the Premises.

14.3 Tenant shall promptly apply for and procure and keep in good standing all necessary licenses, approvals, permits and certificates required by any Governmental Authority for the purpose of maintaining and operating on the Premises an assisted living and memory care facility.

14.4 Tenant shall deliver to Landlord within five (5) days of receipt thereof copies of all notices from any Governmental Authority of a material violation of, or termination, suspension or threatened termination or suspension, of any license or agreement relating to the Premises. Tenant shall deliver to Landlord within five (5) days after request therefor, copies of all other notices, exit interviews, inspections, accident reports and surveys from all state, federal, and local governmental bodies and agencies regarding the operation, condition or safety of the Premises and its compliance or its violation of any laws, regulations or requirements.

14.5 Tenant covenants and agrees there shall be no Hazardous Materials (as defined in Section 26.2 below) in quantities exceeding applicable legal limits generated, released, stored, used, handled, buried or deposited over, beneath, in or on (or used in the construction and/or renovation of) the Premises from any source whatsoever. Tenant further covenants and agrees that at all times it shall cause all waste to be stored properly and removed only by a contractor licensed by the State of South Carolina to dispose of waste.

## ARTICLE

### 15.

#### DISCHARGE OF LIENS

15.1 In accordance with the applicable provisions of South Carolina law, Tenant has no authority to and shall not create any liens for labor or material on or against the Premises, or any interest therein, or the income therefrom or the Personal Property, of work or materials or personal property furnished or supplied to, or claimed to have been supplied to or at the request of Tenant, and no such liens shall extend to the interest of Landlord in the Premises under any circumstances. Tenant agrees to notify all materialmen, suppliers, contractors, mechanics, or laborers involved with work or improvements on the Premises at Tenant’s request that such party must look only to Tenant or Tenant’s other property interests for payment. All materialmen, suppliers, contractors, mechanics and laborers



may be put on notice of this Section by the recordation, at Landlord's option, of a notice in accordance with South Carolina law in the Public Records of Mecklenburg County. Notwithstanding the foregoing, if a lien is attached to the Property, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same. Any amount paid by Landlord for any of the aforesaid purposes including, but not limited to, reasonable attorneys' fees, shall be paid by Tenant to Landlord within thirty (30) days after demand as Additional Rent. Tenant shall within ten (10) days of receiving such notice of lien or claim have such lien or claim released of record in accordance with Section 15.2. Tenant's failure to comply with the provisions of the foregoing sentence shall be deemed an Event of Default entitling Landlord to exercise all of its remedies therefor without the requirement of any additional notice or cure period.

15.2 If any mechanic's, laborer's or materialman's lien caused by or charged to Tenant shall at any time be filed against the Premises or Personal Property, Tenant shall (subject to terms and conditions of any Mortgage) have the right to contest such lien or charge, provided, Tenant within thirty (30) days after notice of the filing thereof, will cause the same to be discharged of record or in lieu thereof to secure Landlord against said lien by deposit with Landlord of such security as may be reasonably demanded by Landlord to protect against such lien. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, or to otherwise secure Landlord as aforesaid, then in addition to any other right or remedy available to Landlord, Landlord may, upon three (3) days notice, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by processing the discharge of such lien by deposit or by bonding proceedings. Any amount so paid by Landlord and all costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the Default Rate shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. Nothing contained herein shall in any way empower Tenant to do or suffer any act which can, may or shall encumber Landlord's or Mortgagee's interest in the Premises.

## ARTICLE

### 16.

#### INSPECTION OF PREMISES AND BOOKS AND RECORDS BY LANDLORD

16.1 At any time, during reasonable business hours, Landlord and/or its authorized representative shall have the right to enter and inspect the Premises and Personal Property.

16.2 At any time, during reasonable business hours (but not more than one time per quarter in any Lease Year, except (a) if Tenant is in default or (b) Mortgagee requires such inspection, in which both cases, no such restriction shall apply), upon not less than twenty-four (24) hours prior notice (which need not be written), Landlord and or its authorized representatives shall have the right to enter and inspect and make copies of the books and records of the Facility, subject, in all regards, to applicable laws regarding the confidentiality of such records.

16.3 Landlord agrees that upon entering and inspecting the Premises, Personal Property and books and records the person or persons conducting such inspection will cause as little inconvenience to the Tenant and residents of the Facility as may reasonably be possible under the circumstances.

ARTICLE  
17.  
CONDEMNATION

17.1 If all of the Premises are taken by the exercise of the power of eminent domain, or sold under eminent domain proceedings, this Lease shall terminate as of the date possession is taken by the condemning authority.

17.2 Subject to the rights of the holder of any Mortgage, if less than all of the Premises are taken by the exercise of the power of eminent domain or sold under eminent domain proceedings, then this Lease shall terminate as to the portion so taken or sold as of the date possession is taken by the condemning authority and if such exercise affected the improvements located on the Premises, Tenant, subject to the written consent and approval of Mortgagee, shall, with reasonable diligence restore or rebuild to the extent reasonably practicable any improvements upon the Premises affected by the taking. Landlord agrees, that in the event Tenant is obligated to repair and restore the Premises as set forth herein, that it shall make the net amount of the condemnation award available to Tenant for such repair and restoration. If the cost of such repair and restoration exceeds \$50,000.00, such amounts shall be deposited with Landlord prior to the commencement of such repair and restoration and such repair and restoration and payment therefor shall take place pursuant to the terms of Section 10.7 hereof.

17.3 In the event that all of the Premises are taken or so sold, this Lease shall terminate as provided herein, and, subject to the terms of any Mortgage, Landlord shall be entitled to the entire award for the real estate and improvements thereon. Tenant shall be entitled to any award that it can prove for damage to its leasehold interest provided that such award is separately allocated to Tenant by the condemning authorities, and further provided that such award to Tenant shall not diminish or reduce the award paid to Landlord.

ARTICLE  
18.  
RENT ABSOLUTE

Except as otherwise specifically provided herein, damage to or destruction of any portion of the buildings, structures and fixtures upon the Premises, by fire, the elements or any other cause whatsoever, whether with or without fault on the part of Tenant, shall not terminate this Lease or entitle Tenant to surrender the Premises or entitle Tenant to any abatement of or reduction in the Base Rent, Percentage Rent, Additional Rent or any other sums payable hereunder, or otherwise affect the respective obligations of the parties hereto, any present or future law to the contrary notwithstanding.

ARTICLE  
19.  
ASSIGNMENT AND SUBLETTING

19.1 During the term of the Lease, Tenant shall not assign its interest under this Lease or in any manner whatsoever, sublet (except to residential tenants and commercial tenants), assign or transfer all or any part of the Premises or in any manner whatsoever transfer or assign an interest in the Premises or in the operation of the Premises (by management contract or otherwise) without in each case the prior written consent of the Landlord, which consent shall not be unreasonably

withheld, conditioned or delayed. If Tenant is a corporation, partnership, limited liability company or other entity, any transaction or series of transactions resulting in the transfer of control of Tenant, other than by reason of death, shall be deemed to be an assignment of this Lease and shall be prohibited

19.2 In addition, until Tenant shall have fully satisfied all of its obligations under this Lease, Tenant shall maintain its corporate existence and qualification to do business in the State of South Carolina, and shall not, without the prior written consent of Landlord, dissolve, liquidate or otherwise dispose of all or substantially all of its assets or consolidate with or merge into another entity, or permit one or more other entities to merge into or consolidate with it.

ARTICLE  
20.  
ACTS OF DEFAULT

20.1 The following acts or events shall be deemed to be a default on the part of the Tenant:

(1) The failure of Tenant to pay when due any rental payment, or any part thereof, or any other sum or sums of money due or payable to the Landlord under the provisions of this Lease;

(2) The failure of Tenant to perform or the violation by Tenant of, any of the covenants, terms, conditions or provisions of this Lease, if such failure or violation shall not be cured within ten (10) days after notice thereof by Landlord to Tenant;

(3) The failure of Tenant to comply with, or the violation by Tenant of, any of the terms, conditions or provisions of any Mortgage (except for any provision regarding the making of any principal and/or interest payments), if such violation is not cured within five (5) days prior to the expiration of the applicable notice and grace period, if any, provided for therein;

(4) The failure of Tenant to comply with the terms of any insurance policy affecting the Premises and required hereunder within the time provided in such policy to cure such non-compliance prior to cancellation thereof; provided, however that Tenant shall not be in default hereunder if prior to the cancellation of such policy of insurance Tenant obtains a replacement acceptable to Landlord thereof;

(5) The making by Tenant of an assignment for the benefit of creditors;

(6) The levying of a writ of execution or attachment on or against the property of Tenant which is not discharged or stayed by action of Tenant contesting same, within thirty (30) days after such levy or attachment (provided if the stay is vacated or ended, this paragraph shall again apply);

(7) If proceedings are instituted in a court of competent jurisdiction for the reorganization, liquidation or involuntary dissolution of the Tenant or for its adjudication as a bankrupt or insolvent, or for the appointment of a receiver of the property of Tenant;

(8) The sale of the interest of Tenant in the Premises under execution or other legal process;

(9) The abandonment of the Premises by Tenant;

(10) The failure on the part of Tenant during the term of this Lease to cure or abate any violation claimed by any Governmental Authority, or any officer acting on behalf thereof, of any law, ordinance, order, rule or regulation pertaining to the operation of the Premises within the time permitted by such authority for such cure or abatement;

(11) Intentionally Deleted.

(12) The failure of Tenant to comply with the terms of or commit a default under any Mortgage.

#### ARTICLE

#### 21.

#### RIGHT TO CONTEST

If permitted under any Mortgage, Tenant shall have the right upon written notice thereof to the Landlord, to contest by appropriate administrative and/or legal proceedings, diligently conducted in good faith, the validity or application of any law, regulation or rule mentioned herein, and to delay compliance therewith pending the prosecution of such proceedings; provided that no civil or criminal liability would thereby be incurred by Landlord or its members and no lien or charge would thereby be imposed upon or satisfied out of the Premises and further provided that the effectiveness and good standing of any license, certificate, certification, permit or agreement affecting the Premises shall continue in full force and effect during the period of any such contest.

#### ARTICLE

#### 22.

#### LANDLORD'S REMEDIES UPON DEFAULT

22.1 In the event of any default on the part of Tenant, Landlord may, if it so elects, and upon notice of such election to Tenant, and with demand upon Tenant, forthwith terminate this Lease and Tenant's right to possession of the Premises, or, at the option of the Landlord, terminate Tenant's right to possession of the Premises without terminating this Lease. Upon any such termination of this Lease, or upon any such termination of Tenant's right to possession without termination of this Lease, Tenant shall vacate the Premises immediately, and shall quietly and peaceably deliver possession of the Premises and Personal Property to the Landlord, and Tenant hereby grants to the Landlord full and free license to enter into and upon the Premises in such event with or without process of law and to repossess the Premises and Personal Property as the Landlord's former estate. In the event of any such termination of this Lease, Landlord shall again have possession and enjoyment of the Premises and Personal Property to the extent as if this Lease had not been made, and thereupon this Lease and everything herein contained on the part of Tenant to be done and performed shall cease and terminate, all, however, without prejudice to and without relinquishing the rights of the Landlord to receive rent (which, upon such termination of the Lease and entry of Landlord upon the Premises, shall be the right to receive rent due up to the time of such entry) or any other right given to the Landlord hereunder or by operation of law.

22.2 In the event of any default on the part of Tenant and Landlord elects either to terminate this Lease or to terminate Tenant's right to possession of the Premises, then all licenses, certifications, permits, agreements and authorizations issued by any governmental agency, body or

authority in connection with or relating to the Premises and the assisted living and memory care facility operated thereon shall, to the extent assignable, be deemed to be automatically assigned to Landlord. Landlord shall also have the right to continue to utilize the telephone number and name used by Tenant in connection with the operation of the Facility. This Lease shall be deemed and construed as an assignment for purposes of vesting in Landlord all right, title and interest in and to (i) all licenses, certifications, permits, agreements and authorizations obtained in connection with the operation of the Facility, and (ii) the name and telephone number used in connection with the operation of the Facility located on the Premises. Tenant hereby agrees to take such other action and execute such other documents as may be necessary in order to vest in Landlord all right, title and interest to the items specified herein.

22.3 If Tenant abandons the Premises or otherwise entitles Landlord to elect to terminate this Lease or Tenant's right to possession of the Premises and Landlord elects to terminate Tenant's right to possession only, without terminating this Lease, Landlord may, at its option, enter into the Premises, remove Tenant's signs and other evidences of tenancy and take and hold possession thereof as in the foregoing Section 22.1 of this Article provided, without such entry and possession terminating this Lease or releasing Tenant, in whole or in part, from Tenant's obligation to pay the rent hereunder for the full remaining term of this Lease, and in any such case, Tenant shall pay to Landlord a sum equal to the entire amount of the Base Rent, Percentage Rent and Additional Rent reserved hereunder and required to be paid by Tenant up to the time of such termination of the right of possession plus any other sums then due hereunder. Upon and after entry into possession without termination of this Lease, Landlord may attempt to relet the Premises or any part thereof for the account of Tenant for such rent, or shall operate the Facility for such time and upon such terms as Landlord in its sole discretion shall determine. In any such case, Landlord may make repairs, alterations and additions in or to the Premises, and redecorate the same to the extent deemed desirable by Landlord, and Tenant shall, upon demand, pay the cost thereof, together with Landlord's expenses of reletting. If the consideration collected by Landlord upon any such reletting is not sufficient to pay monthly the full amount of Base Rent, Percentage Rent and Additional Rent reserved in this Lease, together with the costs of repairs, alterations, additions, redecorating and Landlord's expenses, Tenant shall pay to the Landlord the amount of each monthly deficiency upon demand.

22.4 Tenant's liability to Landlord for damages for default in payment of Rent or otherwise hereunder shall in all events survive the termination by Landlord of the Lease or the termination by Landlord of Tenant's right to possession, and Landlord may recover from Tenant and Tenant shall pay to Landlord as liquidated and final damages, whether or not Landlord shall have collected any current monthly deficiencies under the foregoing Section 22.3, and in lieu of such current deficiencies after the date of demand for such final damages, the amount thereof found to be due by a court of competent jurisdiction, which amount may be equal to:

(1) the remainder, if any, of Base Rent, Percentage Rent and Additional Rent due from Tenant for the period up to and including the date of the termination of the Lease or Tenant's right to possession;

(2) the amount of any current monthly deficiencies accruing and unpaid by Tenant up to and including the date of Landlord's demand for final damages hereunder; and



(3) the excess, if any, of the Base Rent reserved for what would have been the remainder of the term of this Lease, together with all Percentage Rent and Additional Rent to be paid by Tenant under the Lease over the then fair rental value of the Premises and the Personal Property.

22.5 If any statute or rule governing a proceeding in which such liquidated final damages are to be proved shall validly limit the amount thereof to an amount less than the amount above agreed upon, Landlord shall be entitled to the maximum amount allowable under such statute or rule of law.

22.6 In the event of a default by Tenant in the payment of Rent required hereunder, such amounts shall bear interest at the Default Rate from the date due until paid by Tenant.

22.7 No re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease, unless a written notice of such intention is given to Tenant. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law or equity (all of which are expressly reserved), nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. Landlord's acceptance of Rent following a default hereunder shall not be construed as Landlord's waiver of such default. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or default. The loss or damage that Landlord may suffer by reason of termination of this Lease or the deficiency from any reletting as provided for above shall include the expense of repossession and any repairs or remodeling undertaken by Landlord following possession. Should Landlord at any time terminate this Lease for any default, in addition to any other remedy Landlord may have, Landlord may recover from Tenant all damages Landlord may incur by reason of such default, including the cost of recovering the Premises and the loss of rental for the remainder of the term of this Lease.

#### ARTICLE

23.

#### LIABILITY OF LANDLORD

It is expressly agreed by the parties that in no case shall Landlord be liable, under any express or implied covenant, agreement or provisions of this Lease, for any damages whatsoever to Tenant in an amount in excess of the estate and property of the Landlord in the Premises and Personal Property, and Tenant shall look solely to the estate and property of Landlord in the Tenant's remedies in the event of any default or breach by the Landlord relative to this Lease and no other property or assets of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of any liability of Landlord to Tenant hereunder.

#### ARTICLE

24.

#### CUMULATIVE REMEDIES OF LANDLORD

The specific remedies to which Landlord may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Landlord may be lawfully entitled in case of any breach or threatened breach of Tenant of any provision or provisions of this Lease. The failure of Landlord to insist, in any one or more cases,

upon the strict performance of any of the terms, covenants, conditions, provisions or agreements of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of any such term, covenant, condition, provision, agreement or option.

ARTICLE

25.

SECURITY FOR RENT

Tenant hereby grants to Landlord, and Landlord shall have a first lien paramount to all others, except any Mortgagee, on every right and interest of Tenant in and to this Lease, and on any furnishings, equipment, fixtures, or other property of any kind belonging to Tenant. Such lien is granted for the purpose of securing the payments of rents, charges, penalties, and damages herein covenanted to be paid by Tenant, and for the purpose of securing the performance of all of Tenant's obligations under this Lease. Such lien shall be in addition to all rights to Landlord given and provided by law. This Lease shall constitute a security agreement under the Uniform Commercial Code granting Landlord a security interest in any furnishings, equipment, fixtures, or other personal property of any kind belonging to Tenant, except for Tenant's accounts receivables, and upon request by Landlord, Tenant shall execute deliver and record and/or file, if appropriate, at Tenant's expense, such financing statements and other documentation reasonably necessary to perfect the security interest.

ARTICLE

26.

INDEMNIFICATION

26.1 Tenant agrees to protect, indemnify, defend and save harmless the Landlord from and against any and all claims, demands and causes of action of any nature whatsoever; (i) arising from or related to any default by Tenant hereunder; (ii) for injury to or death of persons or loss of or damage to property, occurring on the Premises or any adjoining sidewalks, streets or ways; or (iii) in any manner growing out of or connected with the use and occupation of the Premises or the condition thereof, or the use of any existing or future sewer or water system, or the use of any adjoining sidewalks, streets or ways during the terms of this Lease, and Tenant further agrees to pay any reasonable attorneys' fees and expenses incident to the defense by Landlord of any such claims, demands or causes of action.

26.2 (a) Tenant covenants and agrees that it will indemnify, defend and hold harmless Landlord and all persons claiming by, through or under Landlord, from any and all claims, liabilities, losses, damages, response costs, clean-up costs and expenses arising out of or in any way relating to the existence of Hazardous Materials in, on, under, at or used in the renovation of the Premises, except as otherwise stated herein, first arising at any time following the date hereof and throughout the term, including, without limitation: (i) claims of third parties (including, without limitation, individuals, companies and governmental agencies) for damages, penalties, response costs, clean-up costs, and injunctive or other relief; (ii) costs of removal or restoration, including reasonable fees of attorneys and experts, and costs of reporting the existence of Hazardous Materials to any governmental agency, where required; and (iii) any and all expenses or obligations, including reasonable attorneys' fees, incurred at, before and after any trial or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' fees, witness fees, deposition costs, copying and telephone charges and other expenses, all of which shall be paid by Tenant to Landlord on demand. In case any action or proceeding is brought against Landlord in respect of which indemnity may be sought pursuant to this Section 26.2,

Landlord shall promptly give notice of any such action or proceeding to Tenant and may require Tenant, upon such notice, to assume the defense of the action or proceeding; provided that failure of Landlord to give such notice shall not relieve Tenant from any of its obligations under this Section 26.2. Upon receipt of notice from Landlord, Tenant shall resist and defend such action or proceeding at Tenant's sole expense. Landlord shall cooperate with all reasonable requests of Tenant or its counsel in the defense or settlement of any such action or proceeding and shall not seek indemnification from Tenant for the settlement of any action hereunder unless Tenant shall have provided its consent thereto, which consent shall not be unreasonably delayed or withheld. The obligations of Tenant to indemnify Landlord set forth in this Section 26.2 shall survive the termination of this Lease by lapse of time or otherwise.

(b) For purposes of this Section 26.2, "Hazardous Materials" shall mean and include any substance chemically the same or similar in its dangerous properties to any hazardous substance defined as such in or for purposes of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Section 9601 et seq.), any hazardous materials as defined by the Hazardous Materials Transportation Act (49 USC Section 1802 et seq.), any hazardous waste as defined by the Resource Conservation and Recovery Act, as amended (42 USC Section 6901 et seq.), any hazardous chemical as defined by OSHA's Hazard Communication Standard, as amended (29 CFR Section 1910.1200), any hazardous waste or material as defined by the Federal Emergency Response and Community Right-to-Know Act of 1986, and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance, chemical or materials now or at any time hereafter in effect, but shall not include hazardous substances or materials contained in commonly used office products or cleaning materials.

#### ARTICLE

#### 27.

#### SUBORDINATION AND NON-DISTURBANCE PROVISIONS

This Lease (and Tenant's interest in the Premises and Personal Property) shall be subject and subordinate to each Mortgage and to all renewals, modifications, consolidations and extensions thereof, including without limitation, the lien of that certain Mortgage, Assignment of Rents and Security Agreement dated as of the date hereof granted by Landlord in favor of Mortgagee. At the request of Landlord, Tenant agrees to execute and deliver upon demand such further instruments subordinating this Lease to any liens or encumbrances as shall be desired by Landlord or its Mortgagee

If this Lease is terminated as a result of Lender's exercise of any of its remedies under the Mortgage or other loan documents, then Landlord and Tenant shall negotiate, in good faith, a reasonable termination fee which shall be payable to Tenant following such termination of this Lease, provided that such termination fee shall be subordinate to all amounts owed to Lender under the Mortgage and other loan documents.

#### ARTICLE

#### 28.

#### TENANT'S FAITHFUL COMPLIANCE WITH THE MORTGAGE

Anything to the contrary contained in this Lease notwithstanding, Tenant shall at all times and in all respects fully, timely and faithfully comply with and observe each and all of the conditions, covenants, and provisions required on the part of the Landlord under a Mortgage (and to any



renewals, modifications, extensions and/or consolidations thereof) including, without limitation, such conditions, covenants and provisions thereof as relate to the care, maintenance, repair, insurance, restoration, preservation and condemnation of the Premises, notwithstanding that such conditions, covenants and provisions may require compliance and observance to a standard or degree in excess of that required by the provisions of this Lease, or may require performance not required by the provisions of this Lease. Tenant shall not do or permit to be done anything which would constitute a breach of or default under any obligation of Landlord under a Mortgage, it being the intention hereof that Tenant shall so comply with and observe each and all of such covenants, conditions and provisions of each Mortgage so that there will not be any default on the part of the Landlord thereunder. However, nothing continued in this Article 28 shall be construed to obligate Tenant to pay any part of the principal or interest secured by a Mortgage except as may otherwise be expressly provided in this Lease.

ARTICLE

29.

ACKNOWLEDGEMENT OF ECONOMIC ARRANGEMENT BETWEEN PARTIES

The Rent set forth in Section 5 above reflects the entire economic arrangement of the parties hereto, including, but not limited to, Tenant's execution of a collateral assignment of all of its right, title and interest in and to the leases and rents derived from the Premises, Tenant's subordination of this Lease to the lien of the Mortgage as set forth in Article 27 above.

ARTICLE

30.

TENANT'S ATTORNMENT

Tenant covenants and agrees that, if by reason of a default upon the part of Landlord in the performance of any of the terms and conditions of any Mortgage and the estate of Landlord thereunder is terminated by summary dispossession proceedings or otherwise, Tenant will attorn to the then holder of such Mortgage or the purchaser in such foreclosure proceedings, as the case may be, and will recognize the holder of any Mortgage or such purchaser as the case may be as the Landlord under this Lease. Tenant covenants and agrees to execute and deliver, at any time and from time to time, upon the request of Landlord or the holder of such Mortgage or the purchaser in foreclosure proceedings, any instrument which may be necessary or appropriate to evidence such attornment. Tenant further waives the provisions of any statute or rule of law now or hereafter in effect which may terminate this Lease or give or purport to give Tenant any right of election to terminate this Lease or to surrender possession of the Premises in the event any such proceedings are brought against the Landlord under any Mortgage, and agrees that this Lease shall not be affected in any way whatsoever by any such proceedings.

ARTICLE

31.

"AS IS"

Tenant has examined the Premises, the Facility and the Personal Property prior to the acceptance and execution of this Lease, agrees and acknowledges that it is familiar with the Premises and that no representations or warranties, express or implied, have been made by or on behalf of Landlord with respect to the condition thereof. Tenant represents that it is satisfied with the condition

thereof and is leasing the Premises, the Facility and the Personal Property in "as is" condition, and Landlord shall in no event whatsoever be liable for any latent or patent defects therein.

ARTICLE

32.

FINANCIAL STATEMENTS

32.1 Within sixty (60) days after the end of each calendar quarter, Tenant shall furnish to Landlord full and complete financial statements of the operations of the Premises and Facility for such fiscal period, and which shall contain a statement of capital charges, balance sheet and detailed income and expense statement (collectively called "**Financial Statements**") as of the end of each calendar quarter. In addition, Tenant shall furnish Landlord, within ten (10) days following filing, with a copy of its federal income tax return for the preceding year. Each such statement shall be certified as being true and correct by an executive officer of Tenant.

32.2 At all times, Tenant, or Tenant's agent, shall keep and maintain full and current records and books of account of the operations of Tenant in the Premises and records and books of account of the entire business operations of Tenant in accordance with generally accepted accounting practices. Upon request by Landlord, from time to time (but not more than one time per quarter in any Lease Year, except (a) if Tenant is in default or (b) Mortgagee requires such inspection, in which both cases, no such restriction shall apply), Tenant shall make available for inspection by Landlord or its designee, during reasonable business hours, the said records and books of account covering the entire business operation of Tenant on the Premises.

ARTICLE

33.

EXTENDED TERM

Provided Tenant is not in default under this Lease, or an event which, with notice or lapse of time or both, would constitute a default hereunder, has occurred and is continuing, either at the date of exercise or upon the commencement of the Extended Term (as hereunder defined), then Tenant shall have the right to renew this Lease for two (2) additional consecutive terms of five (5) years each (each and all such periods, collectively, the "**Extended Term**"), upon giving written notice to Landlord of such renewal not less than nine (9) and not more than twelve (12) months prior to the expiration of the initial term of this Lease or the first Extended Term, as applicable. If proper notification of the exercise of the right to extend is not given or received, such right shall automatically expire. During the Extended Term, all of the terms and conditions of this Lease shall continue in full force and effect except that Base Rent and the Breakpoints for and during the Extended Term shall be determined in the same manner as the Base Rent and the Breakpoints for Lease Years 6 through 15 as set forth in Section 5.7 above.

ARTICLE

34.

APPRAISER

If the parties cannot mutually agree upon the Fair Market Rental and it becomes necessary to determine the Fair Market Rental for any purpose of this Lease the same shall be determined by an independent appraisal firm (the "**Appraiser**"), in which one or more of the members, officers or principals of such firm are Members of the Appraisal Institute (or any successor organization

thereto), as may be reasonably selected by Landlord and Tenant within ten (10) business days of either party's determination that an appraiser is required to make such determination; provided, however, if the parties cannot mutually agree upon the appraisal firm within such ten (10) business day period, each party shall select an appraisal firm of its choice within five (5) business days of the expiration of such ten (10) business day period and the two firms shall select the Appraiser within ten (10) business days of their selection by the parties. Landlord shall cause such Appraiser to determine the Fair Market Rental as of the relevant date (giving effect to the impact, if any, of inflation from the date of the Appraiser's decision to the relevant date) and the determination of such Appraiser shall be final and binding upon the parties. A written report of such Appraiser shall be delivered and addressed to each of Landlord and Tenant. This provision for determination by appraisal shall be specifically enforceable to the extent such remedy is available under applicable law, and any determination hereunder shall be final and binding upon the parties except as otherwise provided by applicable law. Landlord and Tenant shall each pay one-half (1/2) of the fees and expenses of the Appraiser and one-half (1/2) of all other costs and expenses incurred in connection with such appraisal.

ARTICLE  
35.  
MISCELLANEOUS

35.1 Tenant, upon paying the Rent and all other charges herein provide, and for observing and keeping the covenants, agreements, terms and conditions of this Lease on its part to be performed, shall lawfully and quietly hold, occupy and enjoy the Premises during the term of this Lease, and subject to its terms, without hindrance by Landlord or by any other person or persons claiming by, through or under Landlord.

35.2 All payments to be made by the Tenant hereunder, whether or not designated as Additional Rent, shall be deemed Additional Rent, so that in default of payment when due, the Landlord shall be entitled to all of the remedies available at law or equity, or under this Lease, for the nonpayment of rent.

35.3 Tenant acknowledges that: (i) Landlord is directly or indirectly owned in whole or in part by an entity or entities (individually and collectively, "**REIT Owner**") that qualify or intend to qualify as a "real estate investment trust" ("**REIT**") under sections 856 through 860 of the Internal Revenue Code of 1986, as amended, or any successor statute (the "**Code**"); and (ii) Landlord and REIT Owner are therefore subject to operating and other restrictions under the Code. At any time and from time to time, Tenant will cooperate with Landlord to effectuate structural changes in the arrangements between Landlord and Tenant (including, without limitation, this Lease) to address Landlord's or REIT Owner's concerns regarding REIT qualification. If Tenant cannot take actions to the satisfaction of Landlord or REIT Owner to protect any such REIT qualification, Landlord shall have the right to terminate this Lease upon thirty (30) days' notice to Tenant.

35.4 Landlord and Tenant agree that the fair market value of any personal property leased hereunder does not exceed fifteen percent (15%) of the total fair market value of all property leased hereunder (including real property, improvements, fixtures and personal property).

35.5 This Lease is intended as, and shall constitute, an agreement of lease, and nothing herein shall be construed as conveying to Tenant any right, title or interest in or to the Premises nor to any remainder or reversionary estates in the Premises held by any entity or person, except, in each instance,



If to Tenant: Spring Street Senior Housing OPCO, LLC  
c/o Kayne Anderson Real Estate  
One Town Center Road, Suite 300  
Boca Raton, Florida 34486  
Attention: Russell Reiter, Esq.

or if Notice of a change of address has been sent, to such other party and/or to such other address as may be designated in that Notice, provided, however, that the designation of an address by Notice hereunder shall not be effective until the third day after Notice thereof is given.

35.10 Upon demand by either party, Landlord and Tenant agree that neither this Lease nor any notice thereof or reference thereto shall be recorded in any public records, except that Landlord only may request a memorandum of the pertinent portions hereof be recorded in the public records of Charleston County, South Carolina. Such memorandum shall in all events contain the provisions of this Lease giving notice that Landlord's interest in the Premises shall not be subject to any mechanic's liens as a result of any contracts entered into between Tenant and any third party, or arising out of or related to any improvements made to the Premises or materials or services applied thereto which may be ordered by Tenant. In the event of such a request by Landlord, Tenant shall join in the execution of such memorandum for the purpose of recordation.

35.11 Each party agrees that any time, and from time to time, upon not less than (10) days prior written request from the other party, to execute, acknowledge and deliver to the other party a statement in writing, certifying, among other things, that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), the dates to which the Base Rent and Percentage Rent have been paid, the amount of Additional Rent held by Landlord pursuant to Article 7, and whether Tenant or Landlord is then default or whether any events have occurred which, with the giving of notice or the passage of time, or both, could constitute a default hereunder, it being intended that any such statement delivered pursuant to this Section 35.11 may be relied upon by any prospective assignee, mortgagee or purchaser of the fee interest in the Premises or of this Lease.

35.12 All of the provisions of this Lease shall be deemed and construed to be "conditions" and "covenants" as though the words specifically expressing or importing covenants and conditions were used in each separate provision hereof.

35.13 Any reference herein to the termination of this Lease shall be deemed to include any termination thereof by expiration or pursuant to Articles referring to earlier termination.

35.14 The headings and titles in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Lease, or in any way affect this Lease.

35.15 Except as otherwise herein expressly provided, the covenants, conditions and agreements in this Lease shall be binding on and inure to the benefit of Landlord and Tenant and their respective successors and assigns.

35.16 All nouns and pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons, firm or firms, corporation or corporations, entity or entities or any other thing or things may require.



35.17 If any term or provision of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby, but each term and provision shall be valid and be enforced to the fullest extent permitted by law.

35.18 This Lease contains the entire agreement between the parties with respect to the subject matter hereof and any executory agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part unless such executory agreement is in writing and signed by the a party against whom enforcement of the change, modification or discharge is sought. This Lease cannot be changed orally or terminated orally.

35.19 This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina and is to be performed in Charleston County, South Carolina. Landlord and Tenant hereby irrevocably consent to the jurisdiction and proper venue of the State of South Carolina, County of Charleston.

35.20 Time is of the essence in this Lease and in each and all of the provisions hereof. Whenever a period of days is specified in this Lease, such period shall refer to calendar days unless otherwise expressly stated in this Lease.

35.21 TENANT AND LANDLORD HEREBY KNOWINGLY AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTER CLAIM, BROUGHT BY ONE PARTY AGAINST THE OTHER OR ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT CREATED HEREBY, THE TENANT'S USE OR OCCUPANCY OF THE LEASED PREMISES AND/OR ANY CLAIM FOR INJURY OR DAMAGE. LANDLORD AND TENANT ARE EACH HEREBY AUTHORIZED BY THE OTHER TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THE FOREGOING WAIVER.

## ARTICLE

### 36.

#### PARENT RIGHTS

36.01 Subject to the limitations contained in the following sentence, the parties understand and agree that for as long as KAREP V Senior Housing REOC JV, LLC, a Delaware limited liability company ("**Parent**") directly or indirectly owns a beneficial interest in the Tenant, Parent shall be entitled to exercise independently the rights of Tenant, as set forth in this Lease. Such rights shall be exercisable by Parent in the same manner and to the same extent that such rights could otherwise be exercised or enforced by Tenant; provided, however, Parent acknowledges and agrees that its right pursuant to this Section shall be subject to and limited by any right of Liberty Southern CSL, LLC, a South Carolina limited liability company, and Liberty Development of Charleston, LLC, a North Carolina limited liability company (collectively, the "**Liberty Members**"), in their capacity as a member of Spring Street Senior Housing JV OPCO, LLC, a Delaware limited liability company ("**JV**"), as set forth in the Limited Liability Company Operating Agreement of the JV, dated on or about the date hereof, as it may be amended from time to time. It is the intention of Parent, the Landlord, the Tenant and the Liberty Members that such rights constitute substantial direct participation and management rights with respect to the property governed by this Agreement, and that such rights shall be independently enforceable by Parent, consistent with its status as a "real

estate operating company” as defined in regulations issued by the U.S. Department of Labor under the Employee Retirement Income Security Act of 1974, as amended.

**[ REMAINDER OF PAGE INTENTIONALLY LEFT BLANK ]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be signed by persons authorized so to do behalf of each of them respectively as of the day and year above written.

**LANDLORD:**

**SPRING STREET SENIOR HOUSING PROPCO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: S. David Selznick  
Its: Vice President

**TENANT:**

**SPRING STREET SENIOR HOUSING OPCO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: S. David Selznick  
Its: Vice President

Solely with respect to Article 36 of this Lease:

**KAREP V SENIOR HOUSING REOC JV, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: S. David Selznick  
Its: Vice President



# **EXHIBIT 6**

## **190 Spring Street Management, LLC Ownership and Services Offered**

**190 Spring Street Management, LLC “Upstream” Ownership Info and Business  
Experience**

190 Spring Street Management, LLC is wholly owned by Liberty Senior Living, LLC. Liberty Senior Living, LLC is wholly owned by Liberty Healthcare Group, LLC. John A. McNeill Jr. and Ronald B. McNeill are the members/managers of Liberty Healthcare Group, LLC.

***Liberty Healthcare Group, LLC***

- John A. McNeill, Jr., Member/Manager
- Ronald B. McNeill, Member/Manager

The principals in this enterprise are John A. McNeill Jr. and Ronald B. McNeill. *John A. (Sandy) McNeill Jr.*, a pharmacist by training, has had many years of business experience in the health care field. He has opened and operated four pharmacies and developed Medi-Care Supply Company from a relatively small operation with one location in 1975 to a multi-million dollar corporation with 16 locations when it was sold in 1986 to a Fortune 500 company.

*Ronald B. (Ronnie) McNeill* is a Registered Professional Engineer with a Master’s Degree in Business Administration. He brings technical, financial and health care insurance reimbursement expertise to the project. He previously served as Chief Financial Officer and Billing Manager of Medi-Care Supply Company. He contributes his substantial expertise in financial management and cost control to the efficient operation of the organization.

The McNeill’s purchased their first nursing home in 1990, but the McNeill family’s healthcare heritage dates back to 1870 beginning with their great-grandfather. Over the last two and a half decades the Liberty family of companies has grown from a single nursing home to a fully integrated post-acute healthcare provider. In addition to the thirty-five nursing homes the Liberty Healthcare organization also includes eight assisted living facilities, two independent living communities, five Continuing Care Retirement Communities, a home health and hospice company with twenty-nine locations servicing various urban and rural counties in North Carolina, South Carolina, and Virginia, a durable medical equipment company under the Liberty as well as a retail and a long-term care pharmacy. The McNeill family comes from a tradition of service, dating back generations, and Sandy and Ronnie continue that tradition today as principals of one of the largest and most comprehensive healthcare companies in North Carolina.

# **EXHIBIT 7**

**Listing of all existing licensed health  
care facilities and/or services by  
Liberty (affiliate of the Applicant)**

The Liberty organization (affiliate of the Applicant) includes: thirty-five nursing homes, eight assisted living facilities, two independent living communities, five Continuing Care Retirement Communities, and a home health and hospice company with twenty-nine locations servicing various urban and rural counties in North Carolina, South Carolina, and Virginia.

The following is a listing of all nursing home facilities owned, managed and/or operated by companies affiliated with the proposer:

- Liberty Commons Nursing and Rehabilitation Center of Alamance County, Burlington, NC
- Pavilion Health Center at Brightmore, Charlotte, NC
- Elizabethtown Nursing Center, Elizabethtown, NC
- Bradley Creek Healthcare Center, Wilmington, NC
- Liberty Commons Nursing and Rehabilitation Center of Columbus County, Whiteville, NC
- Bermuda Commons Nursing and Rehabilitation Center, Advance, NC
- Louisburg Healthcare & Rehabilitation Center, Louisburg, NC
- Golden Years Nursing Home, Falcon, NC
- Liberty Commons Nursing and Rehabilitation Center of Halifax County, Weldon, NC
- Cross Creek Health Care, Swan Quarter, NC
- Liberty Commons Nursing and Rehabilitation Center of Johnston County, Benson, NC
- Summerstone Health and Rehabilitation Center, Kernersville, NC
- Liberty Commons Rehabilitation Center, Wilmington, NC
- The Foley Center at Chestnut Ridge, Blowing Rock, NC
- Liberty Commons Nursing and Rehabilitation Center of Lee County, Sanford, NC
- Westfield Rehabilitation and Health Center, Sanford, NC
- Royal Park Rehabilitation and Health Center, Matthews, NC
- Mary Gran Nursing Center, Clinton, NC
- Pinehurst Healthcare & Rehab, Pinehurst, NC
- The Oaks, Winston Salem, NC
- Parkview Health and Rehabilitation Center, Chapel Hill, NC
- Southport Health & Rehabilitation Center, Southport, NC
- Roxboro Healthcare and Rehabilitation Center, Roxboro, NC
- Pisgah Manor at Pisgah Valley Retirement Community, Candler, NC
- The Inn at Quail Haven, Pinehurst, NC
- Liberty Commons Nursing and Rehabilitation Center of Rowan County, Salisbury, NC
- Shoreland Health Care and Retirement Center, Whiteville, NC
- Southwood Nursing and Rehabilitation Center, Clinton, NC
- Three Rivers Health and Rehabilitation Center, Windsor, NC
- Capital Nursing and Rehabilitation Center, Raleigh, NC
- Warren Hills Rehabilitation & Nursing Center, Warrenton, NC
- Woodlands Nursing and Rehabilitation Center, Fayetteville, NC
- Yadkin Nursing Care Center, Yadkinville, NC
- Shem Creek Health Center at South Bay at Mount Pleasant, Mount Pleasant, SC

- Swift Creek Health Center at The Templeton of Cary, Cary, NC

The following is a listing of all adult care facilities owned, managed and/or operated by companies affiliated with the proposer:

- The Kempton at Brightmore, Wilmington, NC
- Liberty Commons at Brightmore, Wilmington, NC
- The Terrace at Brightmore, Charlotte, NC
- Liberty Commons of Jacksonville, Jacksonville, NC
- The Kempton of Hermitage, Hermitage, TN
- The Kempton of Greenville, Greer, SC
- Oakleaf Village of Lexington, Lexington, SC
- Liberty Commons Assisted Living of Franklin County, Louisburg, NC

The following is a listing of all independent living communities owned, managed and/or operated by companies affiliated with the proposer:

- Brightmore of South Charlotte, Charlotte, NC
- Brightmore of Wilmington, Wilmington, NC

The following is a listing of the Continuum Care Retirement Communities owned, managed and/or operated by companies affiliated with the proposer:

- Carolina Bay at Autumn Hall, Wilmington, NC
- South Bay at Mount Pleasant, Mt. Pleasant, SC
- Quail Haven Village, Pinehurst, NC
- Pisgah Valley Retirement Community, Candler, NC
- The Templeton of Cary, Cary, NC

The following is a listing of all the home health & hospice agencies owned, managed and/or operated by companies affiliated with the proposer:

- Burgaw Office (NC)
- Burlington Office (NC)
- Clinton Office (NC)
- Dunn Office (NC)
- Durham Office (NC)
- Elizabethtown Office (NC)
- Fayetteville Office (NC)
- Greensboro Office (NC)
- Jacksonville Office (NC)
- Lumberton Office (NC)
- Maxton Office (NC)
- Morehead City Office (NC)
- Pinehurst Office (NC)

- Raeford Office (NC)
- Raleigh Office (NC)
- Sanford Office (NC)
- Siler City Office (NC)
- Smithfield Office (NC)
- Supply Office (NC)
- Thomasville Office (NC)
- Wadesboro Office (NC)
- Whiteville Office (NC)
- Wilmington Office (NC)
- Mt. Airy Office (NC)
- Aiken Office (SC)
- Myrtle Beach Office (SC)
- Bennettsville Office (SC)
- Cana Office (VA)
- Danville Office (VA)

# **EXHIBIT 8**

## **Transfer Agreement Support Letter**

November 6, 2020

Timothy Walsh  
Senior Financial Analyst  
Liberty Senior Living  
2334 S. 41<sup>st</sup> Street  
Wilmington, NC 28403

Dear Mr. Walsh,

If Spring Street Senior Housing OPCO, LLC is approved to develop their new, non-institutional, healthcare community that includes skilled nursing in Charleston County, we will consider entering into a transfer agreement once the Certificate of Need has been issued and the community licensed. We thank you for contacting us regarding the proposal.

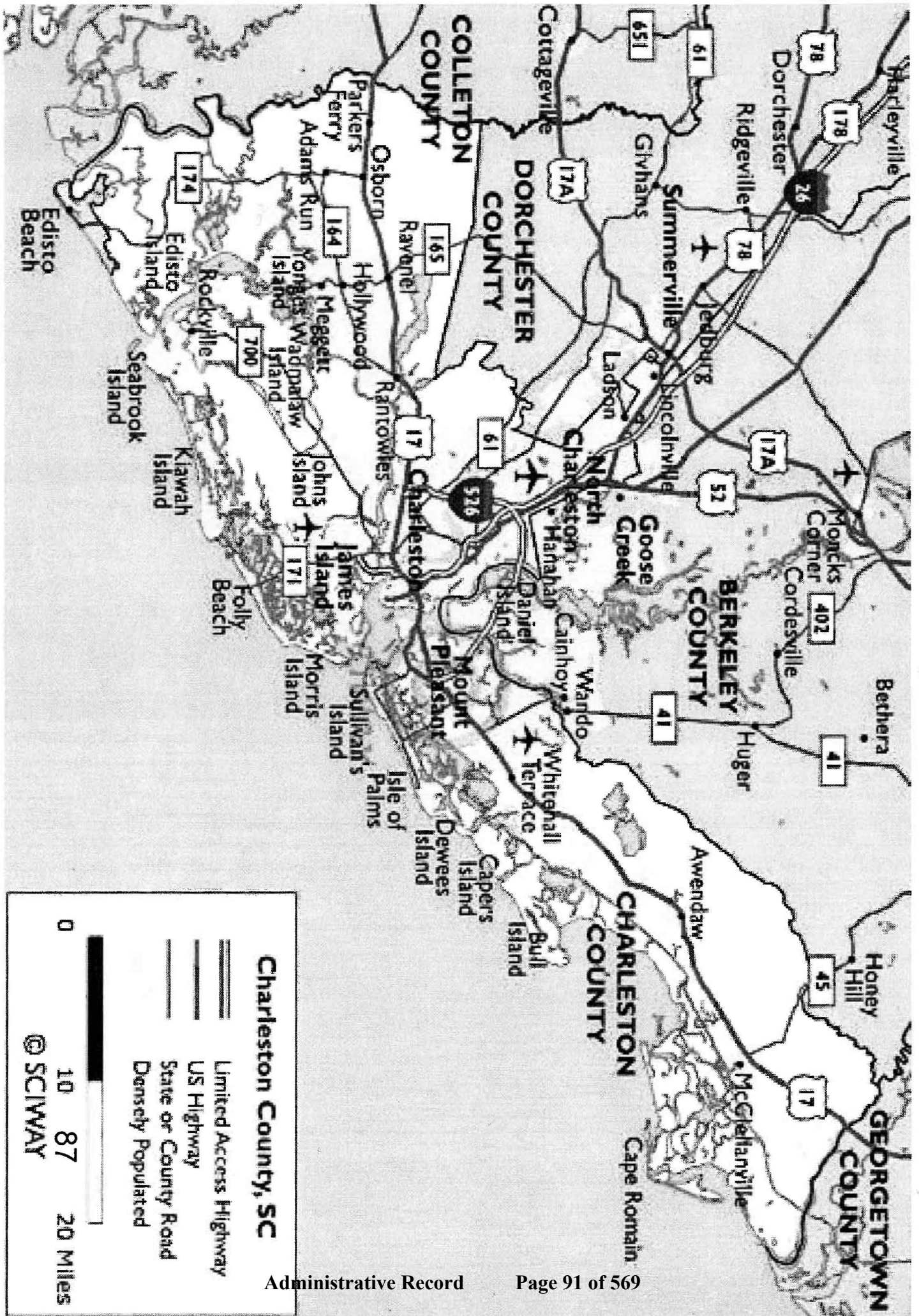
A handwritten signature in cursive script, appearing to read "Sarah Bacik".

**Sarah Bacik, MHA**  
Chief Strategy Officer  
The Medical University of South Carolina



# **EXHIBIT 9**

## **Map of Charleston County**



# **EXHIBIT 10**

## **Population and Demographic Data on Charleston County**

# Pop-Facts® by Age, Race, Sex | Summary



Trade Area: Charleston County, SC

	Count	%
<b>Population</b>		
2000 Census	310,175	100.00
2010 Census	350,209	100.00
2020 Estimate	414,835	100.00
2025 Projection	444,165	100.00
<b>Population Growth</b>		
Percent Change: 2000 to 2010	-	12.91
Percent Change: 2010 to 2020	-	18.45
Percent Change: 2020 to 2025	-	7.07

Benchmark: USA

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(<https://en.environicsanalytics.ca/Spotlight/About/3/2020>)

# Pop-Facts® by Age, Race, Sex | 2010 Detail

Trade Area: Charleston County, SC

	Population	%	Male	%	Female	%
<b>2010 Census Estimate</b>						
2010 Census Estimate	350,209	100.00	169,871	48.51	180,338	51.49
Age 0 - 4	22,886	6.54	11,626	6.84	11,260	6.24
Age 5 - 9	20,077	5.73	10,269	6.04	9,808	5.44
Age 10 - 14	18,419	5.26	9,312	5.48	9,107	5.05
Age 15 - 17	11,276	3.22	5,729	3.37	5,547	3.08
Age 18 - 20	17,621	5.03	8,703	5.12	8,918	4.95
Age 21 - 24	25,541	7.29	12,652	7.45	12,889	7.15
Age 25 - 34	55,456	15.84	27,780	16.34	27,696	15.36
Age 35 - 44	43,171	12.33	21,630	12.73	21,541	11.95
Age 45 - 54	47,982	13.70	22,981	13.53	25,001	13.86
Age 55 - 64	43,059	12.29	20,135	11.85	22,924	12.71
Age 65 - 74	25,010	7.14	11,540	6.79	13,470	7.47
Age 75 - 84	13,869	3.96	5,684	3.35	8,185	4.54
Age 85+	5,842	1.67	1,850	1.09	3,992	2.21
Age 18+	277,551	79.25	132,935	78.26	144,616	80.19
Age 21+	259,930	74.22	124,232	73.13	135,698	75.25
Age 65+	44,721	12.77	19,074	11.23	25,647	14.22
Median Age	-	35.82	-	34.55	-	37.18
<b>2010 Census Estimate Hispanic or Latino</b>						
2010 Census Estimate Hispanic or Latino	18,877	5.39	10,998	3.14	7,879	2.25
Age 0 - 4	2,466	13.06	1,264	11.49	1,202	15.26
Age 5 - 9	1,645	8.71	884	8.04	761	9.66
Age 10 - 14	1,094	5.79	551	5.01	543	6.89
Age 15 - 17	562	2.98	289	2.63	273	3.46
Age 18 - 20	1,100	5.83	659	5.99	441	5.60
Age 21 - 24	2,053	10.88	1,279	11.63	774	9.82
Age 25 - 34	4,875	25.82	3,052	27.75	1,823	23.14
Age 35 - 44	2,592	13.73	1,645	14.96	947	12.02
Age 45 - 54	1,421	7.53	812	7.38	609	7.73
Age 55 - 64	650	3.44	358	3.25	292	3.71
Age 65 - 74	263	1.39	139	1.26	124	1.57
Age 75 - 84	119	0.63	52	0.47	67	0.85
Age 85+	37	0.20	14	0.13	23	0.29
Age 18+	13,110	69.45	8,010	72.83	5,100	64.73
Age 21+	12,010	63.62	7,351	66.84	4,659	59.13
Age 65+	419	2.22	205	1.86	214	2.72
Median Age	-	25.98	-	26.74	-	24.73
<b>2010 Census Estimate White Alone</b>						
2010 Census Estimate White Alone	224,910	64.22	110,536	31.56	114,374	32.66
Age 0 - 4	11,807	5.25	5,981	5.41	5,826	5.09
Age 5 - 9	10,765	4.79	5,608	5.07	5,157	4.51
Age 10 - 14	10,179	4.53	5,103	4.62	5,076	4.44
Age 15 - 17	5,845	2.60	3,049	2.76	2,796	2.44
Age 18 - 20	10,892	4.84	5,323	4.82	5,569	4.87
Age 21 - 24	16,490	7.33	8,156	7.36	8,334	7.29
Age 25 - 34	37,239	16.56	18,953	17.15	18,286	15.99
Age 35 - 44	29,166	12.97	15,039	13.61	14,127	12.35
Age 45 - 54	30,936	13.76	15,130	13.69	15,806	13.82
Age 55 - 64	29,268	13.01	13,901	12.58	15,367	13.44
Age 65 - 74	17,834	7.93	8,519	7.71	9,315	8.14
Age 75 - 84	10,083	4.48	4,332	3.92	5,751	5.03
Age 85+	4,406	1.96	1,442	1.30	2,964	2.59
Age 18+	186,314	82.84	90,795	82.14	95,519	83.52
Age 21+	175,422	78.00	85,472	77.33	89,950	78.65
Age 65+	32,323	14.37	14,293	12.93	18,030	15.76
Median Age	-	38.01	-	36.92	-	39.21
<b>2010 Census Estimate Black or African American Alone</b>						
2010 Census Estimate Black or African American Alone	104,239	29.77	47,992	13.70	56,247	16.06
Age 0 - 4	8,398	8.06	4,311	8.98	4,087	7.27
Age 5 - 9	7,462	7.16	3,741	7.79	3,721	6.62
Age 10 - 14	6,931	6.65	3,549	7.39	3,382	6.01
Age 15 - 17	4,724	4.53	2,314	4.82	2,410	4.29
Age 18 - 20	5,542	5.32	2,716	5.66	2,826	5.02
Age 21 - 24	7,012	6.73	3,344	6.97	3,668	6.52
Age 25 - 34	13,463	12.92	6,028	12.56	7,435	13.22
Age 35 - 44	11,165	10.71	4,956	10.33	6,209	11.04
Age 45 - 54	15,185	14.57	6,863	14.30	8,322	14.80
Age 55 - 64	12,733	12.21	5,735	11.95	6,998	12.44
Age 65 - 74	6,655	6.38	2,768	5.77	3,887	6.91
Age 75 - 84	3,591	3.44	1,276	2.66	2,315	4.12
Age 85+	1,378	1.32	391	0.81	987	1.75
Age 18+	76,724	73.60	34,077	71.01	42,647	75.82
Age 21+	71,182	68.29	31,361	65.35	39,821	70.80
Age 65+	11,624	11.15	4,435	9.24	7,189	12.78
Median Age	-	33.83	-	31.31	-	35.94

Benchmark: USA

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# Pop-Facts® by Age, Race, Sex | 2020 Detail



Trade Area: Charleston County, SC

	Population	%	Male	%	Female	%
<b>2020 Estimated Total</b>						
2020 Estimated Total	414,835	100.00	201,150	48.49	213,685	51.51
Age 0 - 4	24,347	5.87	12,482	6.21	11,865	5.55
Age 5 - 9	23,690	5.71	12,144	6.04	11,546	5.40
Age 10 - 14	22,369	5.39	11,411	5.67	10,958	5.13
Age 15 - 17	12,977	3.13	6,546	3.25	6,431	3.01
Age 18 - 20	16,578	4.00	8,555	4.25	8,023	3.75
Age 21 - 24	18,767	4.52	9,905	4.92	8,862	4.15
Age 25 - 34	66,621	16.06	32,559	16.19	34,062	15.94
Age 35 - 44	56,562	13.63	28,187	14.01	28,375	13.28
Age 45 - 54	49,262	11.88	23,981	11.92	25,281	11.83
Age 55 - 64	52,966	12.77	24,368	12.11	28,598	13.38
Age 65 - 74	44,588	10.75	20,336	10.11	24,252	11.35
Age 75 - 84	18,962	4.57	8,187	4.07	10,775	5.04
Age 85+	7,146	1.72	2,489	1.24	4,657	2.18
Age 18+	331,452	79.90	158,567	78.83	172,885	80.91
Age 21+	314,874	75.90	150,012	74.58	164,862	77.15
Age 65+	70,686	17.04	31,012	15.42	39,674	18.57
Median Age	-	38.72	-	37.34	-	40.13
<b>2020 Estimated Hispanic or Latino</b>						
2020 Estimated Hispanic or Latino	21,540	5.19	12,534	3.02	9,006	2.17
Age 0 - 4	2,667	12.38	1,372	10.95	1,295	14.38
Age 5 - 9	2,077	9.64	1,132	9.03	945	10.49
Age 10 - 14	1,470	6.83	754	6.02	716	7.95
Age 15 - 17	736	3.42	396	3.16	340	3.77
Age 18 - 20	941	4.37	566	4.52	375	4.16
Age 21 - 24	1,303	6.05	856	6.83	447	4.96
Age 25 - 34	5,861	27.21	3,596	28.69	2,265	25.15
Age 35 - 44	3,562	16.54	2,236	17.84	1,326	14.72
Age 45 - 54	1,471	6.83	851	6.79	620	6.88
Age 55 - 64	810	3.76	452	3.61	358	3.98
Age 65 - 74	445	2.07	231	1.84	214	2.38
Age 75 - 84	157	0.73	71	0.57	86	0.95
Age 85+	40	0.19	21	0.17	19	0.21
Age 18+	14,590	67.73	8,880	70.85	5,710	63.40
Age 21+	13,649	63.37	8,314	66.33	5,335	59.24
Age 65+	642	2.98	323	2.58	319	3.54
Median Age	-	28.01	-	28.58	-	27.05
<b>2020 Estimated White Alone</b>						
2020 Estimated White Alone	279,302	67.33	137,023	33.03	142,279	34.30
Age 0 - 4	13,228	4.74	6,787	4.95	6,441	4.53
Age 5 - 9	12,939	4.63	6,767	4.94	6,172	4.34
Age 10 - 14	12,238	4.38	6,191	4.52	6,047	4.25
Age 15 - 17	7,412	2.65	3,705	2.70	3,707	2.60
Age 18 - 20	11,407	4.08	5,865	4.28	5,542	3.90
Age 21 - 24	13,121	4.70	6,935	5.06	6,186	4.35
Age 25 - 34	44,969	16.10	22,269	16.25	22,700	15.96
Age 35 - 44	38,594	13.81	19,786	14.44	18,798	13.21
Age 45 - 54	34,355	12.30	17,037	12.43	17,318	12.17
Age 55 - 64	37,814	13.54	17,686	12.91	20,128	14.15
Age 65 - 74	33,161	11.87	15,520	11.33	17,641	12.40
Age 75 - 84	14,477	5.18	6,464	4.72	8,013	5.63
Age 85+	5,597	2.00	2,011	1.47	3,586	2.52
Age 18+	233,485	83.60	113,573	82.89	119,912	84.28
Age 21+	222,078	79.51	107,708	78.61	114,370	80.38
Age 65+	53,235	19.06	23,995	17.51	29,240	20.55
Median Age	-	41.15	-	39.88	-	42.52
<b>2020 Estimated Black or African American Alone</b>						
2020 Estimated Black or African American Alone	107,993	26.03	49,505	11.93	58,488	14.10
Age 0 - 4	7,932	7.34	4,094	8.27	3,838	6.56
Age 5 - 9	8,138	7.54	4,086	8.25	4,052	6.93
Age 10 - 14	8,124	7.52	4,197	8.48	3,927	6.71
Age 15 - 17	4,446	4.12	2,232	4.51	2,214	3.79
Age 18 - 20	4,007	3.71	2,042	4.13	1,965	3.36
Age 21 - 24	4,197	3.89	2,131	4.30	2,066	3.53
Age 25 - 34	15,595	14.44	6,877	13.89	8,718	14.91
Age 35 - 44	13,528	12.53	5,901	11.92	7,627	13.04
Age 45 - 54	12,555	11.63	5,703	11.52	6,852	11.71
Age 55 - 64	13,573	12.57	5,943	12.01	7,630	13.04
Age 65 - 74	10,274	9.51	4,266	8.62	6,008	10.27
Age 75 - 84	4,172	3.86	1,592	3.22	2,580	4.41
Age 85+	1,452	1.34	441	0.89	1,011	1.73
Age 18+	79,353	73.48	34,896	70.49	44,457	76.01
Age 21+	75,346	69.77	32,854	66.36	42,492	72.65
Age 65+	15,896	14.72	6,299	12.72	9,597	16.41
Median Age	-	36.09	-	33.68	-	38.09

Benchmark: USA

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# Pop-Facts® by Age, Race, Sex | 2025 Detail



Trade Area: Charleston County, SC

	Population	%	Male	%	Female	%
<b>2025 Projected Total</b>						
2025 Projected Total	444,165	100.00	215,402	48.50	228,763	51.50
Age 0 - 4	25,013	5.63	12,778	5.93	12,235	5.35
Age 5 - 9	25,728	5.79	13,183	6.12	12,545	5.48
Age 10 - 14	25,118	5.66	12,872	5.98	12,246	5.35
Age 15 - 17	14,944	3.37	7,571	3.52	7,373	3.22
Age 18 - 20	17,986	4.05	9,301	4.32	8,685	3.80
Age 21 - 24	19,148	4.31	10,156	4.71	8,992	3.93
Age 25 - 34	59,441	13.38	29,209	13.56	30,232	13.21
Age 35 - 44	65,185	14.68	32,312	15.00	32,873	14.37
Age 45 - 54	52,474	11.81	25,955	12.05	26,519	11.59
Age 55 - 64	53,034	11.94	24,512	11.38	28,522	12.47
Age 65 - 74	55,404	12.47	24,952	11.58	30,452	13.31
Age 75 - 84	22,692	5.11	9,766	4.53	12,926	5.65
Age 85+	7,998	1.80	2,835	1.32	5,163	2.26
Age 18+	353,362	79.56	168,998	78.46	184,364	80.59
Age 21+	335,376	75.51	159,697	74.14	175,679	76.80
Age 65+	86,094	19.38	37,553	17.43	48,541	21.22
Median Age	-	40.25	-	38.88	-	41.61
<b>2025 Projected Hispanic or Latino</b>						
2025 Projected Hispanic or Latino	22,613	5.09	13,100	2.95	9,513	2.14
Age 0 - 4	2,779	12.29	1,426	10.88	1,353	14.22
Age 5 - 9	2,364	10.45	1,284	9.80	1,080	11.35
Age 10 - 14	1,653	7.31	842	6.43	811	8.53
Age 15 - 17	916	4.05	510	3.89	406	4.27
Age 18 - 20	1,034	4.57	601	4.59	433	4.55
Age 21 - 24	1,424	6.30	897	6.85	527	5.54
Age 25 - 34	4,950	21.89	3,062	23.37	1,888	19.85
Age 35 - 44	4,157	18.38	2,605	19.89	1,552	16.32
Age 45 - 54	1,668	7.38	969	7.40	699	7.35
Age 55 - 64	856	3.79	486	3.71	370	3.89
Age 65 - 74	540	2.39	279	2.13	261	2.74
Age 75 - 84	217	0.96	104	0.79	113	1.19
Age 85+	55	0.24	35	0.27	20	0.21
Age 18+	14,901	65.90	9,038	68.99	5,863	61.63
Age 21+	13,867	61.32	8,437	64.41	5,430	57.08
Age 65+	812	3.59	418	3.19	394	4.14
Median Age	-	27.51	-	28.45	-	25.89
<b>2025 Projected White Alone</b>						
2025 Projected White Alone	306,127	68.92	149,941	33.76	156,186	35.16
Age 0 - 4	13,966	4.56	7,130	4.75	6,836	4.38
Age 5 - 9	14,343	4.68	7,528	5.02	6,815	4.36
Age 10 - 14	14,213	4.64	7,239	4.83	6,974	4.46
Age 15 - 17	8,712	2.85	4,357	2.91	4,355	2.79
Age 18 - 20	12,310	4.02	6,312	4.21	5,998	3.84
Age 21 - 24	13,372	4.37	7,138	4.76	6,234	3.99
Age 25 - 34	41,712	13.63	20,740	13.83	20,972	13.43
Age 35 - 44	44,578	14.56	22,651	15.11	21,927	14.04
Age 45 - 54	37,295	12.18	18,771	12.52	18,524	11.86
Age 55 - 64	39,329	12.85	18,444	12.30	20,885	13.37
Age 65 - 74	42,263	13.81	19,509	13.01	22,754	14.57
Age 75 - 84	17,649	5.76	7,810	5.21	9,839	6.30
Age 85+	6,385	2.09	2,312	1.54	4,073	2.61
Age 18+	254,893	83.26	123,687	82.49	131,206	84.01
Age 21+	242,583	79.24	117,375	78.28	125,208	80.17
Age 65+	66,297	21.66	29,631	19.76	36,666	23.48
Median Age	-	42.64	-	41.33	-	44.03
<b>2025 Projected Black or African American Alone</b>						
2025 Projected Black or African American Alone	107,127	24.12	49,204	11.08	57,923	13.04
Age 0 - 4	7,597	7.09	3,916	7.96	3,681	6.36
Age 5 - 9	8,333	7.78	4,156	8.45	4,177	7.21
Age 10 - 14	8,508	7.94	4,409	8.96	4,099	7.08
Age 15 - 17	4,876	4.55	2,492	5.07	2,384	4.12
Age 18 - 20	4,216	3.94	2,156	4.38	2,060	3.56
Age 21 - 24	4,168	3.89	2,115	4.30	2,053	3.54
Age 25 - 34	12,241	11.43	5,424	11.02	6,817	11.77
Age 35 - 44	15,214	14.20	6,657	13.53	8,557	14.77
Age 45 - 54	12,362	11.54	5,703	11.59	6,659	11.50
Age 55 - 64	11,913	11.12	5,211	10.59	6,702	11.57
Age 65 - 74	11,604	10.83	4,728	9.61	6,876	11.87
Age 75 - 84	4,612	4.30	1,773	3.60	2,839	4.90
Age 85+	1,483	1.38	464	0.94	1,019	1.76
Age 18+	77,813	72.64	34,231	69.57	43,582	75.24
Age 21+	73,597	68.70	32,075	65.19	41,522	71.69
Age 65+	17,699	16.52	6,965	14.15	10,734	18.53
Median Age	-	37.45	-	34.89	-	39.33

Benchmark: USA

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# Report Details

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**Name:** Pop-Facts® by Age, Race, Sex 2020  
**Date / Time:** 11/5/2020 9:10:38 AM  
**Workspace Vintage:** 2020

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## Trade Area

Name	Level	Geographies
Charleston County, SC	County	Charleston County, SC

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## Benchmark

Name	Level	Geographies
USA	Entire US	United States

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## DataSource

Product	Provider	Copyright
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SPOTLIGHT Pop-Facts® Premier	Claritas	©Claritas, LLC 2020 ( <a href="https://en.environmentalanalytics.ca/Spotlight/Abo">https://en.environmentalanalytics.ca/Spotlight/Abo</a> )

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# **EXHIBIT 11**

## **Construction Loan Agreement**

# South State Bank

## Construction Loan Agreement

THIS CONSTRUCTION LOAN AGREEMENT ("**Loan Agreement**"), entered into effective as of May 4, 2020, by **SPRING STREET SENIOR HOUSING PROPCO, LLC**, a Delaware limited liability company, having an address of 2334 S. 41<sup>st</sup> Street, Wilmington, NC 28403 ("**Borrower**"), to **SOUTH STATE BANK**, with a mailing address of 6525 Morrison Boulevard, Suite 500, Charlotte, NC 28211 ("**Bank**").

A. Borrower has applied to Bank for a construction loan as described below ("**Loan**").

B. Borrower will use the proceeds of the Loan to construct a 92-unit assisted living and memory care community located at 190 Spring Street, Charleston, South Carolina and related improvements on certain real property located in Charleston, Charleston County, South Carolina.

C. Bank is willing to make the Loan based on the terms and conditions set forth in this Loan Agreement and the other Loan Documents.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Bank hereby agree as follows:

### Article I. **Definitions.**

Section 1.1. **Definitions.** For the purposes hereof:

(a) "Affiliate" means a Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with the Borrower. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting stock, by contract or otherwise, and a change in control of Borrower, for all purposes with respect to any Loan Document, shall mean the Liberty Member ceases to control the Borrower;

(b) "Appraisal" means that appraisal of the Project dated February 11, 2020 by Colliers International Valuation & Advisory Services reflecting an "as stabilized" value in the amount of \$53,200,000, which has been reviewed, approved and accepted by Bank;

(c) "Architect" means McMillan Pazdan Smith, LLC, a South Carolina limited liability company, and is the person who will serve as Borrower's design architect;

(d) "Architect's Contract" as defined in **Section 4.1.21** herein;

(e) "Business Day" means any day that is not a Saturday, Sunday or other day on which banks in the jurisdiction whose laws govern this Loan Agreement are authorized or required to close;

(f) "Casualty" means any casualty, damage or injury, by fire or otherwise, to the Premises or any part thereof;

(g) "Closing" means the date of the first disbursement of Loan proceeds hereunder, which may occur on a date different than the Closing Date;

(h) "Closing Date" means the date as of which this Loan Agreement is executed by Borrower and Bank;

(i) "Collateral" shall have the meaning set forth in **Article III**;

(j) "Collateral Assignments" means the collateral assignments, chattel mortgage and security agreements granting to Bank a perfected first priority lien and security interest in (1) the fixtures and Improvements comprising the Project, the description, location and value of which must be acceptable to the Bank; (2) all furniture, machinery, equipment, chattels, building materials and other personal property now or hereafter located on the Project and which was acquired with the proceeds of the Loan; (3) all leases, rents, issues and profits arising out of or related to the Project; (4) the construction contracts (including general contractor contracts, architect contracts, and engineer contracts), plans and specifications, easements and other rights and documents relating to construction of the Project (the "Assignment of Construction Documents"); (5) all sales contracts affecting the Project; (6) all proceeds of above; and (7) any other property or property rights identified herein as being subject to a Collateral Assignment;

(k) "Completion" means (1) substantial completion of the Improvements in accordance with the Plans in all material respects, free and clear of all claims of liens, liens and other encumbrances (except Permitted Encumbrances), (2) other than any Healthcare Licenses, the issuance of all necessary certificates of completion and a final certificate of occupancy by applicable Governmental Authorities, if such certificates are necessary for the occupancy of the Improvements under applicable Requirements of Law (it being acknowledged that a temporary certificate of occupancy shall be sufficient so long as it permits occupancy of the Improvements under applicable Requirements of Law, so long as within 90 days of the issuance of the temporary certificate of occupancy a permanent certificate of occupancy is issued) and (3) receipt of all approvals from Private Associations, if any are required;

(l) "Completion Guarantors" means Robert T. Gunby, III; John A. Hamilton; John A. McNeill, Jr.; Ronald B. McNeill; William B. Purvis and the Corporate Guarantors;

(m) "Condemnation" means a temporary or permanent taking by any Governmental Authority as the result, in lieu or in anticipation, of the exercise of the right of condemnation or eminent domain, of all or any part of the Premises, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Premises or any part thereof;

(n) "Construction Documents" means the Cost Breakdown, the Plans, the Architect's Contract, the Engineer's Contract, and all other contracts, agreements, plans and documents concerning the construction of the Improvements;

(o) "Construction Inspector" means an architectural or engineering firm reasonably acceptable to Bank to be engaged at Borrower's expense to perform various services on behalf of Bank, including (1) a preconstruction review or front-end analysis of the intended construction (to include a review of the soil tests, mold and other fungi studies, licenses and permits, Construction Documents and the Construction Schedule), (2) periodic inspections of the Improvements for conformity with the Construction Documents and Construction Schedule, (3) approvals of requests for Loan disbursements, (4) a determination at the time of each requested Loan disbursement as to whether there are sufficient undisbursed Loan proceeds to obtain Completion of the Improvements, (5) a review and analysis of each proposed change to the Construction Documents or Construction Schedule and (6) advising and rendering periodic reports to Bank concerning any and all of the foregoing, it being expressly understood and agreed that Bank shall have the right to rely on such reports from the Construction Inspector and the Construction Inspector shall have responsibility to Bank;

(p) "Construction Schedule" means the schedule for Completion of the Improvements;

(q) "Corporate Guarantors" means Liberty Real Properties, LLC and Liberty Development, LLC;

(r) "Cost Breakdown" means the construction budget attached hereto as Exhibit A, as reasonably approved by Bank and as amended from time to time in accordance with the Loan

Documents, which contains a detailed breakdown of the cost of constructing the Improvements, including a detailed construction ledger with hard costs and the cost of acquiring the related Personalty, and an itemization of non-construction costs on AIA form G703. The Cost Breakdown attached hereto as Exhibit A has been certified by the Construction Inspector as fair and reasonable. Except as otherwise permitted by the Loan Documents, Bank and Borrower each acknowledge and agree that the Cost Breakdown includes all costs and items necessary to complete the Improvements in accordance with the Plans and accurately reflects the equity infusion by the Borrower as required by Bank;

(s) "Debt Service Coverage Ratio" means pre-distribution net income from the Project plus interest expense and non-cash expenses including, but not limited to, depreciation expenses and amortization expenses, divided by the total principal and interest payments due for the applicable period;

(t) "Developer" means Liberty Development of Charleston, LLC;

(u) "Development Agreement" means that certain Development Agreement dated as of the Closing Date by and between Borrower and Developer;

(v) "Draw Request" means a written request for any disbursement of Loan proceeds, which shall be submitted for each requested disbursement as set forth in **Section 2.3.1** hereof, the form of which is attached hereto as Exhibit B;

(w) "Engineer" means Forsberg Engineering & Surveying, Inc., a South Carolina corporation, who will serve as Borrower's engineers for the Project;

(x) "Engineer's Contract" as defined in **Section 4.1.22** herein;

(y) "Event of Default" means an event of default as defined in **Article VII**;

(z) "Extension Request" shall have the meaning set forth in **Section 2.8** hereof;

(aa) "First Extension Option" shall have the meaning set forth in **Section 2.8** hereof;

(bb) "First Extension Period" means a single period of one (1) year commencing on the day after the Original Maturity Date;

(cc) "First Extension Maturity Date" means the date that is one (1) year from the Original Maturity Date;

(dd) "Financing Statements" means the UCC financing statements filed in order to perfect Bank's lien on certain Personalty as more particularly described therein, as well as all continuations and amendments thereof;

(ee) "Force Majeure" means strikes, lock-outs, riots or other labor troubles, unavailability of materials, a national emergency, health pandemic as determined by the Centers for Disease Control and Prevention of the United States any other instrumentality of the Federal Government or the State of South Carolina which directly impacts the ability to provide construction services, terrorist attacks, any rule, order or regulation of Governmental Authorities enacted after the Closing Date, tornadoes, floods, hurricanes or other natural disasters, or other similar causes not within Borrower's control, but excluding Borrower's negligence and excluding Borrower's willful misconduct;

(ff) "General Construction Contract" as defined in **Section 4.1.18**;

(gg) "General Contractor" means Trident Construction LLC, a South Carolina limited liability company, and is the person who will serve as the general contractor for the construction of the Improvements;

(hh) "Governmental Authorities" means any governmental or quasi-governmental (including health and environmental) office, officer or official whose consent or approval is required as a prerequisite to the commencement of the construction of the Improvements, to the operation and occupancy of the Improvements or the Premises, to the performance of any act or obligation, or the observance of any agreement, provision or condition of whatsoever nature herein contained;

(ii) "Guarantor" means, collectively, the Completion Guarantors;

(jj) "Guaranty" means, the guaranty agreement from the Corporate Guarantors evidencing the direct and unconditional guaranty of the Guarantor of payment of all sums due under the Loan Documents and performance of all obligations of Borrower identified therein, including the lien free completion of the Improvements in accordance with the Plans and the guaranty agreement from the Completion Guarantors evidencing performance of all obligations of Borrower identified therein, including the lien free completion of the Improvements in accordance with the Plans;

(kk) "Healthcare Licenses" as defined in **Section 6.2.28**;

(ll) "Hedging Contracts" means (A) Interest rate swap agreements and interest rate collar agreements (in each case together with any confirmation and schedules relating thereto), or any other agreements or arrangements entered into between Borrower and Lender designed to protect the Borrower against fluctuations in interest rates or currency exchange rates or Borrower, and (B) interest rate cap agreements (together with any confirmation and schedules relating thereto) entered into between Borrower and Lender or a third party acceptable to Lender, designed to protect the Borrower against fluctuations in interest rates or currency exchange rates, provided however, any such interest rate cap agreement may not obligate the Guarantor or encumber the Lender's collateral for the Loan;

(mm) "Hedging Obligations" means with respect to the Borrower, all liabilities of the Borrower to the Lender under any Hedging Contracts;

(nn) "HVCRE" means a loan classified as a Highly Volatile Commercial Real Estate Loan by the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) including, without limitation, the rules, guidelines and directives promulgated pursuant to Basel III;

(oo) "Improvements" means all improvements on the Land as more particularly described in the Plans, including, without limitation, a 92-unit assisted living and memory care community and related amenities and all improvements constructed pursuant to the Construction Documents. The Improvements shall be constructed in accordance with the terms of this Loan Agreement;

(pp) "Indebtedness" means with respect to any person, all indebtedness, obligations and liabilities of such person for money borrowed, all indebtedness of such person for the acquisition of property, all indebtedness secured by any lien on the property of such person whether or not such indebtedness is assumed by such person, all liability of such person by way of endorsements (other than for collection or deposit of negotiable instruments in the ordinary course of business), all contingent obligations of such person and all capitalized leases and other items which in accordance with generally accepted accounting principles are classified as liabilities on a balance sheet, all Hedging Obligations owed by Borrower to Lender, and all renewals, extensions, modifications or refinancings of any of the foregoing;

(qq) "Kayne Member" means Spring Street Senior Housing Member, LLC, a Delaware limited liability company, a member of Propco JV;

(rr) "Land" means the real property owned or to be acquired by Borrower or by such other person identified in the Title Policy and encumbered by the Mortgage;

(ss) "Liabilities" means all Indebtedness and other obligations of every kind and nature of Borrower to Bank (including, without limitation, interest, premiums, penalties, fees, charges, costs and expenses and other sums chargeable to Borrower by Bank), including, without limitation, all Indebtedness and other obligations arising under any of the Loan Documents and all Indebtedness and other obligations acquired by Bank from another person, both now existing Indebtedness and other obligations and hereafter arising Indebtedness and other obligations from Borrower to Bank, howsoever evidenced, created, incurred, acquired or owing, whether primary, secondary, direct, contingent, fixed or otherwise, and including obligations of performance;

(tt) "Liberty Manager" means Spring Street Housing JV Manager, LLC, a Delaware limited liability company;

(uu) "Liberty Member Removal" means either (i) the removal of Liberty Manager as the manager of the Propco JV or the Operator JV in accordance with the terms of the Propco JV Operating Agreement and/or Operator JV Operating Agreement as applicable, or (ii) Kayne Member's acquisition of the membership interest of the Liberty Members in the Propco JV or the Operator JV in accordance with the terms of the Propco JV Operating Agreement and/or Operator JV Operating Agreement, as applicable;

(vv) "Liberty Members" means, individually or collectively as applicable, (i) Liberty Manager, (ii) Liberty Southern CSL, LLC, a South Carolina limited liability company, and (iii) Liberty Development of Charleston, LLC, a North Carolina limited liability company;

(ww) "Loan Amount" means the lesser of (i) \$32,262,259.00, (ii) 70.0% of the final approved costs of the Project, or (iii) 65% of the "as stabilized" appraised value of the Project, as determined in the sole and absolute discretion of the Bank upon its review and approval of a third party MAI Appraisal Report;

(xx) "Loan Documents" means this Loan Agreement, the Note, the Mortgage, the Collateral Assignments, the Guaranty, the Operator Security Agreement, Hedging Contracts, the Financing Statements and any other instruments, documents, statements and agreements evidencing the Loan and any other instruments, documents, statements and agreements securing the Loan executed or delivered by Borrower or Guarantor;

(yy) "Major Subcontractor" shall mean subcontractor that enters into subcontract with the General Contractor under which there is an obligation to pay more than \$500,000;

(zz) "Management Agreement" shall have the meaning set forth in **Section 4.1.19.1**;

(aaa) "Material Adverse Change" means any event, circumstance, fact, condition, development or occurrence that has had or could be expected to have a material and adverse effect on any of: (i) the business, operations, condition (financial or otherwise), prospects, liabilities, assets, results of operations, capitalization, liquidity or any properties of Borrower or Guarantor; (ii) the value of the Premises; (iii) the ability of Borrower or Guarantor (or any persons comprising Borrower or Guarantor), to pay and perform the Indebtedness; or (iv) the validity, enforceability or binding effect of any of the Loan Documents. Borrower acknowledges and agrees that a fact, event or circumstance which exists as of the date hereof which does not currently constitute a Material Adverse Change may, in the future, constitute a Material Adverse Change upon the occurrence of further adverse facts or

circumstances (e.g., a pending litigation action pertaining to the Premises may, following future adverse procedural or substantive trial developments, become a Material Adverse Change);

(bbb) "Material Contract" shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Project, as to which either (i) there is an obligation of Borrower to pay more than \$250,000 per annum; or (ii) the term thereof extends beyond one (1) year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or other sums of any kind);

(ccc) "Material Contractor" shall mean the person or contractor under a. Material Contract;

(ddd) "Maturity Date" means the Original Maturity Date, as such may have been extended pursuant to Section 2.8 hereof, subject, however, to the right of acceleration as herein provided and as provided elsewhere in the Loan Documents;

(eee) "Mortgage" means the deed of trust, mortgage, deed to secure debt, security deed or trust deed securing the Loan and if more than one, all such deeds of trust, mortgages, deeds to secure debt, security deeds or trust deeds executed by Borrower or some other person for the benefit of Bank covering the Premises;

(fff) "Note" means the promissory note of Borrower to Bank, dated as of the Closing Date, in the Loan Amount, together with any amendments, modifications, extensions, renewals, substitutions and replacements thereto or therefor;

(ggg) "Operating Lease" means that certain Operating Lease Agreement dated the date hereof by and between Borrower and Operator;

(hhh) "Operator" means Spring Street Senior Housing Opco, LLC, a Delaware limited liability company;

(iii) "Operator JV Agreement" means that certain Limited Liability Company Operating Agreement of the Operator dated the date hereof;

(jjj) "Operator JV" means Spring Street Senior Housing JV Opco, LLC, a Delaware limited liability company;

(kkk) "Operator Security Agreement" as defined in Section 4.1.33;

(lll) "Original Maturity Date" means the date that is set forth in the Note;

(mmm) "Permitted Encumbrances" means liens, collectively, (i) encumbrances, easements and other matters listed as exceptions to the final Title Policy and such other matter of title thereafter approved in writing by Bank; (ii) liens or encumbrances securing taxes, assessments or other governmental charges which, in each case, are not delinquent; (iii) purchase money liens or encumbrances with respect to leases equipment arising in the ordinary course of business, (iv) the Operating Lease, or (v) mechanics' or materialmen's liens, tax liens or other matters being contested by Borrower in good faith in accordance with the terms of the Loan Documents;

(nnn) "Permitted Transfers" means each of the following transfers: (1) any transfer of direct or indirect ownership interests in Borrower or Operator to family members or trusts for estate planning purposes; (2) transfers of direct or indirect interests in Kayne Member, so long as there is no change of control of Kayne Member; (3) transfers of direct or indirect interests in any Liberty Member, so long as there is no change of control of Liberty Member; (4) transfers between the current members of Propco JV or Operator JV, so long as either (i) Liberty Manager retains control of Borrower, or (ii) a Liberty Member Removal occurs and the following conditions are satisfied (A) immediately following



such Liberty Member Removal, each of Borrower and Operator is controlled by Kayne Member; (B) Borrower provides an additional guarantor pursuant to Section 7.1(l) within thirty (30) days after such Liberty Member Removal; (C) if a Liberty Member Removal occurs prior to Completion, Borrower terminates the Development Agreement and either (x) performs the applicable development services itself (or through an Affiliate of Kayne Member) provided that the Kayne Member or Affiliate shall enter into a new Development Agreement with Borrower in the same form as entered into as of the Closing Date subject to change of the party names and shall enter into an Assignment and Subordination of Development Agreement in the form attached hereto as Exhibit F or (y) enters into a new development agreement in form and substance reasonably acceptable to Bank with a successor developer reasonably acceptable to Bank within thirty (30) days after such Liberty Member Removal and such successor developer shall enter into an Assignment and Subordination of Development Agreement in the form attached hereto as Exhibit F; and (D) if Borrower terminates the Management Agreement in connection with a Liberty Member Removal, or a Liberty Member Removal occurs prior to the date that the Management Agreement is effective, then within thirty (30) days after the Management Agreement is terminated, or prior to the date that is ninety (90) days prior to Completion (as applicable), Borrower shall have entered into a replacement Management Agreement in form and substance reasonably acceptable to Bank with a replacement Manager that is reasonably acceptable to Bank and such replacement manager shall enter into an Assignment and Subordination of Management Agreement in the form attached hereto as Exhibit C-1. Borrower's failure to timely satisfy the foregoing conditions following a Liberty Member Removal (including, for the avoidance of doubt, Bank's approval of a successor developer or manager to the extent required), shall constitute an immediate Event of Default.

(ooo) "Person" means any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other person or entity, and any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing;

(ppp) "Personalty" means all furnishings, fixtures, equipment, inventory and other articles of tangible personal property now owned and all of the foregoing which may be hereafter acquired by Borrower, attached to, located on, contained in, or used exclusively in connection with the Land and Improvements, or any portion thereof, and all replacements thereof, all articles in substitution therefor and all accessions thereto, whether or not the same are or shall be attached to the Land and Improvements in any manner, together with all accounts, promissory notes and other instruments, chattel paper (both tangible and electronic), documents, deposit accounts, monies, investment property, financial assets and general intangibles of every nature and kind arising out of or in connection with the Premises, both now owned and all of the foregoing which may be hereafter acquired by Borrower, and all property described in the Collateral Assignments to the extent the same constitutes personal property, together with all proceeds and products thereof;

(qqq) "Plans" means the plans and specifications for the Improvements, including the construction of the Improvements and the furnishing of the Improvements with the Personalty, prepared by the Architect and delivered to Bank, and including such amendments thereto as may from time to time be made by Borrower with the prior written consent of Bank, such consent not to be unreasonably withheld, conditioned or delayed;

(rrr) "Premises" means the collective reference to the Land, the Improvements and the Personalty;

(sss) "Private Association" means a property owners' association or similar association under any covenants and restrictions referenced in the Permitted Encumbrances;

(ttt) "Project" means the construction of a 92-unit assisted living and memory care community located at 190 Spring Street, Charleston, South Carolina;



(uuu) "Propco JV" means Spring Street Senior Housing JV PROPCO, LLC, a Delaware limited liability company;

(vvv) "Propco JV Operating Agreement" means the Limited Liability Company Agreement of Propco JV;

(www) "Property Manager" shall have the meaning set forth in **Section 4.1.19.1**;

(xxx) "Requirement of Law" means as to any person, the certificate of incorporation and by-laws or other organizational or governing documents of such person, and any law, treaty, rule, regulation, ordinance, determination of an arbitrator, order of a court and determination, advisory opinion, order, guideline, finding or requirement of any other Governmental Authority, in each case applicable to and binding upon such person or any of its properties or to which such person or any of its properties is subject, either individually or jointly with another person or persons;

(yyy) "Second Extension Option" shall have the meaning set forth in **Section 2.8** hereof;

(zzz) "Second Extension Period" means a single period of one (1) year commencing on the day after the First Extension Maturity Date;

(aaaa) "Second Extension Maturity Date" means the date that is one (1) year from the First Extension Maturity Date;

(bbbb) "Special Allocation" shall have the meaning as set forth in the Propco JV Operating Agreement;

(cccc) "Subcontractors" means any person, entity, contractor, supplier or materialman with whom the General Contractor has contracted or intends to contract for the furnishing of labor, services, materials, parts and/or equipment for the construction of the Improvements;

(dddd) "Subsidiary" or "Subsidiaries" means any Person which is controlled or owned, directly or indirectly, by Borrower;

(eeee) "Title Insurance Commitment" means a legally binding commitment by the Title Insurance Company to issue the Title Policy;

(ffff) "Title Insurance Company" means the organization issuing the Title Policy, which organization must be a recognized national title insurance company, licensed to do business in the jurisdiction in which the Premises are located and otherwise acceptable to Bank, acting reasonably;

(gggg) "Title Policy" means the mortgagee title policy meeting the requirements of this Loan Agreement;

(hhhh) "UCC" means the Uniform Commercial Code in effect from time to time in the jurisdiction whose laws govern this Loan Agreement.

Any words or phrases which are not defined in this Loan Agreement but are defined in any of the other Loan Documents shall have the meaning given to such words or phrases in the Loan Document in which the same are defined, and any words or phrases which are not defined in this Loan Agreement or in any of the other Loan Documents but are defined in the UCC shall have the meaning given to them in the UCC.

Section 1.2. Use and Application of Terms. To the end of achieving the full realization by Bank of its rights and remedies under this Loan Agreement and the other Loan Documents, including payment in full of the Loan, in using

and applying the various terms, provisions and conditions in this Loan Agreement and the other Loan Documents, the following shall apply:

(a) the terms “hereby”, “hereof”, “herein”, “hereunder” and any similar words refer to this Loan Agreement;

(b) words in the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular numbered meaning include the plural number or a collective reference, and vice versa;

(c) words importing persons include firms, companies, associations, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations and other organizations, including public and quasi-public bodies, as well as individuals;

(d) the use of the terms “including” or “included in”, or the use of examples generally, are not intended to be limiting, but shall mean, without limitation, the examples provided and others that are not listed, whether similar or dissimilar;

(e) as the context requires, the word “and” may have a joint meaning or a several meaning and the word “or” may have an inclusive meaning or an exclusive meaning;

(f) the words “attorney” and “counsel” are interchangeable in this Loan Agreement;

(g) the phrase “costs and expenses”, “fees”, “charges” or variations thereof, shall include, without limitation, out of pocket reasonable attorneys’ fees and reasonable fees of legal assistants, and out of pocket reasonable fees of accountants, engineers, surveyors, appraisers and other professionals or experts – and all references to attorneys’ fees or fees of legal assistants, or to fees of accountants, engineers, surveyors, appraisers or other professionals or experts shall mean reasonable fees;

(h) the phrase “highest contract rate of interest under the Note” shall refer to the highest rate at which interest accrues under the Note, including any Default Rate, or if there is more than one Note, the highest rate under all of the Notes, and when used in this Loan Agreement it means that interest on an amount owing to Bank shall accrue at such rate to the same extent and in the same manner as it would if the amount owing to Bank was included in the principal evidenced by the Note bearing the highest contract rate of interest;

(i) this Loan Agreement shall not be applied, interpreted and construed more strictly against a person because that person or that person’s attorney drafted this Loan Agreement;

(j) if any party hereto is an organization, when any action is required or permitted to be taken, it is intended that the same will be undertaken through duly authorized employees or representatives of such party, or a partner, member, manager, officer or director, and any action taken by any of the foregoing persons shall be presumed authorized absent clear and convincing evidence that the person relying on such action knew or should have known that the person acting was exceeding his authority.

## Article II. **Loan.**

Section 2.1. **Loan.** Subject to the terms and conditions of this Loan Agreement, Bank will lend and Borrower will borrow up to the Loan Amount, such borrowing to be evidenced by the Note. The purpose of the Loan is to refinance existing debt secured by the Land and to finance the construction of the Project as provided in the Cost Breakdown, unless agreed to in writing otherwise by Bank. Loan proceeds may not be used for any other purpose without the prior written consent of Bank, which may be granted in Bank’s sole and absolute discretion.

Section 2.2. Term; Interest Rate and Repayment.

2.2.1. Term. All principal, interest and other sums due under the Loan Documents shall be due and payable in full on the Maturity Date.

2.2.2. Interest Rate and Repayment. The outstanding principal balance of the Loan shall bear interest, and principal and interest shall be repayable in accordance with the terms of the Note, together with the fees, premiums, charges and cost and expenses provided for therein. The monetary obligations Borrower now owes to Bank and those it may in the future owe to Bank under the other Loan Documents, unless otherwise provided in any of the other Loan Documents, shall be payable by Borrower upon demand of Bank, with interest thereon at the highest contract rate of interest under the Note; and, like the amounts due and owing under the Note, the same shall be secured by the Collateral. From time to time, upon request from Bank, Borrower shall execute a note modification agreement with Bank to confirm the repayment terms then applicable to the Loan. Payments of interest shall be funded from the Note, but only to the extent budgeted and set forth in the Cost Breakdown.

Section 2.3. Disbursements. Bank agrees that it will, from time to time, so long as no Event of Default is continuing and for a period of twenty-four (24) months following the Closing Date, except for matters of Force Majeure which shall not extend longer than ninety (90) days from the beginning of the first day of the occurrence of the matter of Force Majeure, disburse Loan proceeds to Borrower in accordance with the terms and provisions set forth below in this Section 2.3. and elsewhere in this Loan Agreement, including, without limitation, the terms and conditions relating to disbursements as a percentage of the "completed value of construction" at the time of a request for a disbursement. Borrower shall be entitled to request one disbursement per thirty (30) day period (unless otherwise approved by Bank, which approval shall not be unreasonably withheld, conditioned or delayed), subject to the terms of this Section 2.3., and provided that Borrower is responsible for payment of all fees or other sums due to the Construction Inspector related to each request for disbursement. Loan disbursements may be made by depositing the disbursements in Borrower's operating account with Bank, or by depositing them in a depository account with another person designated by Borrower and reasonably approved by Bank. Bank may condition its approval of another person being a depository for disbursements on Bank obtaining, prior to the first disbursement, a first lien, perfected security interest in the account in which the disbursements will be deposited, together with all of the funds in such account and the proceeds therefrom.

2.3.1. Draw Requests. At least ten (10) days prior to each Loan disbursement by Bank, either Borrower or the General Contractor must submit to Bank a Draw Request, which shall include:

(a) a completed and properly executed disbursement request in the form of AIA Documents G702 and G703 (or functional equivalents of same), together with a report on the status of any stored materials, and setting forth the amount of Loan proceeds desired and the following information and certifications:

(i) information regarding the percentage of the Improvements completed at that time, the total funds expended to date by Borrower in connection with the construction of the Improvements (including the portions thereof for which Loan proceeds have been previously disbursed) and the funds required to complete the construction of the Improvements;

(ii) a draw summary showing costs and draws to date for all budget line items, including soft costs in excess of \$1,000 and hard costs, and a lien waiver or lien affidavit from the General Contractor as described in Section 4.1.25 below as related to sums paid to Subcontractors for the present Loan disbursement. Borrower shall provide copies of all soft cost invoices supporting amounts in the draw summary;

(iii) a certification that all outstanding claims for labor, materials and fixtures have been paid (except for bills not yet past due and for which payment will be promptly made upon receipt by Borrower of the then requested Loan disbursement);

(iv) a certification that there are no liens outstanding against the Premises except for Bank's lien and security interest therein, other than inchoate liens for property taxes not yet due or other Permitted Encumbrances;

(v) a certification that Borrower and Guarantor have complied with all of their respective obligations under the Loan Documents, as of the date of the Draw Request, and that all information submitted to Bank by Borrower is true, correct and accurate;

(vi) a certification that all construction prior to the date of the Draw Request has been performed in accordance with the Plans in all material respects;

(vii) a certification that all funds previously disbursed by Bank have been applied directly to construction and development costs approved by Bank;

(viii) a certification that all change orders in excess of \$250,000 individually or \$500,000 in the aggregate have been approved in advance and in writing by Bank, unless Bank elects to orally consent to changes followed within 10 days by Bank's written confirmation, in Bank's reasonable discretion;

(ix) a certification that the Loan proceeds then remaining to be disbursed are sufficient to cover the remaining construction and development costs;

(x) a certification from the Construction Inspector, at Borrower's expense, regarding the accuracy, timeliness and propriety of the Draw Request in all material respects; and

(xi) such other information as may be reasonably required by Bank.

2.3.2. Disbursement Amount. Following receipt of a Draw Request and provided the Draw Request complies with the terms of this Loan Agreement and all information therein is true, correct and otherwise accurate, Bank shall determine the amount of the disbursement to be made under the Loan in accordance with the standards of this **Section 2.3.2.**, as set out below.

2.3.2.1. Cost Breakdown. Disbursements shall be made in accordance with the Cost Breakdown and disbursements for each item or category listed in the Cost Breakdown. Subject to Section 2.3.2.8 below, disbursements shall not, at any time, exceed the amount budgeted for an item or category in the Cost Breakdown, without Bank's consent, such consent not to be unreasonably withheld, conditioned or delayed. If the cost of any item or category listed in the Cost Breakdown exceeds the budgeted amount, Borrower shall, unless Bank shall then otherwise agree, pay such excess from its own funds as further described in **Section 2.4** below. In its reasonable discretion, Bank may agree to reallocate undisbursed funds for other items or categories to the item or category that exceeds the budgeted amount.

2.3.2.2. Value of Work; Percentage Completion. The value of work and material in place, as well as stored on the Premises at any time, shall be reasonably determined by Bank based upon the Plans, the Cost Breakdown and the other items submitted to Bank pursuant to this Loan Agreement; and the percentage of completion determined from the foregoing information shall be binding on Borrower, absent manifest error on Bank's part.

2.3.2.3. Construction Work. Loan disbursements for construction work shall be made on a pro rata basis, less retainage as provided in the Construction Documents, for the value of the work completed, as shown on Draw Requests reviewed and approved by the Construction Inspector and Bank, such approval not to be unreasonably withheld, conditioned or delayed. The final disbursement of the Loan proceeds, which shall include the release of any retainage, shall be made upon compliance in full with the requirements set forth in **Section 5.2**.

2.3.2.4. Non-Construction Items. Loan disbursements for non-construction items (*i.e.*, so-called "soft costs") shall be made as shown on the Cost Breakdown or otherwise as approved by Bank in its reasonable

discretion, and Bank may require that invoices for such costs be submitted to it for approval prior to making any disbursements for such items, such approval not to be unreasonably withheld, conditioned or delayed.

2.3.2.5. Materials Stored On-Site. Pro rata disbursements for materials stored on-site will be made based upon the invoice costs of materials if the materials are adequately identified, secured and insured. All invoices for materials stored on-site are subject to Bank's review and approval, such approval not to be unreasonably withheld, conditioned or delayed. Bank must have a perfected first lien and security interest on such stored materials and a disbursement therefor must not be in conflict with the terms of the Construction Documents.

2.3.2.6. Materials Stored Off-Site. Disbursements for materials stored off-site shall be at Bank's reasonable discretion, but no disbursements will be made for such materials unless they are adequately identified, secured and insured, and Bank must have a perfected first lien and security interest thereon.

2.3.2.7. Deposits. Disbursements will not be made for deposits and prepayments required by manufacturers and fabricators of building materials, fixtures and equipment, unless otherwise specifically agreed in writing by Bank.

2.3.2.8. Savings and Contingency. Notwithstanding anything to the contrary contained herein, Borrower shall have the right without the prior approval of Bank to reallocate any cost savings ("Savings"), realized or contracted, affecting any approved Cost Breakdown category. Borrower shall have the right without Bank's consent to utilize amounts in the contingency reserve (the "Contingency") to pay for costs related to the Project as follows: (i) up to fifty percent (50%) of the contingency reserve until fifty percent (50%) completion of the Project, (ii) up to seventy-five percent (75%) of the contingency reserve until seventy-five percent (75%) completion of the Project, and (iii) once the Project is seventy-five percent (75%) complete, up to ninety percent (90%) of the contingency reserve.

Section 2.4. Equity Requirements. Prior to the initial disbursement of any Loan proceeds, in addition to the Land being contributed as equity to the Project, Borrower shall contribute or have contributed cash equity to the Project equal to at least Thirteen Million Eight Hundred Twenty-Six Thousand Six Hundred Eighty-Three and No/100 Dollars (\$13,826,683.00). Bank acknowledges and agrees the Special Allocation in the amount of up to \$550,000.00 shall be credited against Borrower's equity requirement. In the event there are cost overruns after Borrower has utilized available Contingency or reallocated any available Savings, prior to Bank disbursing any additional Loan proceeds Borrower shall, unless expressly waived in writing by Bank, deposit additional cash equity with Bank from some other source in an amount sufficient to complete the cost overrun ("Deposited Funds") as reflected in the Cost Breakdown. Deposited funds shall be held by Bank and shall be advanced as construction progresses in accordance with this Loan Agreement before any additional Loan disbursements are made. Cost overruns, if any, shall be determined following Borrower's request for disbursement of 100% of the scheduled value of any individual line item set forth in the Cost Breakdown and Borrower's use of any available Contingency and reallocation of available Savings. Bank shall not have any obligation to fund any such cost overruns. Borrower shall at all times maintain sufficient equity in the Property to ensure the Loan is not categorized as an HVCRE.

Section 2.5. Option to Pay Contractors. If an Event of Default shall be continuing, at its option, Bank may make Loan disbursements directly to the General Contractor and any unpaid subcontractor, laborer and material supplier providing labor, services or materials in connection with the construction of the Improvements, and the execution of this Loan Agreement by Borrower shall, and hereby does constitute an irrevocable direction and authorization to so disburse the funds. No further direction or authorization from Borrower shall be necessary to warrant such direct disbursements and all such disbursements shall be secured by the Mortgage and other Loan Documents as fully as if made to Borrower, regardless of the disposition thereof by the General Contractor, any subcontractor, laborer or material supplier so paid. All such disbursements shall be conclusively deemed to be a necessary expenditure for the preservation of the Collateral and Bank's lien and security interest therein.

Section 2.6. Advances Do Not Constitute a Waiver. No advance of Loan proceeds hereunder shall constitute a waiver of any of the conditions to Bank's obligations to make further advances nor, in the event Borrower is unable to satisfy any such condition, shall any such advance have the effect of precluding Bank from thereafter declaring such inability to be an Event of Default hereunder.

Section 2.7. HVCRE. Bank shall not be obligated to make an advance which could, in Bank's sole discretion, cause the Loan to be classified as an HVCRE.

Section 2.8. Extension Options.

2.8.1. First Extension Option. Borrower shall have the right and option to extend the Original Maturity Date to a date ending upon the expiration of the First Extension Period ("**First Extension Option**"). The First Extension Option shall be granted to Borrower only if all of the following conditions have been simultaneously satisfied as of the commencement date of the First Extension Period (unless an earlier date is specified hereinbelow):

2.8.1.1. receipt by Bank of a written request of Borrower ("**Extension Request**") given to Bank not less than forty-five (45) days prior to the Original Maturity Date but not more than ninety (90) days prior to the Original Maturity Date;

2.8.1.2. Borrower's satisfaction of all those requirements contained in Section 5.2 hereof and Bank's determination that Completion has occurred and all Healthcare Licenses have been obtained;

2.8.1.3. no Event of Default shall have occurred and be then continuing;

2.8.1.4. no Material Adverse Change shall have occurred;

2.8.1.5. Borrower shall have provided Bank with written evidence reasonably satisfactory to Bank that the Debt Service Coverage Ratio shall then equal or exceed 1.25 based on the trailing twelve-month period;

2.8.1.6. at Bank's election, Bank shall have received an updated title report from the Title Company showing the Security Instrument as a prior and paramount lien on the Premises, that title to the Land is vested in Borrower and that no claim for mechanics' or materialmen's liens then encumber the Premises; and

2.8.1.7. Borrower shall have paid all reasonable out of pocket costs and expenses incurred by Bank in connection with such extension, including without limitation, underwriting, title and legal fees and costs.

2.8.2. Second Extension Option. To the extent Borrower properly exercises the First Extension Option, Borrower shall have the right and option to extend the First Extension Maturity Date to a date ending upon the expiration of the Second Extension Period ("**Second Extension Option**"). The Second Extension Option shall be granted to Borrower only if all of the following conditions have been simultaneously satisfied as of the commencement date of the Second Extension Period (unless an earlier date is specified hereinbelow):

2.8.2.1. receipt by Bank of an Extension Request from Borrower not less than forty-five (45) days prior to the First Extension Maturity Date but not more than ninety (90) days prior to the First Extension Maturity Date;

2.8.2.2. Borrower's satisfaction of all those requirements contained in Section 5.2 hereof;

2.8.2.3. no Event of Default shall have occurred and be then continuing;

2.8.2.4. no Material Adverse Change shall have occurred;

2.8.2.5. Borrower shall have provided Bank with written evidence reasonably satisfactory to Bank that the Debt Service Coverage Ratio shall then equal or exceed 1.25 based on the trailing twelve-month period;

2.8.2.6. at Bank's election, Bank shall have received an updated title report from the Title Company showing the Security Instrument as a prior and paramount lien on the Premises, that title to the Land is vested in Borrower and that no claim for mechanics' or materialmen's liens then encumber the Premises; and



2.8.2.7. Borrower shall have paid all reasonable out of pocket costs and expenses incurred by Bank in connection with such extension, including without limitation, underwriting, title and legal fees and costs.

#### Article III. Collateral.

Section 3.1. Collateral. Subject to the Permitted Encumbrances, the Loan will be secured by a first lien and security interest in the Premises, including without limitation (1) the Land and Improvements, (2) the Personalty, (3) all leases relating to the Premises and all rents, issues and profits arising out of or related to the Premises, (4) the Construction Documents and all other agreements and documents relating to construction of the Improvements, (5) all licenses and permits relating to any one or more of the Land, the Improvements and the Personalty, (6) all other property and property rights described in any one or more of the Mortgage, the Collateral Assignments and any of the other Loan Documents, and (7) all proceeds, products, accessions, additions, replacements and substitutions of or to the foregoing property and property rights (collectively referred to herein as the "Collateral").

Section 3.2. Perfection. At the time of the Closing of the Loan, Bank will require that its liens and security interests in the Collateral described in **Section 3.1** be perfected through recording of such of the Loan Documents as may need to be recorded in order to achieve perfection and through Bank taking possession of such of the Collateral as may need to be in Bank's possession to achieve perfection. In addition, at Closing, Bank shall require evidence reasonably satisfactory to it (1) that there are no liens and security interests prior to Bank's on any of the Collateral, (2) that Bank has a first lien and security interest in the Collateral, subject only to the Permitted Encumbrances, and (3) that no liens and security interests, including, without limitation, mechanic's liens and materialmen's liens, may at a date subsequent to Closing, attach to the Premises or otherwise be perfected against the Premises, or any part thereof, which, upon such attachment or perfection, would have lien priority superior to Bank's lien and security interest priority in the Collateral.

#### Article IV. Conditions to First Disbursement.

Section 4.1. Conditions to First Disbursement. Except as otherwise provided herein or in the Post Closing Agreement entered in as of the Closing Date between Borrower and Bank, all of the conditions set forth in this **Section 4.1** must be satisfied and completed, or the satisfaction and completion thereof waived by Bank, prior to any disbursement of proceeds by Bank under the Loan. If all of the conditions are not met to Bank's reasonable satisfaction, or the completion thereof waived by Bank, Bank may, at its option, (1) withhold disbursement until the same are met, (2) disburse and require that any unsatisfied terms and conditions be satisfied as a condition subsequent to Closing within such period of time as may be designated by the Bank or (3) terminate its obligation to fund the Loan and recover from Borrower all reasonable, out of pocket costs and expenses incurred by Bank in connection with its preparations for making the Loan to Borrower, together with the fees and other costs and expenses required to be paid by Borrower under the Loan Documents.

4.1.1. Loan Documents and Perfection of Lien. Bank shall have received fully executed and, if necessary, recorded or filed, originals of the Loan Documents as may be required by Bank prior to the first disbursement, and all of the conditions listed in this Loan Agreement shall have been completed and satisfied, including, without limitation, perfection in favor of Bank of a first priority lien and security interest in all of the Collateral, subject only to the Permitted Encumbrances.

4.1.2. UCC-11 Search Results. Bank shall have received current UCC-11 search results from such local and state filing offices as Bank may request, each showing no liens and security interests against any of the Collateral described in **Section 3.1**.

4.1.3. Title Insurance Commitment. Bank shall have received the Title Policy, or the Title Insurance Commitment, with respect to the Premises issued by the Title Insurance Company, and such Title Policy, or Title Insurance Commitment, (1) shall have deleted, or shall have been marked to delete, all exceptions other than Permitted Encumbrances, (2) shall meet or have satisfied all requirements requested by Bank and (3) shall contain such endorsements as Bank deems appropriate (e.g., zoning, access, comprehensive). Without limiting the foregoing, but in addition thereto, the Title Policy, or marked up Title Insurance Commitment, shall insure in an amount up to the Loan Amount, Bank's first lien and security interest in the Land, and in the Improvements as they are being constructed, subject only to the Permitted Encumbrances and such other

matters as Bank may approve, such approval not to be unreasonably withheld, conditioned or delayed; and Bank's first lien and security interest in the Land and in the Improvements as they are being constructed, shall be insured as superior and prior to any and all mechanic's liens and materialmen's liens which may be filed in the future relative to the Land and the Improvements.

4.1.4. Survey. Borrower shall have delivered to Bank four copies of a recent (dated not more than 90 days prior to the Closing Date) survey of the Land by a registered land surveyor, together with a surveyor's certificate with respect to such survey. The survey shall meet in all respects the survey requirements of the Bank.

4.1.5. Environmental Assessment / Reliance Letter. Borrower shall provide to the Bank an acceptable Phase I environmental assessment and reliance letter inuring to Bank's benefit with respect to the Land, the results and conclusions of which are in all respects satisfactory to Bank, in its sole discretion. Bank may require additional environmental diligence, with all such costs and fees therefore paid by Borrower.

4.1.6. Reserved.

4.1.7. Appraisal. Bank shall have received and approved the Appraisal of the Premises, performed in accordance with all applicable Requirements of Law by an independent appraiser selected by Bank and commissioned by and addressed to Bank, which shall be in all respects satisfactory to Bank. The Borrower shall pay the cost of the Appraisal.

4.1.8. Taxes. Borrower shall have delivered to Bank evidence that ad valorem taxes and all general and special assessments on the Land have been paid through the most recent calendar year and are otherwise current in their payment under applicable Requirements of Law, and information as to tax parcel identification numbers, tax rates, estimated tax values, assessments and the identities of the taxing authorities.

4.1.9. Utilities. Borrower shall deliver to Bank evidence reasonably satisfactory to Bank of the suitability and availability of water, sanitary sewer and storm water sewer, electric, gas, telephone, cable, internet connectivity and other utilities needed for construction of the Project and to properly service the Premises in its intended use by providing a utilities facilities endorsement to the title policy, together with evidence reasonably satisfactory to Bank that all easements needed for the construction, maintenance and use of such utilities are available.

4.1.10. Licenses and Permits. Other than the Healthcare Licenses, which are governed by Section 6.2.28 below, Bank shall have received copies of all necessary licenses and permits for the development and construction of the Improvements and all such licenses and permits are in full force and effect or will be obtained prior to commencement of construction and any advance under the Loan, including a copy of the building permit.

4.1.11. Flood Hazards. Bank shall have received evidence as to whether or not the Improvements are located within an area identified as having "special flood hazards" as such term is used in the federal Flood Disaster Protection Act of 1973, and Bank shall have received a flood hazard certification for the Project (which the Bank may in its discretion order) which reflects whether or not the improvements will be located in an area designated as a Zone V or Zone A flood hazard area. If any part of a structure or building comprising Improvements is or is to be located in an area having "special flood hazards", a flood insurance policy naming the Bank as mortgagee must be submitted to the Bank.

4.1.12. Insurance. Borrower shall have delivered to Bank evidence that Borrower has obtained each of the insurance policies required under the Mortgage and Section 6.2.11, together with satisfactory evidence of premium payments.

4.1.13. Current Financial Statements. Borrower and any other person obligated for payment of the Loan or Borrower's performance shall have delivered to Bank complete and current financial statements, all in a form reasonably satisfactory to Bank.



4.1.14. Taxpayer Identification Number. Borrower and any other person obligated for payment of the Loan or Borrower's performance shall have supplied to Bank their respective federal taxpayer identification numbers or social security numbers, as appropriate.

4.1.15. Authority Documents. Bank shall have received from Borrower, documents evidencing Borrower's authority to enter into this Loan, such documents to include:

- (a) certified copy of the Articles of Organization;
- (b) certificate of existence or good standing from the applicable Governmental Authorities;
- (c) certified copy of the operating agreement, together with all amendments thereto; and
- (d) certified copies of the resolutions authorizing the Loan and the execution and delivery of the Loan Documents.

4.1.16. Attorney's Opinion. Borrower's and Guarantor's counsel shall have delivered to Bank its written opinion regarding the organization and operation of Borrower, the enforceability of the Loan Documents and such other matters as Bank may reasonably request, such opinion to be in all respects reasonably satisfactory to Bank and its counsel.

4.1.17. Plans and Specifications. Borrower shall have delivered and certify to Bank two (2) complete sets of the Plans in final form. The Plans must have been approved in writing by Borrower, the General Contractor and any other person designated by Bank, either by initialing same or by other written approval identifying all pages and dates, including revision dates. The Plans must include architectural, structural, mechanical, plumbing, electrical and site development (including storm drainage, utility lines, erosion control and landscaping) plans and specifications, and must incorporate the recommendations in the soil testing report, the mold and other fungi report and any other site reports or pre-construction investigations, if any, and must include a construction time period schedule and a cost estimate with architect's certification. Bank acknowledges and agrees that it has approved the Plans.

4.1.18. General Construction Contracts and Cost Breakdown. Except as provided herein below, Bank shall have received copies of all executed Material Contracts as may be reasonably required by Bank in connection with the construction of the Project, including, without limitation, the contract between the Borrower and the General Contractor (the "General Construction Contract"). Bank also shall have received and approved the Cost Breakdown, such approval not to be unreasonably withheld, conditioned or delayed, certified as being accurate by Borrower, which Cost Breakdown shall describe the proposed cash disbursements and Construction Schedule. Notwithstanding the foregoing, attached hereto as Exhibit D is the draft General Construction Contract to be entered into between Borrower and General Contractor. Bank approves the form of the attached General Construction Contract. Borrower hereby agrees that within one hundred and twenty days (120) from the Closing Date and prior to disbursement of any Loan proceeds, Borrower shall deliver to Bank a fully executed copy of the General Construction Contract. Borrower agrees that it shall not modify or amend the form of General Construction Contract attached hereto as Exhibit D without the prior written consent of Bank, such consent not to be unreasonably withheld or delayed.

4.1.19. Management Agreement.

4.1.19.1. The management of the Improvements shall be by either: (i) Borrower or an affiliate of Borrower reasonably approved by Bank or (ii) a professional property management company with substantial experience in managing properties similar to the Improvements in the geographical region where the Improvements are located and which is reasonably approved by Bank (as applicable, the "Property Manager"). The initial Property Manager shall be 190 Spring Street Manager, LLC, a North Carolina limited liability company. All such management shall be undertaken pursuant to a written agreement (the "Management Agreement") between

Borrower and Property Manager and reasonably approved by Bank, such approval not to be unreasonably withheld or delayed. The form of Management Agreement attached hereto as Exhibit C is hereby approved by Bank. Borrower hereby agrees to provide a fully executed copy of the Management Agreement with the Property Manager to Bank at least (90) days prior to Completion. Borrower further covenants and agrees that Borrower shall require the Property Manager to maintain at all times during the term of this Agreement workers' compensation insurance as required by law.

4.1.19.2. Except in connection with a Permitted Transfer, absent obtaining the prior written consent of Bank, not to be unreasonably withheld, conditioned or delayed, Borrower shall not remove or replace the Property Manager or terminate, modify or amend the Management Agreement. Bank shall have the right to terminate, or direct Borrower to terminate, such Management Agreement in any of the following circumstances: (i) the occurrence of any default under the Management Agreement and the expiration of any applicable notice, cure or grace period then in effect with respect thereto, (ii) the occurrence and continuance of any Event of Default, (iii) other than in connection with a Permitted Transfer, a change in 50% or more of the ownership of Property Manager or a change otherwise in the effective control over the Property Manager, (iv) any "for cause" reason for termination of the Property Manager including, without limitation, gross negligence, willful misconduct or fraud, as determined by a court of competent jurisdiction, or (v) the Property Manager becoming insolvent or a debtor in any bankruptcy or insolvency proceeding. In any circumstance where the Management Agreement is terminated, Bank shall be entitled to approve any new replacement Management Agreement and Property Manager, such approval not to be unreasonably withheld, conditioned or delayed, and, if Borrower fails to promptly act with respect thereto or if an Event of Default has occurred and is then continuing, Bank shall be entitled to retain, or to direct Borrower to retain, a new Property Manager pursuant to the Management Agreement reasonably designated by Bank.

4.1.19.3. Any Management Agreement shall be solely with respect to the Property. Borrower shall cause Property Manager to follow a procedure such that all Rents generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property including, without limitation, current expenses relating to Borrower's liabilities and obligations with respect to this Agreement and the other Loan Documents and none of the Rents generated by or derived from the Property shall be diverted by Borrower (or Property Manager) and utilized for any other purpose; provided, however, absent the continuance of an Event of Default or to the extent prohibited pursuant to the Loan Documents otherwise, this provision shall not prohibit the distribution of any residual net operating income from the Property to the owners of Borrower after all current expenses and obligations to Bank and all current Property expenses and appropriate reserves have been satisfied and funded.

4.1.19.4. At least ninety (90) days prior to Completion, Property Manager shall execute and deliver to Bank the Assignment and Subordination of Management Agreement in the form attached hereto as Exhibit C-1. To the extent a new Property Manager should be retained, such new Property Manager shall be required, as a condition to its being retained, to execute a substitute Assignment and Subordination of Management Agreement with respect to the new Management Agreement in form and content substantially similar to the Assignment and Subordination of Management Agreement approved by Bank and executed in favor of Bank as of the date hereof.

4.1.20. Agreements Related to Borrower: The Bank shall have received and approved copies of all equity partnership agreements and similar documents related to Borrower, such approval not to be unreasonably withheld, conditioned or delayed.

4.1.21. Architect's Contract. Bank shall have received a true and exact copy of the contract between Borrower and the Architect for design services ("Architect's Contract"), together with the consent from the Architect to Borrower's assignment to Bank of Borrower's interest in the contract between Borrower and the Architect pursuant to the Collateral Assignments.

4.1.22. Engineer's Contract. Bank shall have received a true and exact copy of the contract between Borrower and the Engineer ("Engineer's Contract"), together with the consent from the Engineer to Borrower's assignment to Bank of Borrower's interest in the contract between Borrower and the Engineer pursuant to the Collateral Assignments.

4.1.23. Consents and Approvals. Bank shall have received true and exact copies of any other consents and approvals of all persons required in order for Borrower to construct, occupy and utilize the Improvements for its intended purpose and to comply with all of the terms of the Loan Documents, including those of any Private Association.

4.1.24. Compliance with Laws; Governmental Approvals. Bank shall have received evidence that the Premises, and the intended uses of the Premises are in compliance with all applicable Requirements of Law and other restrictions and requirements applicable to the Premises, and that all governmental approvals as may be necessary to comply with all governmental requirements relating to the Project have been obtained and that applicable appeal periods have expired. The evidence of compliance may include letters, licenses, permits, certificates and other correspondence from the appropriate Governmental Authorities and Private Associations, and opinions and certifications from the General Contractor and the Architect. The Requirements of Law and other restrictions and requirements with which compliance and evidence of compliance will be necessary include, without limitation, the following: building codes, private building restrictions and covenants, safety, health and environmental protection laws (to include those relating to air and water quality, and those relating to mold and other fungi), disability accessibility and other local barrier laws, erosion control ordinances, doing business laws, licensing laws and zoning laws (the evidence submitted as to zoning should include the zoning designation made for the Land, the permitted uses of the Land under such zoning designation and zoning requirements as to parking, lot size, ingress, egress and building setbacks).

4.1.25. Lien Waivers/Subordinations. Subject to the terms of **Section 2.3.1(a)** above, Bank shall have received from the General Contractor lien waivers or subordination agreements related to sums paid to Subcontractors.

4.1.26. Origination Fee. Borrower shall have paid to Bank the origination fee of One Hundred Twenty-Nine Thousand Forty Nine and No/100 Dollars (\$129,049.00).

4.1.27. Pending Litigation. Borrower shall have certified to Bank that no litigation or proceedings are pending or to Borrower's knowledge threatened which might adversely affect Borrower's ability to perform Borrower's obligations under this Loan Agreement, Borrower's agreement with contractors or Borrower's development and operation of the Project.

4.1.28. Cost Breakdown. The total Cost Breakdown for the Project projecting cash disbursements, as well as its projected sources, shall be subject to the Bank's review and approval. Among other things, the Cost Breakdown shall reflect the equity requirements set forth in **Section 2.4**.

4.1.29. Qualification Statement from General Contractor. Borrower shall have delivered to Bank the General Contractor's qualification statement, a minimum three years of financial statements, and a bondability letter. Bank hereby acknowledges that it approves Trident Construction LLC, a South Carolina limited liability company, as the General Contractor.

4.1.30. Ownership Structure. The ownership structure of the Borrower shall be reviewed and approved by the Bank.

4.1.31. Payment and Performance Bonds. Unless waived by Bank, Borrower shall provide evidence to Bank's reasonable satisfaction that the General Contractor has obtained a payment bond in the minimum amount of the value of the General Construction Contract, naming Bank as a dual obligee, and a performance bond for the full performance of the General Construction Contract, naming Bank as a dual obligee.

4.1.32. Other Documents. Upon request, Borrower shall deliver such other documents, contracts, and information relating to the Project as the Bank requests.

4.1.33. Development Agreement. The Bank shall have received and approved an executed copy of the Development Agreement for the of the Project, together with the consent from the Developer to Borrower's assignment to Bank of Borrower's interest in such Development Agreement. On the Closing Date

Borrower and Developer shall enter into an Assignment and Subordination of Development Agreement in the form attached hereto as **Exhibit F**. Except in connection with a Permitted Transfer, absent obtaining the prior written consent of Bank, Borrower shall not remove or replace the Developer, or terminate, modify or amend the Development Agreement, without the prior written consent of Bank, such consent not to be unreasonably withheld or delayed.

4.1.34. Miscellaneous. All of the Loan Documents (duly executed by all parties thereto to the extent any of such Loan Documents must be executed by the parties thereto in order to be enforceable against them), and all other items set forth in this Loan Agreement and which Bank or its counsel may reasonably require shall be provided to Bank by Borrower. Additionally, prior to the closing of the Loan, the Borrower shall deliver to the Bank for review and approval documentation associated with the Project, including without limitation permits, governmental approvals, plans and specifications, any pertinent parking contracts or easements, and construction contracts.

Section 4.2. Additional Conditions to Disbursement. In addition to the conditions in **Section 4.1** above, Bank shall not be obligated to make the first Loan disbursement:

(a) if an Event of Default shall have occurred and be continuing; and

(b) until Bank receives Borrower's initial Draw Request that complies in all respects with the requirements of this Loan Agreement.

Section 4.3. Waiver of Conditions. Bank may, at its option, waive any condition precedent to the first and any subsequent disbursement of Loan proceeds, and either eliminate the condition or require that the condition be satisfied at some later time. A waiver by Bank of a condition must be in writing to be effective and a waiver as to one or more conditions shall not constitute a waiver as to other conditions and shall not establish a "course of dealing or practice" that would require a waiver of the same or a similar condition at some later time.

#### **Article V. Conditions Precedent to Disbursements Following the First Disbursement**

Section 5.1. Periodic Disbursements. All of the conditions set forth below in this **Section 5.1** must be satisfied in all material respects before Bank is obligated to make any disbursements after the first disbursement and each of the conditions must be and remain satisfied at the time of each disbursement subsequent to the first disbursement. As in **Section 4.1**, all of the following conditions must be met or completed to Bank's reasonable satisfaction.

5.1.1. Existing Conditions. All of the conditions stated in **Article IV** must have been satisfied to Bank's reasonable satisfaction and they each must remain so satisfied at the time of the disbursement, or the satisfaction thereof waived by Bank.

5.1.2. Draw Request. Borrower shall have delivered to Bank a Draw Request for each subsequent disbursement.

5.1.3. Subsequent Liens. No other lien or other interest shall have been permitted to attach to the Premises superior or subordinate to the interest of Bank under the Mortgage or under any of the other Loan Documents, except taxes for the current year and other matters acceptable to Bank as evidenced by Bank's written consent thereto. All parties holding direct contracts with the Borrower related to the Project shall execute lien waivers prior to each disbursement.

5.1.4. Construction of Improvements. Construction of the Improvements shall have been and shall be proceeding in all material respects in accordance with the Plans and the other Construction Documents.

5.1.5. Title Insurance.

5.1.5.1. Title Policy from Closing. Bank shall have received the Title Policy which conforms in all respects with the marked up Title Insurance Commitment or Proforma Title that Bank received at Closing. Prior to each disbursement, Borrower shall provide an update of the title, and an endorsement to the Title Policy certifying a first lien priority in favor of the Bank pursuant to the Mortgage.

5.1.6. Foundation Survey. If the foundations have been completed, the survey provided to Bank as required under **Section 4.1** above shall have been updated to show the foundations, said updated survey shall have been delivered to Bank within the timeframe contemplated under **Section 6.2.9** below and the survey and all information shown thereon shall be in all respects reasonably satisfactory to Bank.

5.1.7. Progress of Construction. At the time of each disbursement (1) the progress of construction is proceeding in accord with the Cost Breakdown, (2) the equity requirements set out in **Section 2.4** are satisfied, and (3) no Condition or Event of Default is continuing.

**Section 5.2. Requirements for Disbursement at Completion.** Bank shall not be obligated to make the final disbursement of the Loan until all of the conditions set forth below in this **Section 5.2** have been satisfied. As in **Section 4.1** and **Section 5.1** all of the following conditions must be met or completed to Bank's satisfaction.

5.2.1. Existing Conditions. All of the conditions stated in **Article IV** and **Section 5.1** must have been satisfied to Bank's reasonable satisfaction and they each must remain satisfied at the time of the disbursement, or the satisfaction thereof waived by Bank.

5.2.2. Completion of Improvements. The Improvements shall have been completed in accordance with the Plans and the other Construction Documents in all material respects, and certificates as to such completion shall have been issued by the Construction Inspector, the Architect and the General Contractor.

5.2.3. Certificates of Occupancy. Bank shall have received true and exact copies of certificates as to occupancy and use of the Improvements, which certificates shall have been issued for the Improvements by the appropriate Governmental Authorities. Bank also shall have received written authorization, from any Private Associations whose approval is necessary with respect to the Improvements, such written authorization approving the Improvements, as completed, and authorizing the occupancy and use of the Premises by Borrower for the intended purposes, as set forth herein and as set forth in any of the other Loan Documents; provided that such approvals shall not be deemed to include the Healthcare Licenses.

5.2.4. As-Built Survey. Bank shall have received an "as-built" survey prepared by a land surveyor registered as such in the jurisdiction in which the Premises are located, which survey meets in all material respects the survey requirements of the Bank.

5.2.5. Insurance. Bank shall have received evidence of insurance in such amount, with such terms and with such provider as shall be reasonably acceptable to Bank.

#### Article VI. Representations, Warranties and Covenants

**Section 6.1. Representations and Warranties.** In order to induce Bank to enter into this Loan Agreement and to make the Loan as herein provided, Borrower makes the representations and warranties set forth below in this **Section 6.1**, all of which shall survive the execution and delivery of this Loan Agreement, the Note, the Mortgage, the other Loan Documents and any inspections and examinations at any time made by or on behalf of Bank, and all of which shall be made as of the date hereof, subject to Borrower's obligations to update same as provided for herein, and except for matters (i) which have been otherwise disclosed by Borrower to Bank, or (ii) as to which the representation or warranty is made as of a specific date:

6.1.1. No Default. Borrower is not in default, subject to any applicable notice and cure rights, under any instrument, loan agreement, indenture, mortgage, deed of trust, deed to secure debt, security deed, security agreement, pledge agreement, guaranty agreement or other agreement to which it is a party, and Borrower is not in default, subject to any applicable notice and cure rights, under any of the foregoing agreements by which



it may be bound. Neither the execution and delivery of this Loan Agreement, the Note and the other Loan Documents, nor the consummation of the transactions herein and therein contemplated, nor compliance with the provisions hereof or thereof will violate any Requirement of Law, or will conflict with, or result in the breach of, or constitute a default under, subject to any applicable notice and cure rights, any instrument, loan agreement, indenture, mortgage, deed of trust, deed to secure debt, security deed, security agreement, pledge agreement, guaranty agreement or other agreement to which Borrower is a party.

6.1.2. No Actions. There are no actions, suits or proceedings pending, and to the knowledge of Borrower threatened, against or affecting Borrower before any court, arbitrator or Governmental Authority which are likely to have a material adverse effect on any one or more of the following: (1) Borrower's business operations, (2) a substantial part of Borrower's assets, and (3) Borrower's ability to observe and perform its obligations to Bank under any of the Loan Documents as and when the same are required to be observed or performed.

6.1.3. Title to Premises. Borrower has good and marketable title to and in all the Premises free and clear of all liens and encumbrances other than the lien of Bank and Permitted Encumbrances, or, on acquisition of title to the Premises will have such title.

6.1.4. Tax Returns. Borrower has filed all federal, state, local and other tax returns which are required to be filed by it. Borrower has paid all taxes, assessments and other governmental charges which became due and were required to be paid by Borrower up through the Closing Date, other than those which are due and payable for the current year without penalty or interest, and those being contested by Borrower in good faith by appropriate proceedings. Borrower has established reserves adequate for the payment of all federal, state, local and other tax liabilities, including those it is now contesting.

6.1.5. Validity of Loan Documents. Upon execution and delivery, this Loan Agreement, the Note, the Mortgage and the other Loan Documents are and the same shall be valid and binding agreements of Borrower, enforceable against Borrower in accordance with the terms thereof and hereof.

6.1.6. Priority of Liens. Upon proper recordation of the Mortgage, the Financing Statements and any of the other Loan Documents which Bank requires to be recorded or filed, Bank will hold a first priority security interest in and lien on the Collateral described therein free and clear of all liens, claims of lien and encumbrances, except for the Permitted Encumbrances with respect to the Collateral, as applicable.

6.1.7. No Untrue Statements. This Loan Agreement and the certificates, statements and other documents furnished to Bank by Borrower in connection with the Loan or in connection with any transaction contemplated hereby, and those furnished to Bank by any other person on behalf of Borrower or for their own undertaking in connection with the Loan or in connection with any transaction contemplated hereby, do not contain any untrue statement of a material fact and do not omit disclosure of a material fact, which, by its omission, makes the statements contained herein or therein misleading. There is no fact known to Borrower which has not been disclosed to Bank in writing which materially affects any one or more of the following: (1) the Premises, (2) Borrower's business, prospects, profits or financial condition, or (3) the business, prospect, profits or financial condition of any other person obligated, either primarily or secondarily, on the Loan. There is no fact known to Borrower which has not been disclosed to Bank in writing which materially affects the ability of Borrower to perform as and when required under each and all of the Loan Documents.

6.1.8. Permits and Licenses. Borrower has obtained or has made provisions for obtaining all permits, licenses and approvals necessary for the construction of the Improvements, and there are no restrictions, covenants or other matters that prevent or may prevent either or both (1) the construction of the Premises in material accordance with the Plans and the other Construction Documents or (2) the intended use of the Premises as stated by Borrower in one or more of the Loan Documents. To the extent Borrower has not obtained all permits, licenses and other approvals for the construction of the Improvements, Borrower has no information which would lead it to believe that they cannot be obtained within the time frame contemplated by the Construction Schedule.

6.1.9. Utilities. All utility services necessary for the construction of the Improvements and the operation of the Improvements for their intended purposes as stated in one or more of the Loan Documents are presently available, or they will be available at the earlier of when they are needed in the course of constructing the Improvements or at the time of completion of the Improvements in accordance with the Construction Documents. The utilities are available or will be available to the Premises through presently existing public or unencumbered private easements or rights-of-ways located at the boundaries of the Land. The utilities include but are not limited to, water supply, storm and sanitary sewer, electric, gas, telephone and internet connectivity facilities, and all such utilities are non-interruptible. There are no unpaid assessments for any of the utilities and there are no unpaid assessments for street or sidewalk paving and curbing, nor has Borrower received any written notice of any proposed public improvements that would result in either general or special assessments being levied against the Premises or parts thereof. All utilities will inure to the benefit of Bank in the event of the foreclosure of the Premises, or a deed in lieu of foreclosure.

6.1.10. Environmental Condition of Premises. The Premises described herein are and at all times while Bank has any interest in or lien on the Premises will continue to be in full compliance with all federal, state and local environmental Requirements of Law, including, but not limited to, those relating to air and water quality, those relating to oil, gas and petroleum products, those related to lead based paints, those related to radon, those related to asbestos and those related to mold and other potentially harmful fungi. As of the date hereof, except as disclosed to Bank in the Environmental Reports (as defined in the Environmental Indemnity Agreement dated of even date herewith among Borrower, Bank and Guarantors) provided by Borrower to Bank, and to Borrower's knowledge, there are no hazardous materials, substances, wastes and other environmentally regulated substances (including, without limitation, gas, oil and other petroleum products, lead based paints and any materials containing asbestos) located on, in or under the Premises or used in connection therewith; or if there are any of the foregoing, (1) Borrower has fully disclosed to Bank in writing the existence, extent and nature of any such substances, (2) Borrower is legally authorized and empowered to maintain such substances on, in or under the Premises or use them in connection therewith, and (3) Borrower has obtained and will maintain all licenses, permits and approvals required with respect thereto, and Borrower is and will remain in full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals.

6.1.11. Zoning. The present and proposed use of the Premises is in compliance with all zoning ordinances, and all municipal and other governmental and regulatory approvals have been obtained for the operation of the Premises for the purposes intended as stated in one or more of the Loan Documents.

6.1.12. No Violations. There does not exist any written notice of any uncorrected violation of any regulation, ordinance, rule, order or directive of any Governmental Authority with respect to the Premises.

6.1.13. Contracts Respecting the Premises. All contracts respecting the Premises and the use thereof, if any, including, without limitation, all leases and residency agreements with respect to the Premises, are in full force and effect and to Borrower's knowledge none of the parties to any of such contracts are in default under any of them, subject to applicable notice and cure rights.

6.1.14. Construction Documents. The Construction Documents are each in full force and effect and to Borrower's knowledge none of the parties to any of such contracts are in default under any of them, subject to applicable notice and cure rights.

6.1.15. Certification. There is no fact or condition known to Borrower that constitutes a material or significant threat or risk to the completion of the Improvements in accordance with the terms of the Construction Documents and the Loan Documents. There is no fact or condition known to Borrower that constitutes a material or significant threat or risk to Borrower's performance under the Loan Documents.

6.1.16. OFAC. Borrower (1) is not a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (2) does not engage in any dealings or transactions prohibited by Section 2 of such executive order, or is not otherwise associated with any such person in any manner violative of Section 2, and

(3) is not a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order.

6.1.17. PATRIOT Act. Without limiting Borrower's other representations and warranties in this **Section 6** relating to compliance with applicable Requirements of Law, Borrower is in compliance, in all material respects, with (1) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (2) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001).

**Section 6.2. Borrower's Covenants and Agreements.** Borrower covenants and agrees with Bank that it will fully and promptly do and perform each and every one of the covenants and agreements set forth below in this **Section 6.2**, or to the extent any of the covenants and agreements set forth below requires it to refrain from doing an act, it will so refrain. Borrower acknowledges to Bank that the breach or default by Borrower of any of the covenants and agreements set forth below in this **Section 6.2** is and the same shall be material.

6.2.1. Payment/Performance. Borrower shall pay when due all sums owing to Bank under the Note, this Loan Agreement and the other Loan Documents, and Borrower shall promptly perform all other obligations of Borrower thereunder and hereunder.

6.2.2. Further Assurances. On written demand of Bank at anytime and from time to time, Borrower shall do any act, and execute any additional documents consistent with the Loan Documents reasonably required by Bank to secure the Loan, confirm and perfect the lien of the Mortgage and any other security documents and to comply with the Loan Documents, including, but not limited to, additional Financing Statements, new or replacement notes and agreements supplementing, extending and otherwise modifying any one or more of the Note, this Loan Agreement, the Mortgage and the other Loan Documents.

6.2.3. Construction. Borrower shall commence construction of the Improvements on or before September 1, 2020 and shall thereafter conscientiously continue the construction of the Improvements to their Completion in accordance with the Construction Documents, including, without limitation, Completion within the Construction Schedule. Borrower shall not discontinue or permit the discontinuance of work on the Improvements for a period of more than fifteen (15) consecutive Business Days, except for matters of Force Majeure. In the event of matters of Force Majeure which cause a discontinuance of work on the Improvements, such discontinuance shall not be a breach or default under this Loan Agreement provided the discontinuance of work does not extend longer than ninety (90) days from the beginning of the first day of the occurrence of the matter of Force Majeure. Under no event shall Completion of the Improvements, including installation of any required items of Personalty, extend ninety (90) days past the date of completion set forth in the Construction Schedule, plus a total of twenty (20) Business Days for matters of Force Majeure.

6.2.4. Payment of Contractors. Borrower shall pay and Borrower shall cause others acting under or on the account of Borrower to pay, the Architect, the General Contractor, the Engineer, the Construction Inspector and any other persons required to be paid for labor, services, materials, parts and equipment furnished to or in connection with the construction of the Improvements as and when such persons are required to be so paid under the Construction Documents. Borrower shall advise Bank in writing within five (5) Business Days after receipt of written notice from any contractor, subcontractor, supplier, laborer or other person to the effect that said person has not been paid for any labor, services, materials, parts or equipment furnished to or in the Premises and such payment is past due and owing. When Borrower advises Bank of receipt by it of a claim of nonpayment for labor, services, materials, parts or equipment, Borrower shall include with such advice a copy of the notice it has received and any contracts, bills of sale, statements, receipted vouchers and agreements under which Borrower claims to have paid for such labor, services, materials, parts or equipment. Also, upon Bank's request at any time and from time to time, and without regard to whether Bank or Borrower has received a written notice of a claim of nonpayment from any person, Borrower shall provide to Bank evidence satisfactory to Bank that Borrower has paid for all labor, services, materials, parts and equipment which have been used in constructing the Improvements up to the date specified by Bank in its request; and if payment has not been made, evidence establishing that such



nonpayment is within the contractual payment terms for any labor, services, materials, parts or equipment for which payment has not been made by Borrower or is otherwise being contested by Borrower in good faith.

6.2.5. Compliance with Construction Documents. The Improvements shall be constructed in accordance with the Construction Documents in all material respects, including, without limitation, the Plans. Borrower shall, within five (5) Business Days after receipt of written demand from Bank, take action to correct any defects in workmanship, materials, parts or equipment in the Improvements and shall remedy or rectify any departure from the Plans not approved by Bank or otherwise permitted pursuant to the Loan Documents. Borrower shall not change, alter or amend either or both the Construction Documents or the actual construction of the Improvements except as permitted by the Loan Documents without the prior written consent of Bank, such consent not to be unreasonably withheld, conditioned or delayed, and except as permitted by the Loan Documents Borrower shall not permit any deviations by the Architect, the General Contractor, the Engineer, any subcontractor or any other person from the Construction Documents.

6.2.6. Subcontractors. Borrower shall deliver to Bank, upon request, the names, mailing addresses, telephone numbers, facsimile numbers and email addresses of all Major Subcontractors.

6.2.7. Construction Inspector. Borrower shall permit Bank and other persons designated by Bank, including the Construction Inspector, to enter upon the Premises as often as Bank desires for the purpose of inspecting the construction of the Improvements. When requested, Borrower shall furnish to Bank and Borrower shall furnish to other persons designated by Bank, detailed plans, shop drawings and specifications which relate to the Improvements. Failure of Bank, the Construction Inspector or their authorized agents to (1) discover defects in the Improvements, including errors or omissions in design, workmanship, materials, parts or equipment, or (2) to otherwise reject materials, parts, equipment or workmanship due to non-compliance with the Construction Documents, or due to defects in any of the foregoing, shall not make any of them liable to Borrower and shall not make any of them liable to any other person on account of such deficiency, nor shall any prior failure constitute a waiver of Bank's right to subsequently reject any such design, workmanship, materials, parts or equipment.

6.2.8. Preservation of Contracts. Borrower shall not, without the prior written approval of Bank, terminate or cancel its contracts or agreements with any one or more of the Architect, General Contractor, the Engineer, the Construction Inspector and any other person Material Contractor. Borrower shall not modify any contract with any one or more of the Architect, General Contractor, the Construction Inspector and any Material Contractor without Bank's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.

6.2.9. Foundation and Other Surveys. Upon the completion of the construction of the foundations for the Project, Borrower shall within three weeks following completion submit to Bank for its approval two (2) copies of a foundation survey prepared by a registered land surveyor, together with a surveyor's certification, all in conformity with the survey and certification criteria set forth in this Loan Agreement or established by Bank from time to time.

6.2.10. Use of Loan Funds. Borrower shall use all Loan proceeds disbursed to Borrower solely in payment of costs and expenses itemized in the Cost Breakdown, unless agreed to in writing otherwise by Bank. Without limiting the foregoing, but in addition thereto, Borrower shall not use any of the Loan proceeds, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

6.2.11. Insurance. Borrower covenants to maintain insurance as required herein and in the other Loan Documents, including the insurance coverages set forth below:

- (a) from the Closing until Completion of the Improvements, all risk replacement cost insurance with agreed amount endorsement, written in builder's risk form;

(b) upon Completion of the Improvements until the Loan and all other monetary and non-monetary obligations of Borrower to Bank under the Loan Documents are satisfied in full, all risk replacement cost insurance with agreed amount endorsement and such other casualty insurance as Bank may require;

(c) at all times from and after the Closing until the Loan and all other monetary and non-monetary obligations of Borrower to Bank under the Loan Document are satisfied in full, general liability insurance covering risks customarily carried in similar properties having a use or uses similar to that being made of the Premises from time to time; and

(d) if the Premises is located in an area designated as a flood zone or an area which Bank deems to be prone to flooding, a flood insurance policy.

All insurance shall be with insurance carriers approved by Bank with a Bests Insurance Reports policy holder's rating of at least "A+" and a Best's Key Rating Class of at least "IX". The insurance must be in amounts acceptable to Bank and the form of the policies must be reasonably satisfactory to Bank. Such insurance shall also comply with any and all insurance requirements in any commercial lease, if any. The builder's risk insurance in (a) above, the casualty insurance in (b) above and the flood insurance in (d) above shall contain standard noncontributing mortgagee clauses showing Bank as the mortgagee/loss payee and an additional insured, and they each shall contain standard waiver of subrogation clauses and such other clauses and endorsements as Bank may require. The general liability insurance in (c) above shall include Bank as an additional insured and loss payee. Conformed copies of the policies, or certificates evidencing insurance coverages as required hereunder, shall be delivered to Bank as and when requested by Bank, or at such other times as may be specified in this Loan Agreement and the other Loan Documents. The conformed copies of the policies, or the certificates of insurance coverage, shall contain or be accompanied by an agreement with the insurer or insurers therein to give the Bank thirty (30) calendar days prior notice of intent to cancel. The conformed copies of the policies, or the certificates of insurance, shall be accompanied by evidence of payment of the premium therefor.

6.2.12. Taxes. Upon the request of Bank, Borrower shall submit to Bank such receipts and other statements which shall evidence, to the satisfaction of Bank, that all taxes, general and special assessments and other items required to be paid by Borrower under this Loan Agreement and any of the other Loan Documents have been paid in full.

6.2.13. Title Policy. In the event periodic title endorsements are not required to be issued in connection with the title insurance, Borrower nonetheless agrees to cause title endorsements to be issued to the Title Policy as reasonably required by Bank. After the final disbursement of the Loan, Borrower will provide Bank with an endorsement to the Title Policy insuring the principal balance of the Loan and containing no exceptions not approved by Bank, such approval not to be unreasonably withheld, conditioned or delayed.

6.2.14. Environmental Matters. If Borrower maintains hazardous materials, substances, wastes or other environmentally regulated substances (inclusive of oil, gas and other similar petroleum products) on the Premises or uses them in connection with the Premises, and the existence of such substances are actually known to Bank as the result of their existence being disclosed to Bank in writing by Borrower under the terms and conditions of this Loan Agreement, Borrower shall promptly notify Bank of any change in the nature or extent of any such hazardous materials, substances, wastes or other environmentally regulated substances. Borrower also shall transmit to Bank promptly upon receipt copies of any written citations, orders, notices and other written communications received with respect to any of the foregoing, and shall transmit to Bank immediately upon receipt copies of any written communications received in connection with any other hazardous materials, substances, wastes or environmentally regulated substances affecting the Premises.

6.2.15. Additional Construction. Borrower shall not construct and Borrower shall not permit others to construct any improvements on the Premises other than the Improvements as described in the Construction Documents.

6.2.16. Financial Statements, Tax Returns, and Other Requirements. Borrower shall provide to Bank such financial information as Bank may from time to time reasonably require. The financial information shall

be in a form and shall cover such substantive matters as Bank may reasonably from time to time direct. Without limiting the generality of the foregoing, at a minimum:

6.2.16.1. If requested by Bank, within 30 days of each fiscal quarter end following the issuance of the first certificate of occupancy with respect to the Project, Borrower shall submit financial statements to Bank, which financial statements shall be prepared in accordance with GAAP (or some other accounting method reasonably acceptable to Bank) and certified by Borrower to be true and correct in all material respects. Such statements shall include, at a minimum: a balance sheet; an income and expense statement; a current rent roll for the Project; and any supporting schedules or documentation which Bank may require.

6.2.16.2. Within 120 days of Borrower's fiscal year end, an annual financial statement in form and substance reasonably satisfactory to Bank, which financial statement shall (i) be prepared in accordance with GAAP (or some other accounting method reasonably acceptable to Bank), (ii) be certified by Borrower to be true and correct in all material respects, and (iii) include a balance sheet, income statement, and cash flow statement.

6.2.16.3. Annually, Borrower shall submit a copy of its complete federal tax returns with supporting schedules within thirty (30) days of filing.

6.2.16.4. Annually, Borrower shall provide or cause to be provided to Bank, (y) within thirty (30) days of filing, a copy of the complete federal tax returns of Guarantor, including schedules and K-1s, and

6.2.16.5. Annually, Borrower shall provide or cause to be provided to Bank a financial statement for each individual Completion Guarantor addressed to Bank in form and substance reasonably satisfactory to Bank, and if requested by Bank, Guarantors will furnish Bank liquidity verification.

6.2.16.6. Within 120 days of Liberty Healthcare's fiscal year end, an annual financial statement in form and substance reasonably satisfactory to Bank.

6.2.16.7. After Completion, if requested by Bank in its discretion, monthly management reports consisting of operations information, rent rolls, cash flows and a profit and loss statement.

6.2.17. Financial Condition and Deposit Accounts. Unless Bank otherwise consents in writing, Borrower shall not make any loans or advances to any person and Borrower shall not permit any equity withdrawals from Borrower by any person except as may be expressly permitted under the terms of Borrower's organizational documents that were reviewed and approved by Bank prior to Closing. Until the Loan is paid in full, Borrower shall cause all its primary deposit accounts (inclusive of its property management accounts) to be maintained with Bank. Borrower hereby grants a security interest to Bank in all such accounts and any and all monies now or hereafter deposited therein.

6.2.18. No Subordinate Financing. Borrower shall not enter into any agreements for subordinate financing of or liens against the Project other than the Permitted Encumbrances.

6.2.19. Modification of Contracts. Other than residency agreements for units within the Project, Borrower shall not, without the prior written approval of Bank, terminate or modify in any material manner any Material Contracts relating to the Premises.

6.2.20. Cash Distributions. Borrower shall not make any distributions to partners, members or shareholders; provided, that after Completion Borrower may so distribute Monthly Excess Cash Flow not needed to pay Project operating expenses or amounts payable under the Loan Documents. For purposes hereof, "Monthly Excess Cash Flow" shall mean, for any month, the amount by which Gross Revenues exceed the sum of (a) actual cash operating expenses, to include minimum replacement reserve of \$250 per unit per year and (b) actual debt service on the Loan. "Gross Revenues" shall mean, for any period, all revenues of Borrower, determined on a cash basis, derived from the ownership, operation, use, leasing and occupancy of the Project during such period; provided, however, that in no event shall Gross Revenues include (i) any loan proceeds, (ii) proceeds or payments under insurance policies (except proceeds of business interruption

insurance); (iii) condemnation proceeds; (iv) any security deposits received from residents in the Project, unless and until the same are applied to rent or other obligations in accordance with the resident's lease; or (v) any other extraordinary items, in Bank's reasonable discretion.

6.2.21. Consolidation or Merger. Without the prior written consent of the Bank, the Borrower shall not wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation.

6.2.22. Subordinate Liens; Transfer. Without Bank's prior written consent, Borrower agrees that there shall be no sale, lease, conveyance (including, without limitation, any grant of rights or easements with respect to the Collateral), assignment, pledge, encumbrance or transfer of all or any part of the Collateral or any interest therein, voluntarily or involuntarily, whether by operation of law or otherwise except: (i) liens in favor of Bank; (ii) sales or transfers of items of the Collateral which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes, owned by Borrower, having a value equal to or greater than the replaced items when new; (iii) residency agreements for units within the Project pursuant to the standard form of lease approved by the Bank; (iv) as otherwise permitted in this Loan Agreement or the Loan Documents, as applicable, including, without limitation, transfers complying with the requirements of this Section; and (v) Permitted Transfers and Permitted Encumbrances. In the event that (i) Borrower sells, leases, conveys, assigns, pledges, encumbers or transfers all or any part of the Collateral other than as permitted by the foregoing exceptions of this Section; (ii) any transfer(s), singly or in the aggregate, which are in excess of ten percent (10%) of the ownership interests in Borrower; or (iii) any part of or all of the Collateral becomes subject to any voluntary or involuntary lien or encumbrance, except as otherwise permitted by this Loan Agreement, Bank shall, in its sole and absolute discretion, have the right to accelerate the Loan and declare that the then unpaid principal balance and all accrued interest of the Loan be immediately due and payable. In the case of any Permitted Transfer which would result in the transferee(s) owning twenty percent (20%) or more of the direct or indirect ownership interests of Borrower, to the extent such transferee did not own in excess of such threshold as of the Closing Date, Borrower shall furnish to Bank: (i) thirty (30) day prior written notice of such Permitted Transfers; provided that if the event giving rise to the Permitted Transfer is the removal of the Liberty Member or its affiliated property manager for fraud, intentional misconduct or intentional breaches of the Propco JV Agreement or Opco JV Agreement, and the Kayne Member needs to effect such removal immediately to fulfill fiduciary obligations, then the removal and related Permitted Transfer may be effected immediately and notice shall be provided to Bank as soon practicable; and (ii) such information as Bank may reasonably request in order to confirm that the transferee is in compliance with Section 6.1.16, entitled "OFAC" as determined by Bank.

6.2.23. Material Adverse Change. The Borrower shall immediately give the Bank written notice of any Material Adverse Change in the financial condition of Borrower or Guarantor and provide Bank with any information on Borrower and/or Guarantor's financial condition that Bank may reasonably require in connection with receipt of such written notification.

6.2.24. Debt Service Coverage Ratio. Beginning with the measurement for the three-month period ending June 30, 2023 and tested annually thereafter, Borrower shall maintain a Debt Service Coverage Ratio of not less than 1.25:1.00. The Bank has the right to test the ratio more frequently but will not test more often than quarterly. Borrower may cure a breach of the Debt Service Coverage Ratio requirement by either (i) providing a letter of credit in form and from an issuer acceptable to Bank with funds sufficient to pay down the Loan amount to achieve the required Debt Service Coverage Ratio or (ii) depositing into an account with Bank, named the Principal and Interest Reserve Account, an amount sufficient to reduce the principal balance due under the Loan in order to meet the required Debt Service Coverage Ratio. Borrower hereby grants to Bank a security interest in the funds in the Principal and Interest Reserve Account. On such date which is six (6) months after the occurrence of a test in which the Debt Service Coverage Ratio requirement is not met, the Debt Service Coverage Ratio shall be retested based on a trailing three-month basis. If the Debt Service Coverage Ratio is met at that time: the letter of credit shall be released or the balance in the Principal and Interest Reserve Account shall be released to Borrower; if it is not met at that time: the balance in the Principal and Interest Reserve Account shall be applied to pay down the Loan or the Letter of Credit shall be called and the proceeds applied to the Loan. During the term of the Loan, the cure provision contained in this Section may not be utilized more than two times.

6.2.25. Additional Indebtedness. So long as the Loan remains outstanding and unpaid, the Borrower shall not, without the prior express written consent of Bank, (i) incur additional indebtedness (in addition to the Loan) in excess of \$100,000.00 other than customary trade debt, account payables, financing for equipment, supplies and personal property or leasing commissions in the ordinary course of its business of owning and operating the Project, provided that such debt is not evidenced by a note and is paid prior to delinquency; (ii) pledge any assets of Borrower, including without limitation, the Collateral, as security for any new or existing debt (other than the Loan); or (iii) guarantee, assume, or endorse any new or existing debt of any person or entity other than as permitted under the Loan Documents.

6.2.26. Residency Agreements. At least ninety (90) days prior to Completion, Borrower shall provide to Bank Borrower's standard form of residency agreement for the lease of a unit within the Project, which form of residency agreement shall be reasonably satisfactory to Bank in all respects. Borrower shall not, without the prior written consent of Bank, lease any unit within the Project other than pursuant to the standard form of lease approved by the Bank with only minor variations thereto, such consent/approval not to be unreasonably withheld, conditioned or delayed.

6.2.27. Single Purpose Entity. So long as any Indebtedness remains outstanding and not discharged in full, and except as otherwise permitted under the Loan Documents, the Borrower shall:

- (a) maintain its business and purpose to consist solely of the acquisition, ownership, operation and management of the Project and such activities as are necessary, incidental or appropriate in connection therewith;
- (b) not hold or acquire, directly or indirectly, any ownership interest (legal or equitable) in any real or personal property other than the Project and other property related thereto;
- (c) not become a shareholder of or a member or partner in any entity which acquires any property other than the Project;
- (d) be, as memorialized in its organizational documents, organized solely for the purpose of acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Project and carrying on such other activities as are necessary, incidental or appropriate in connection therewith;
- (e) not amend or modify any provisions set forth in its organizational documents regarding matters set forth in this Section 6.2.27, without the prior written consent of Lender;
- (f) maintain its assets, accounts, books, records, financial statements (or consolidated statements with appropriate footnotes), and checks separate from and not commingled with any of those of any other Person;
- (g) conduct its own business in its own name and, to the extent of sufficient income generated by the Project to do so, pay its own liabilities from its own funds, and allocate fairly and reasonably any overhead for shared employees, and maintain an arm's length relationship with its Affiliates;
- (h) hold itself out as a separate entity, correct any known misunderstanding regarding its separate identity, and observe appropriate organizational formalities;
- (i) except as otherwise permitted by the terms of the Loan Documents and obligations arising on endorsement of negotiable instruments in the ordinary course of its business, not guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of others, including not acquiring obligations or securities of its partners, members or shareholders;
- (j) except as otherwise permitted by the terms of the Loan Documents, not pledge its assets for the benefit of any other Person or make any loans or advances to any Person;



(k) not enter into any contract or agreement with any Affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any Affiliate;

(l) not seek, cause or consent to the dissolution, winding up, liquidation, consolidation, merger or sale of all or substantially all of its assets (provided however that Borrower may agree to such dissolution, winding up, liquidation, consolidation, merger or sale in anticipation of a transaction which will repay the Loan in full provided that any such action occurs simultaneously with or after the full repayment of the Loan);

(m) maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate; and

(n) hereafter have no debts or liabilities in respect of borrowed money other than normal accounts payable and equipment leases in the ordinary course of business, the Loan, Permitted Encumbrances, Hedging Obligations and obligations arising on endorsement of negotiable instruments in the ordinary course of its business.

6.2.28. Licenses. Borrower shall or shall cause Operator to procure and provide to Bank within ninety (90) days following Completion, all licenses and permits needed by either Borrower or Operator to own and operate the Project as an assisted living and memory care facility (collectively, "Healthcare Licenses") which have not been obtained as of the Closing Date, and after appropriate inquiry, neither Borrower nor Operator is aware of any fact or circumstance of any nature or kind that would prohibit or restrict Borrower or Operator, as applicable, from obtaining all such Healthcare Licenses or create doubt as to the prospects of obtaining such Healthcare Licenses. In the event at any time the foregoing sentence is no longer true, Borrower and Operator shall immediately so notify Bank in writing. There is no legal action pending or to the best of Borrower's knowledge threatened which would adversely affect the Healthcare Licenses. The failure of Borrower or Operator to obtain the Healthcare Licenses shall be an immediate Event of Default hereunder.

6.2.29. Operating Lease. At least ninety (90) days prior to Completion, Bank shall have received a fully executed copy of the Operating Lease and that certain Security, Assignment and Subordination Agreement for Operating Lease and Assignment of Leases and Rents and Fixture Filing executed between Borrower and Operator ("Operator Security Agreement"). Bank has approved of the form of Operating Lease attached hereto as Exhibit E and Operator Security Agreement attached hereto as Exhibit E-1 and no changes are permitted without the prior written approval of Bank, such approval not to be unreasonably withheld or delayed. Borrower shall cause the execution, delivery and recordation of the Operator Security Agreement within ninety (90) days prior to Completion and shall deliver to Bank a title endorsement updating title to the Premises and insuring the Operator Security Agreement, such title endorsement to be satisfactory to Bank in all respects. Borrower hereby agrees that it will not allow the termination or amendment of the Operating Lease in a manner that would impact Bank's rights under the Loan Documents (it being acknowledged that Borrower and Operator may increase the rent payable thereunder without Bank's approval) or the acceptance of any prepayment of any installment of rent thereunder for more than one (1) month in advance, without the prior written consent of Bank.

#### Article VII. **Events of Default; Remedies.**

Section 7.1. Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Borrower's breach of or default under any of the terms, conditions or covenants contained in the Note, including, without limitation, Borrower's failure to pay within five (5) days following the date when due the principal of or interest on the Note or any other sums due thereunder, whether fees, charges, premiums or costs and expenses;

(b) Borrower's breach of or default under any of the terms, conditions or covenants

contained in this Loan Agreement or any of the other Loan Documents, subject any applicable notice and cure rights set forth therein and if no such period is set forth, the terms of the final paragraph of this Section 7.1 shall apply;

(c) the actual demolition of the Collateral, or any material part thereof, which materially impairs its value;

(d) Borrower's assets, or any material part or portion thereof, are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within ninety (90) days from the date that Borrower becomes aware of same, or if Borrower is enjoined, restrained or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any material portion of Borrower's assets, or if a notice of lien, levy or assessment is filed of record with respect to any of Borrower's assets by any Governmental Authority, and the same is not paid within ninety (90) days after Borrower receives written notice thereof, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by Borrower;

(e) the insolvency of Borrower or any person obligated for payment of the Loan or any parts or portions thereof, or the appointment of a receiver for, or the filing of a petition of bankruptcy by or against Borrower or any person obligated for payment of the Loan or any parts or portions thereof (except for the appointment of a receiver or the filing of a petition for bankruptcy by Bank in exercise of its remedies under the Loan Documents) to the extent that such matter remains undismissed or unstayed for a period of ninety (90) days;

(f) intentionally omitted;

(g) intentionally omitted;

(h) any false statement, material misrepresentation or withholding of facts by Borrower or any other person in any loan application or other document provided by Borrower or any other person to Bank or its agents in writing, including any material misrepresentation made in this Loan Agreement, as to any matter relied upon by Bank in evaluating whether to extend financing to Borrower;

(i) intentionally omitted;

(j) one or more final judgments are entered against Borrower or against the Guarantors, or any of them in excess of \$250,000.00, and said judgments are not stayed or bonded over within ninety (90) days after entry;

(k) default by Borrower in keeping, performing or observing any term, covenant, agreement or condition of the Construction Documents, subject to any notice and cure rights provided therein;

(l) the failure of any Guarantor to comply with any applicable term, provision or condition of any Loan Document as it relates to such Guarantor; provided, however that the foregoing shall not constitute an Event of Default if, within ninety (90) days after written notice of same from Bank, Borrower (A) in the event of the death of an individual Guarantor, provides to Bank a reaffirmation from the executor of such Guarantor's estate reaffirming the obligations contained herein and certifying (with such evidence as Bank may reasonably request) that such estate maintains assets in an amount substantially similar to the assets of such Guarantor immediately prior to such death, or (B) with respect to any Guarantor, provides an additional or replacement guarantor reasonably acceptable to Bank, who (x) meets or exceeds the required financial strength and position necessary to cause the

Guarantors collectively to meet or exceed any financial covenants set forth in the Loan Documents; (y) satisfies the underwriting criteria that Bank customarily uses in assessing potential guarantors; and (z) executes and delivers guaranty agreements in substantially the same form and substance as the Guaranties, subject only to changes based on the identity of the additional or replacement Guarantor (or such other changes requested by the additional or replacement Guarantor that are acceptable to Bank in its sole discretion). Notwithstanding anything to the contrary herein, Bank has approved KAREP V SL REIT, LLC as an additional or replacement guarantor for purposes of subparagraph (B) hereinabove to avoid an Event of Default hereunder or satisfy the conditions to a Permitted Transfer, provided that KAREP V SL REIT, LLC's financial condition remains similar, in all material respects, or exceeds the financial condition disclosed to Bank in that certain financial statement regarding such entity dated June 30, 2019;

(m) the dissolution, termination of existence, merger or change in control of or in Borrower, except as expressly permitted herein;

(n) Intentionally Deleted;

(o) Termination of any Hedging Contract required pursuant to this Agreement as the result of the occurrence of any event or circumstance denominated as an event of default by Borrower in such Hedging Contract, and Borrower fails with thirty (30) days of such termination to purchase a replacement Hedging Contract in form and substance acceptable to Lender.

Notwithstanding anything herein or in any other Loan Document to the contrary, in the event of a nonpayment breach or default (including Borrower's failure to maintain the Debt Service Coverage Ratio required under **Section 6.2.24** hereof), Borrower shall have a period of thirty (30) days after written notice from Bank to Borrower to cure such default, provided, however, there shall be no obligation for the Bank to give notice and no right of Borrower to cure if the event or condition is either the institution of a voluntary bankruptcy, insolvency or receivership action, the giving of any material false or fraudulent representation to Bank, the failure to keep the Collateral free and clear of consensual liens not approved in writing in advance by Bank or the failure to timely obtain the Healthcare Licenses, provided, however, that if such nonpayment default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and Borrower (or Guarantor, if applicable) shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for Borrower (or Guarantor, if applicable) in the exercise of due diligence to cure such default, such additional period not to exceed sixty (60) days.

**Section 7.2. Rights and Remedies.** If an Event of Default shall occur under this Loan Agreement, in addition to any other right and remedy which may be available to Bank and without limiting any other right and remedy granted to Bank in the Loan Documents, which rights and remedies are fully exercisable by Bank as and when provided in such other Loan Documents, Bank shall have the rights and remedies set forth below in this **Section 7.2.**, any and all of which it may exercise at its election, without notice of its election and without demand – subject, however, to applicable notice or grace periods, if any. No remedy herein conferred upon or reserved to the Bank is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Note or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank to exercise any remedy reserved to it in this **Article VII**, it shall not be necessary to give any notice, other than notice required herein or by applicable law

**7.2.1. Acceleration of Maturity.** Bank may, at its option, accelerate and declare immediately due and payable the Note, as well as any of and all of the other Indebtedness and obligations owing under this Loan Agreement and the other Loan Documents that are not already due hereunder and that are not already due thereunder. Bank hereby agrees to provide Borrower written notice of such acceleration of the maturity of the Note, provided that the failure of Bank to provide such notice shall not impair its rights and remedies under this Loan Agreement or to the Collateral. In addition to the foregoing, Bank may from time to time and at any time proceed to protect and enforce its rights and remedies under the Loan Documents (including its absolute



and unconditional right to recover full payment of any and all of the obligations owing by Borrower, as well as those owing by other persons to Bank) by any one or more of the following: judicial and non-judicial foreclosure proceedings as against all and any part of the Collateral, without regard to the situs of such Collateral; suits in equity; actions at law; and other appropriate legal, equitable and administrative proceedings to enforce full payment.

7.2.2. Bank's Power of Enforcement. Bank may by appropriate actions and proceedings seek to do and have done any and all of the following: (1) to enforce through actions at law and proceedings in equity, or both, payment of all and any part or parts of the obligations owing by Borrower to Bank under the Loan Documents, the performance of any of the terms in any of the Loan Documents, and any other rights and remedies available to Bank; (2) to foreclose and to authorize the foreclosure of all and any part or parts of the Collateral, or interests therein, and to sell and have sold, as an entirety or in separate lots or parcels, at one or more sales, the Collateral, or parts thereof or interests therein, under the power of sale granted in the Loan Documents (to the extent permitted by law) or the judgment or decree of a court or courts of competent jurisdiction; and (3) to pursue any other right and remedy available to it under the Loan Documents, at law and in equity. Bank may proceed either by such actions and proceedings or by the exercise of its powers with respect to entry and taking possession, or both, as Bank may determine in its discretion; and the same may be taken without regard to whether the Note (or any and all of the Notes if more than one) or any and all of the obligations owing to Bank under this Loan Agreement and the other Loan Documents shall be due and payable and without prejudice to the right of Bank thereafter to bring actions and proceedings for any default existing at the time any earlier action or proceeding was commenced. The taking of any action does not preclude Bank from taking subsequent action and Bank may continue taking subsequent actions at such time or times as it elects until the Loan and all other amounts owing to Bank under the Loan Documents are paid in full.

7.2.3. Bank's Rights to Enter and Take Possession, Operate and Apply Income.

7.2.3.1. Right to Possession. Borrower, upon written demand of Bank, shall forthwith surrender to Bank the actual possession of all, or such part or parts of the Collateral, or interests therein, as Bank may direct; and if and to the extent permitted by law, Bank, through its own actions and through those of its agents, without any prior notice to Borrower and demand on Borrower, may enter and take possession of any and all of the Collateral, or interests therein, and may exclude Borrower and any other persons wholly or partly therefrom – as Bank elects. If Bank takes possession of the Collateral or parts thereof or interests therein as aforesaid, Bank and Borrower shall have joint access to the books and records of Borrower – such joint access to be under and pursuant to procedures established by Bank, which procedures may call for Bank to possess the books and records with Borrower having access to them under the supervision of Bank. Upon Bank's possession of any of the Collateral or parts thereof or interests therein, Borrower will pay monthly in advance to Bank, or to any receiver appointed to collect the rents, income, proceeds and other benefits of the Collateral, the fair and reasonable rental value for the use and occupation of such part of the Collateral as may be left in the actual possession of Borrower (not in lieu of, but in addition to, all amounts which may be owing under the Loan Documents to Bank); and upon default in any such payment, Borrower will vacate and surrender possession of such part of the Collateral to Bank or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

7.2.3.2. Action for Possession. If Borrower should fail for any reason to surrender possession or if Borrower should fail for any reason to deliver possession of the Collateral, or any part or parts thereof or interests therein, to Bank after the earlier of Bank's written demand therefor or Bank's attempt to gain possession without prior demand, Bank may obtain, without prior notice to Borrower and without Borrower having a hearing thereon, a judgment or decree conferring on Bank and Bank's agents the right to immediate possession of all of the Collateral, or such part or parts thereof or interests therein, as Bank may elect, and a judgment or decree requiring Borrower to surrender and deliver immediate possession of all of the Collateral to Bank, or such part or parts thereof or interests therein, as Bank may elect. If Bank seeks such a judgment or decree, Borrower does hereby consent in advance to the entry of such judgment or decree without prior notice to Borrower and without Borrower having a hearing thereon; Borrower reserving, however, the right to challenge at a subsequent time the existence of an Event of Default. Borrower shall pay to Bank, upon written demand, all costs and expenses of obtaining such judgment or decree, including reasonable compensation to Bank, its attorneys and agents; and all such costs and expenses shall, until paid, be secured by the lien and security interest of Bank in the Collateral, and shall be payable on written demand with interest from date of demand at the highest contract rate payable under the Note.

7.2.3.3. Management of Collateral. Upon each and every entering into and taking of possession of the Collateral, or part or parts thereof or interests therein, by the Bank through its own actions and by the Bank through those of its agents and other persons, Bank may directly and through its agents and other persons, hold, store, use, operate, construct, install, complete, repair, restore, preserve, protect, manage and control all and any part or parts of, and interests in the Collateral, and conduct the business related thereto; and, without limiting the foregoing, from time to time and at any time, the Bank may do and the Bank may have done or direct the doing of any one or more of the following through itself, its agents and such other persons as Bank deems appropriate under the circumstances:

(a) Bank may, but shall not be obligated to, complete the construction and upfitting of the Improvements in its name or in the name of Borrower as Borrower's true and lawful attorney-in-fact, with full power of substitution, and in connection therewith, Bank may do any one or more of the following: (1) use any funds of Borrower, including any funds which may remain undisbursed on the Loan, for the purpose of completing the Improvements in the manner called for by the Plans and for completing any other construction connected with or associated with the Improvements, (2) make such additions, changes and corrections in the Plans as shall be necessary or desirable to complete the Improvements, (3) employ such contractors, subcontractors, laborers, suppliers, materialmen, agents, engineers, architects and inspectors as shall be required for said purposes, in the opinion of Bank, (4) pay, settle and compromise all existing bills and claims which may be liens against the Improvements, or as may be necessary or desirable in the sole discretion of Bank for the completion of the Improvements or for clearance of title, (5) take over and use all and any part of the labor, materials, supplies, fixtures, parts, products and equipment contracted for, owned by, or under the control of Borrower, whether or not previously incorporated into the Improvements, (6) execute all applications and certificates in the name of Borrower or its own name which may be required by any of the Construction Documents, (7) prosecute and defend all actions and proceedings in connection with the Premises or the construction of the Improvements, and to take such action and require such performance as Bank shall deem necessary under any guaranty of completion; and (8) do any and every act with respect to construction and completion of the Improvements which Borrower might do in its own behalf, including, without limitation, taking possession of Premises and execution, acknowledgment and delivery of all instruments, documents, agreements and papers in the name of Borrower or itself as may be necessary or desirable in the sole discretion of Bank;

(b) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements to the Premises and parts thereof, and in connection therewith, purchase and otherwise acquire fixtures, personal property and other types of property;

(c) insure and keep the Collateral and parts thereof insured;

(d) manage and operate the Collateral and parts thereof, and exercise all the rights and powers of Borrower in its name and otherwise with respect to the same;

(e) enter into agreements with others to exercise the powers herein granted Bank, all as Bank from time to time may determine; and

(f) collect and receive all the rents, income, proceeds and other benefits from, related to and arising out of the Collateral and each and all parts thereof and interests therein, including those past due, those currently due and those thereafter becoming due.

The powers granted to Bank in this **Section 7.2** are and the same shall be deemed to be powers coupled with an interest, and cannot be revoked. All sums expended by Bank pursuant to any of the foregoing listed matters and any other matter related to the completion of the Premises shall be deemed to have been disbursed to Borrower, evidenced by the Note and secured by the Security Instrument and all other Loan Documents and shall be deemed a necessary expenditure for the preservation of Bank's security, whether or not the amounts advanced or expended exceed the maximum amount of advances set forth in the Note and the Security Instrument. Borrower hereby also assigns and quitclaims to Bank all sums undisbursed under the Loan, such assignment and quitclaim to be effective only upon the occurrence of an Event of Default. The assignment and rights contained in this **Section 7.2** shall be in

addition to, and not in derogation of, the rights of Bank contained in any other Loan Document. In connection with its management of the Collateral as aforesaid, Bank shall apply any monies received by Bank in such priority as Bank may determine, or such priority as may be required under any Applicable Law, to: (1) payment of any and all of the obligations owing to Bank under the Loan Documents, including the Loan; (2) payment of any deposits for taxes, assessments and insurance premiums; (3) payment of the cost of insurance, taxes, assessments and other expenses and charges upon the Collateral or any parts thereof or interest therein, (4) payment of any amounts due and payable on any other Indebtedness of Borrower, whether prior or subsequent to the liens and security interest of Bank, (5) payment of the compensation, disbursements and costs and expenses of the agents, attorneys and other representatives of Bank, (6) payment of any amounts deemed necessary by Bank to otherwise protect and preserve the Collateral and the lien and security interest of Bank and (7) payment of such other amounts as Bank deems necessary to assure to Bank the repayment of the Loan and all other obligations owing to Bank under the Loan Documents.

7.2.4. Payments to Preserve Collateral. Bank, at its election, and without notice to Borrower, may, to protect and preserve its interest in the Collateral, and to assure repayment of the Loan and all other obligations owing under the Loan Documents, make any payments which Borrower has failed to make and any sum so paid shall be deemed an obligation secured by Bank's security interest and be promptly due and payable from Borrower upon written demand with interest thereon at the highest contract rate applicable under the Note, but such payment by Bank shall not release Borrower from its obligations or constitute a waiver of a default hereunder.

7.2.5. Receiver. Bank, to the extent permitted by law and without regard to the value, adequacy and occupancy of all or any part of the Collateral, or any interests therein, and without prior notice to Borrower and without Borrower having a hearing thereon, shall be entitled as a matter of right, if it so elects, to the appointment of a receiver or other similar official to: (1) enter upon and take possession of any and all of the Collateral and any interests therein, (2) preserve, protect, manage and control the Collateral or those parts or interests over which it takes possession; and (3) collect all rents, income, proceeds and other benefits thereof and apply the same as Bank directs, or if so required, as the court which appointed such receiver or other similar official may direct. The costs and expenses, including receiver's fees, attorneys' fees and agent's compensation, incurred pursuant to the powers herein contained shall be deemed an obligation of Borrower owing to Bank under this Loan Agreement and the same shall be secured by Bank's lien and security interest in the Collateral and shall be payable upon written demand with interest from the date of demand at the highest contract rate under the Note. Bank and any receiver or similar official appointed as provided herein shall be liable to account only for such rents, income, proceeds and other benefits actually received by Bank or such other person, whether received pursuant to this Section 7.2 or under other provisions of this Loan Agreement. Notwithstanding the appointment of any receiver or other similar official, Bank shall be entitled as pledgee to the possession and control of any money, deposits, accounts, account receivables, documents, chattel paper, documents of title, instruments, payment intangibles and other general intangibles and other property and property rights and interests at the present and any future time held by, or payable or deliverable under the terms of the Loan Documents to Bank.

7.2.6. Set-off and Recoupment. Bank may, at its option and at any time or times without prior notice to Borrower, set-off and apply toward payment of the Loan and other amounts now owing and amounts which may become owing by Borrower under the Loan Documents, and otherwise exercise its rights of recoupment, as to any and all (1) balances and deposits of Borrower held by Bank, (2) Indebtedness and other obligations at any time owing to or for the credit and account of Borrower by Bank and (3) Indebtedness and other obligations at any time owing to or for the credit and account of Borrower by any of Bank's Affiliates.

7.2.7. Suits to Protect the Collateral. Bank shall have the power and authority, at any time and from time to time, to institute and maintain any suits and proceedings as Bank may deem advisable in its reasonable judgment (1) to prevent the impairment or threatened impairment of the Collateral, or any part or parts thereof or interests therein, by any acts and inactions which may be unlawful or which may be in breach of this Loan Agreement and any of the other Loan Documents, (2) to preserve and protect its interest in the Collateral and each and all parts thereof and interests therein, including its liens and security interests therein, and (3) to restrain the enforcement of or compliance with any legislation and any other governmental enactment, rule and order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such

enactment, rule and order might impair Bank's lien and security interest in the Collateral, or be prejudicial to Bank's interest in any other manner.

7.2.8. Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition and other judicial proceedings affecting Borrower, any person obligated on any of Borrower's obligations, any of Borrower's creditors and any of Borrower's property, Bank, to the extent permitted by law and at any time or times, shall be entitled to file such proofs of claim and other documents as may be reasonably necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Borrower under the Loan Documents, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Borrower after such date.

7.2.9. Discontinuance of Proceedings; Position of Parties Restored. If Bank shall have proceeded to enforce any right and remedy under the Loan Documents by foreclosure, entry or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Bank, then and in every such case Borrower and Bank shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Bank shall continue as if no such proceedings had occurred or had been taken.

#### Article VIII. Miscellaneous.

Section 8.1. Incorporation of Exhibits and Recitals; Customer and Loan Numbers. All exhibits, supplements, schedules, addenda and other attachments to this Loan Agreement are by this reference incorporated herein and made a part hereof as if fully set forth in the body of this Loan Agreement; provided, however, the failure to correctly complete any exhibit, supplement, schedule, addenda or attachment hereto shall not affect Borrower's duties and Bank's rights hereunder if such corrected information can be obtained from any of the other Loan Documents. The recitals set forth in this Loan Agreement are also a part of this Loan Agreement. The Customer and Loan Numbers, if any, stated in this Loan Agreement are for Bank's internal business use and reference only and do not and shall not limit the scope and extent of Bank's security interest or the Indebtedness and other obligations evidenced hereby, referenced herein and secured hereby. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Loan Agreement nor the intent of any provision hereof.

Section 8.2. Amendments. Subject to the exercise by Bank of its rights and remedies as set forth in this Loan Agreement and without limiting any of such rights and remedies, this Loan Agreement may not be modified, amended, waived, extended, changed, discharged and terminated orally or by any act or failure to act on the part of Borrower or Bank, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge and termination is sought.

Section 8.3. Assignment, Ownership. The terms, provisions and conditions in this Loan Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns and personal representatives of the parties hereto; provided, however, Borrower shall not assign this Loan Agreement and any of its rights, interests, duties and obligations hereunder (inclusive of the proceeds of the Loan and other moneys to be advanced under or on account of this Loan Agreement) in whole or in part without the prior written consent of Bank, and any such assignment (whether voluntary or by operation of law) without said consent shall be void. Provided, further, that except as otherwise provided in this Loan Agreement, there shall be no change in the ownership or a change in control of Borrower unless Bank, in its sole discretion, has given its prior written approval.

It is expressly recognized and agreed that Bank may assign, sell or transfer this Loan Agreement, the Note and any other Loan Documents, in whole or in part ("Bank Assignment"), to any person and, in the event of such assignment, Bank shall thereafter be relieved of all liability hereunder to the extent of the assignment or transfer; provided, however, that until the Loan is fully funded or until Completion, whichever first occurs, if Bank decides to sell any participation(s) in the Loan, Bank will first so advise Borrower in writing and Borrower shall have fifteen Business Days to provide its relationship lenders to Bank as possible participants in the Loan (subject to Bank's reasonable approval) and (a) any such participation shall not affect the rights and duties of the selling Bank hereunder to the Borrower, (b) the selling Bank shall remain solely responsible to the other parties hereto for the



performance of such obligations, and (c) the Borrower shall continue to deal solely and directly with Bank in connection with Bank's rights and obligations under this Loan Agreement. Borrower waives and will not assert against any transferee or assignee of Bank any claims, defenses, set-offs and rights of recoupment which Borrower could assert against Bank, except defenses which Borrower cannot waive.

Section 8.4. Conflict. It is the intention of the parties that this Loan Agreement and the other Loan Documents be interpreted in a consistent manner; provided, however, in the event of any irreconcilable conflict in the provisions of this Loan Agreement and the provisions of any of the other Loan Documents, the provisions of this Loan Agreement shall control.

Section 8.5. Benefit. This Loan Agreement is made and entered into for the sole protection and benefit of Bank and Borrower, their successors and assigns, all third party beneficiary rights are expressly negated, and no other person or persons shall have any right to action hereon or rights to the Loan proceeds at any time, nor shall Bank owe any duty whatsoever to any claimant for labor performed or material furnished in connection with the construction of the Improvements, or to apply any undisbursed portion of the Loan to the payment of any such claim, or to exercise any right or power of Bank hereunder or arising from any continuing Event of Default by Borrower.

Section 8.6. No Partnership, Joint Venture or Agency. This Loan Agreement and the other Loan Documents shall not in any respect be interpreted, deemed or construed as making Bank a partner or joint venturer with Borrower, nor shall they or any of them be interpreted, deemed or construed as making Bank the agent or representative of Borrower. The relationship of Bank to Borrower is that of a creditor to an obligor or debtor; and in furtherance thereof and in explanation thereof, Bank has no fiduciary, trust, guardian, representative, partnership, joint venturer and other similar relationship to or with Borrower and no such relationship shall be drawn and implied from any of the Loan Documents or any of Bank's actions and inactions hereunder or with respect hereto – and, Bank has no obligation to Borrower and any other person relative to administration of the Loan and administration of the Collateral, or any part or parts thereof or interests therein. In no event shall Bank be liable for debts and claims accruing or arising against Borrower.

Section 8.7. Disputes. Where disputes have arisen which, in the sole opinion of Bank, may endanger timely completion of the Improvements or fulfillment of any condition precedent or covenant herein, Bank may agree to disburse Loan proceeds for the account of Borrower without prejudice to Borrower's rights, if any, to recover said proceeds from the party to whom paid. Such agreement or agreements may take the form which Bank, in its reasonable discretion, deems proper, including, but without limiting the generality of the foregoing, agreements to indemnify (on behalf of Borrower) any title insurer against possible assertion of lien claims, agreements to pay disputed amounts and the like. All sums paid or agreed to be paid pursuant to such undertaking shall be advances of Loan proceeds.

Section 8.8. Power of Attorney. Upon the occurrence and continuance of an Event of Default, Borrower does hereby irrevocably constitute and appoint Bank its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to execute, deliver and file such agreements, documents, notices, statements and records, to include, without limitation, Financing Statements, and to do and undertake such other acts as Bank, in its reasonable discretion, deems necessary or advisable to effect the terms and conditions of this Loan Agreement and to otherwise protect and preserve the security of the lien and security interests in the Collateral, and Bank's interests therein. The foregoing appointment is and the same shall be coupled with an interest in favor of Bank.

Section 8.9. Indemnity. Borrower hereby agrees to defend, protect, indemnify and hold harmless Bank and each and all of Bank's shareholders, directors, officers, employees, attorneys and agents (individually and collectively, "Indemnified Parties"), from and against any and all claims, actions, liabilities, damages, costs and expenses (including, without limitation, all costs and expenses incurred in the investigation and defense of any matter) ("Indemnified Liabilities") asserted against, imposed upon and incurred by the Indemnified Parties, both direct and indirect and regardless of the basis of the Indemnified Liabilities (i.e., whether based on federal, state or local laws, rules, regulations and ordinances, common law, an equitable cause, contract, tort or otherwise), as a result of or arising from or relating to any one or more of (1) this Loan Agreement, (2) the other Loan Documents, (3) the transactions contemplated by this Loan Agreement, (4) any credit extended or used hereunder, (5) any act done or omitted by any person, or any event occurring in connection therewith, and (6) the exercise of any rights and remedies under this Loan Agreement and the exercise of any rights and remedies under any of the other Loan

Documents, including, without limitation, the acquisition of the Collateral by Bank by way of foreclosure of the lien and security interests thereon, deed in lieu of such foreclosure or otherwise, except in all of the instances enumerated in (1) through (6), the indemnification obligations set forth herein shall not extend to (y) the gross negligence or willful misconduct of the person otherwise to be indemnified hereunder, or (z) any Indemnified Liabilities first arising after the date that Bank takes possession of or title to the Collateral, whether pursuant to the appointment of a receiver, a foreclosure, a deed in lieu of foreclosure, or other similar event, that are not caused by Borrower. In the event this indemnity is unenforceable as a matter of law as to a particular matter or consequence referred to herein, it shall be enforceable to the full extent permitted by law. The obligations of Borrower under this Section are independent of all other rights and obligations set forth herein and shall survive the payment of the Loan and the termination of this Loan Agreement.

Section 8.10. Payment of Fees and Expenses. Without limiting any other provision of this Loan Agreement relating to Borrower's payment of costs and expenses incurred by Bank and those incurred by others on behalf of Bank, but in addition thereto, whether or not the Loan is made and all of the Loan proceeds disbursed, Borrower shall pay to Bank within five (5) Business Days of receipt of written demand, each and all of any reasonable, out-of-pocket costs and expenses incurred by Bank, incurred by others on behalf of Bank and incurred by Bank for Borrower: (1) in order to meet Bank's requirements in connection with the Loan, (2) in connection with the making of the Loan, and (3) in connection with the enforcement of Bank's rights and remedies under the Loan Documents, including, payments to third persons of amounts Borrower is required to pay to such third persons under and pursuant to the terms of any of the Loan Documents, protecting Bank's interest in the Collateral, collecting any amount owing by Borrower and owing by other persons under the Loan Documents and in enforcing its rights under any of the Loan Documents with respect to the Collateral. All of the foregoing costs and expenses shall be paid with interest thereon at the highest contract rate prescribed in the Note from the date paid or incurred by or on behalf of Bank until such costs and expenses are paid by Borrower. All sums so paid and expended by Bank, and the interest thereon, shall be added to and be secured by Bank's lien and security interests in the Collateral.

Section 8.11. Documentary and Intangible Taxes; Additional Costs. To the extent not prohibited by law and notwithstanding who is liable for payment of the taxes or fees, Borrower shall pay, on Bank's written demand, (1) all intangible personal property taxes, documentary stamp taxes, excise taxes and other similar taxes assessed, charged and required to be paid in connection with the Loan and any extension, renewal and modification thereof, and (2) all intangible personal property taxes, documentary stamp taxes, excise taxes and other similar taxes assessed, charged and required to be paid in connection with this Loan Agreement and any of the other Loan Documents, and any extension, renewal and modification of any of the foregoing. If, with respect to this Loan Agreement and the transactions hereunder, any Requirement of Law (x) subjects Bank to any tax (except federal, state and local income taxes on the overall net income of Bank), (y) imposes, modifies or deems applicable any deposit insurance, reserve, special deposit and other similar requirement against assets held by, deposits in, and loans by Bank, or (z) imposes upon Bank any other condition, and the result of any of the foregoing is to increase the cost to Bank, reduce the income receivable by Bank or impose any expense upon Bank with respect to the Loan, Borrower agrees to pay to Bank the amount of such increase in cost, reduction in income or additional expense within thirty (30) days following presentation by Bank of a statement of the amount and setting forth Bank's calculation thereof, all in reasonable detail, which statement shall be deemed true and correct absent manifest error.

Section 8.12. Marshalling of Assets. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisal, homestead, valuation, stay, extension, reinstatement and redemption laws now in force and any which may in the future come to be in force and all rights of marshaling in the event of any sale under the Loan Documents of the Collateral, or any part or parts thereof or any interests therein. Further, Borrower hereby expressly waives on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Collateral or any part thereof subsequent to the date of this Loan Agreement and on behalf of all other persons to the extent permitted by law, any or all rights of redemption from sale under any order or decree of foreclosure of this Loan Agreement.

Section 8.13. Waiver of Statutory Rights. Borrower waives any right to require Bank to bring any action against any other person and to require that resort be had to any security and to any balances of any deposit or other accounts on the books of Bank in favor of any other person; and, without limiting the foregoing, but in furtherance thereof, Borrower waives any rights Borrower otherwise might have or may have in the future under North Carolina General Statute Section 26-7, *et seq.*, and any other laws that require or may require Bank to recover against some other person, or to realize upon any security which Bank holds for the Loan. Borrower also waives any and all right

of subrogation, contribution, reimbursement and indemnity whatsoever and any right of recourse to and with respect to the assets and property of any person that is or may be security for the Loan.

Section 8.14. Jury, Venue, Jurisdiction. This Loan Agreement shall be deemed to have been executed and delivered in the State of North Carolina as the jurisdiction whose laws govern this Loan Agreement, regardless of where the signatories may be located at the time of execution. This Loan Agreement and the other Loan Documents shall be governed by and construed in accordance with the substantive laws of the aforesaid jurisdiction, excluding, however, the conflict of law and choice of law provisions thereof. Notwithstanding the foregoing, to the extent any of the Collateral is located in another jurisdiction or other jurisdictions, the laws of the jurisdictions in which the Collateral is located shall govern with respect to Bank's and Borrower's rights in and to Collateral located in such other jurisdictions and Bank's remedies relative thereto. Borrower: (1) to the extent permitted by law, waives any right to a trial by jury in any action arising from or related to this Loan Agreement and any of the other Loan Documents; (2) irrevocably submits to the jurisdiction of the state or federal courts of North Carolina; and (3) irrevocably waives, to the fullest extent Borrower may effectively do so, the defense of improper venue or an inconvenient forum to the maintenance of any such action or proceeding. Nothing in this Section shall affect or impair Bank's right to serve legal process in any manner permitted by law or Bank's right to bring any action or proceeding against Borrower or Borrower's property in the courts of any other jurisdiction.

Section 8.15. Cumulative Rights. The rights, powers and remedies of Bank under this Loan Agreement shall be in addition to all rights, powers and remedies given to Bank by virtue of any applicable laws and regulations, those given in equity, those given to Bank under the other Loan Documents and those given under any other agreement, all of which rights, powers and remedies shall be cumulative and may be exercised by Bank from time to time and at any number of times successively, concurrently and alternatively without impairing Bank's rights under this Loan Agreement and under any of the other Loan Documents.

Section 8.16. No Waiver; No Course of Dealing; No Invalidity. No delay or forbearance by Bank in exercising any and all of its rights and remedies under this Loan Agreement and those under any of the other Loan Documents, and no delay or forbearance of Bank in exercising any and all rights and remedies otherwise afforded by law and in equity, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any continuing Event of Default as set forth herein or in the event of any subsequently occurring and continuing Event of Default hereunder. If Bank is requested to waive a continuing Event of Default or forbear taking action relative thereto, Bank may condition any waiver or forbearance it elects to grant Borrower on payment by Borrower of such fees to Bank as Bank deems appropriate under the circumstances and may condition any such waiver or forbearance on Borrower reimbursing Bank for all costs and expenses Bank incurs in connection with such waiver or forbearance. Also, no act or inaction of Bank under this Loan Agreement and under any of the other Loan Documents shall be deemed to constitute or establish a "course of performance or dealing" that would require Bank to so act or refrain from acting in any particular manner at a later time under similar or dissimilar circumstances. Wherever possible each provision of this Loan Agreement and the other Loan Documents shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Loan Agreement and if any provision of any of the other Loan Documents shall be prohibited or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Loan Agreement and those of the other Loan Documents, or the application thereof shall be in a manner and to an extent permissible under applicable law.

Section 8.17. Maintenance of Bank's Records. Borrower acknowledges and agrees that Bank is authorized to maintain, store and otherwise retain the Loan Documents in their original, inscribed tangible form or a record thereof in an electronic medium or other non-tangible medium which permits such record to be retrieved in a perceivable form; that a record of any of the Loan Documents in a non-tangible medium which is retrievable in a perceivable form shall be the agreement of Borrower to the same extent as if such Loan Document was in its original, inscribed tangible medium and such a record shall be binding on and enforceable against Borrower notwithstanding the same is in a non-tangible form and notwithstanding the signatures of the signatories hereof or thereof are electronic, typed, printed, computer generated, facsimiles or other reproductions, representations and forms; and that Bank's certification that a non-tangible record of any of the Loan Documents is an accurate and complete copy or reproduction of the original, inscribed tangible form shall be conclusive, absent clear and convincing evidence of the incorrectness of said certification, and such non-tangible record or a reproduction thereof shall be deemed an original and have the same force and effect as the original, inscribed tangible form.



Section 8.18. Credit Investigations; Sharing of Information; Control Agreements. Bank is irrevocably authorized by Borrower to make and have made such credit investigations as it deems appropriate to evaluate Borrower's credit and financial standing, and Borrower authorizes Bank to share with consumer reporting agencies and creditors its experiences with Borrower and other information in Bank's possession relative to Borrower. Bank shall not have any obligation and responsibility to (1) provide information to any third persons relative to Bank's security interest in the Collateral, this Loan Agreement and otherwise with respect to Borrower, (2) subordinate its liens and security interests in the Collateral to the interests of any person, and (3) enter into control agreements relative to the Collateral.

Section 8.19. Bank's Liability for Collateral. Notwithstanding anything in this Loan Agreement and any of the other Loan Documents to the contrary, Bank may at any time or times during the term of this Loan Agreement make such payments and do or cause to be done such acts as Bank considers reasonably necessary or advisable to protect the Collateral and to preserve, protect and perfect or continue the perfection of its security interest in the Collateral. So long as Bank complies with reasonable banking practices, and except to the extent of Bank's gross negligence or willful misconduct, Bank shall not be liable and responsible for the Collateral, or any part thereof or interest therein, and without limiting the foregoing, Bank shall not have any responsibility for any one or more of the following: (1) the safekeeping of the Collateral, (2) any loss and damage occurring to the Collateral, regardless of the cause for such loss and damage, (3) any diminution in the value of the Collateral, and (4) any act or default of any carrier, warehouseman, bailee, forwarding agency and other person whomsoever. All risk of loss, damage and destruction of the Collateral shall be borne by Borrower.

Section 8.20. Publicity. At Bank's request, and subject to Borrower's approval and applicable laws, regulations, sign ordinances and restrictions affecting the Premises, Borrower shall place upon the Premises a sign or signs advertising the fact that financing is being provided by Bank. Bank shall also have the right to secure printed publicity through newspaper and other media concerning the Premises and source of financing.

Section 8.21. Execution in Counterparts. This Loan Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement, and in making proof of this Loan Agreement, it shall not be necessary to produce or account for more than one such counterpart (subject always to the provisions of **Section 8.17** relating to maintenance of records).

Section 8.22. Notices. All notices, certificates and other communications hereunder shall be deemed given when mailed by registered or certified mail, postage prepaid, return receipt requested, or nationally recognized overnight courier, addressed to the addresses set forth above. Borrower and the Bank may, by written notice given hereunder, designate a different address where communications should be sent and Bank may require that all communications sent to it be sent electronically or in some other non-tangible medium.

Section 8.23. Time of Essence. Time is of the essence for the performance of all of Borrower's covenants and agreements set forth in this Loan Agreement and in each of the other Loan Documents.

Section 8.24. Term of Loan Agreement. This Loan Agreement shall become effective on the Closing Date and shall continue in full force and effect until the last to occur of (1) payment in full of the Loan and all other amounts now owing and which may in the future be owing to Bank under the Loan Documents, or (2) termination of Bank's obligation to make disbursements of Loan proceeds under this Loan Agreement or the Note. Notwithstanding the foregoing, Bank shall have the right to limit, declare a moratorium on and terminate its obligation to make disbursement of Loan proceeds immediately and without notice upon the occurrence and during the continuance of an Event of Default and such action by Bank shall not constitute a termination of this Loan Agreement and Borrower's obligations under this Loan Agreement and the other Loan Documents; and shall not adversely affect or impair Bank's lien or security interests in the Collateral.

(Signature Pages Follow)

[SIGNATURE PAGE 1 OF 2 TO CONSTRUCTION LOAN AGREEMENT]

The undersigned has executed this Loan Agreement as of the day and year first above stated.

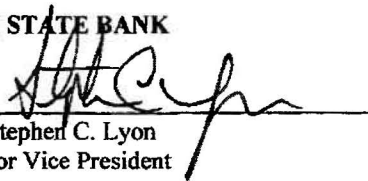
**BANK:**

**SOUTH STATE BANK**

By: \_\_\_\_\_

Name: Stephen C. Lyon

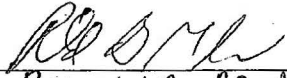
Its: Senior Vice President

A handwritten signature in black ink, appearing to read "Stephen C. Lyon", is written over a horizontal line. The signature is cursive and somewhat stylized.

[SIGNATURE PAGE 2 OF 2 TO CONSTRUCTION LOAN AGREEMENT]

**BORROWER:**

SPRING STREET SENIOR HOUSING PROPCO, LLC,  
a Delaware limited liability company (SEAL)

By:  (SEAL)

Name: Ronald B. McNeill

Title: Authorized Signatory

# **EXHIBIT 12**

## **Revenue and Expense Projections with Assumptions and Attestation**



# LIBERTY Senior Living

2334 S. 41<sup>st</sup> Street • Wilmington, NC 28403  
(910) 815-3122 • FAX: (910) 815-3111

November 16, 2020

Subject: CON Application for Spring Street Senior Housing OPCO, LLC

TO WHOM IT MAY CONCERN:

This letter will attest to the qualifications of the persons who developed the financial information included in the above referenced Certificate of Need application and to the accuracy of all financial calculations, as well as the reasonableness of the assumptions.

As the Vice President of Finance of Liberty Senior Living, LLC, I am responsible for financial information regarding the communities. I joined Liberty in 2007 after graduating from UNC-Wilmington with a B.S. in Business Administration with concentrations in Finance and Accounting. While at Liberty, I earned my Masters of Business Administration from UNC-Wilmington before obtaining my Certified Public Accountant license.

The financial information included in the CON application was compiled and prepared by my staff under my direct supervision. The financial information presented in the application is accurate to the best of our knowledge and abilities. Historical information was based on our internal operating financial records. Financial projections were made utilizing reasonable, but conservative assumptions, which have been fully disclosed in the application. The projections represent management's judgment based on present circumstances of probable outcomes, which are not necessarily the most likely outcomes.

I hereby attest to the accuracy of the calculations and the reasonableness of the assumptions contained therein.

Sincerely,

Mathew Bork, CPA  
VP of Finance

**Spring Street Health Center  
Form A Utilization Assumptions**

**Timeline:**

Construction Commencement 6/1/2020  
Healthcare Center Completion/Opening 10/1/222

**Healthcare Center Unit Configuration:**

	Beds			Units		
	Existing	New	Total	Existing	New	Total
Skilled nursing	0	23	23	0	21	21
Assisted living		77	77		71	71
	0	100	100	0	92	92

**Payor Mix:**

**Skilled nursing :**

Private 30%  
Medicare 70%  
100%

**Assisted living:**

Standard 70%  
Memory Care 30%  
100%

Beds Added per Month
-------------------------

**Fill-Up\*:**

**Skilled nursing :**

Months 1 - 11 2  
Months 11 - On Stabilized  
Stabilized occupancy 21 91% 9/30/2023

**Assisted living:**

Months 1 8  
Months 2 - 8 4  
Months 8 - 24 2  
Months 24 - On Stabilized  
Stabilized occupancy 69 90% 9/30/2024

*\*Based on senior living industry experience. Charleston County is a highly competitive senior living market.*

<b>Form A Utilization</b>	<b>1st Full FFY</b> From 10/01/2022 To 09/30/2023	<b>2nd Full FFY</b> From 10/01/2023 To 09/30/2024	<b>3rd Full FFY</b> From 10/01/2024 To 09/30/2025
<b>NF Beds</b>			
Total # of NF Beds	23	23	23
Days of Care in Total # of NF Beds	4625	7665	7665
Occupancy Rate	55%	91%	91%
<b>ACH Beds</b>			
Total # of ACH Beds	77	77	77
Days of Care in Total # of ACH Beds	10586	21536	25550
Occupancy Rate	38%	77%	91%





First Full FFY	Form B.1 Revenues				
	From 10/01/2022 To 09/30/2023				
	General NF Beds	Total NF Beds	General ACH Beds	Total ACH Beds	Total Beds
<b>Patient Days (from Form C Utilization)</b>	<b>4625</b>	<b>4625</b>	<b>10586</b>	<b>10586</b>	<b>15211</b>
<b>Routine Services Revenue</b>					
Private Pay	\$587,480	\$587,480	\$2,907,384	\$2,907,384	\$3,494,864
Insurance	\$0	\$0	\$0	\$0	\$0
Medicare	\$1,763,553	\$1,763,553	\$0	\$0	\$1,763,553
Medicaid	\$0	\$0	\$0	\$0	\$0
TRICARE	\$0	\$0	\$0	\$0	\$0
County Assistance	\$0	\$0	\$0	\$0	\$0
<b>Total Routine Services Revenue</b>	<b>\$2,351,033</b>	<b>\$2,351,033</b>	<b>\$2,907,384</b>	<b>\$2,907,384</b>	<b>\$5,258,417</b>
<b>Ancillary Services Revenue</b>					
Physical Therapy	\$440,891	\$440,891	\$0	\$0	\$440,891
Speech Therapy	\$88,177	\$88,177	\$0	\$0	\$88,177
Occupational Therapy	\$440,891	\$440,891	\$0	\$0	\$440,891
Other Ancillary Services (1)	\$39,682	\$39,682	\$0	\$0	\$39,682
<b>Total Ancillary Services Revenue</b>	<b>\$1,009,641</b>	<b>\$1,009,641</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,009,641</b>
<b>Other Revenue</b>					
Investments	\$0	\$0	\$0	\$0	\$0
Other Revenues (2)	\$4,765	\$4,765	\$0	\$0	\$4,765
<b>Total Other Revenue</b>	<b>\$4,765</b>	<b>\$4,765</b>	<b>\$0</b>	<b>\$0</b>	<b>\$4,765</b>
<b>Total Revenue (3)</b>	<b>\$3,365,439</b>	<b>\$3,365,439</b>	<b>\$2,907,384</b>	<b>\$2,907,384</b>	<b>\$6,272,823</b>
<b>Total Revenue / Patient Day</b>	<b>\$ 728</b>	<b>\$ 728</b>	<b>\$ 275</b>	<b>\$ 275</b>	<b>\$ 412</b>
<b>Adjustments to Revenue</b>					
Charity Care	\$11,756	\$11,756	\$0	\$0	\$11,756
Bad Debt	\$0	\$0	\$0	\$0	\$0
Contractual Adjustments	\$969,959	\$969,959	\$0	\$0	\$969,959
<b>Total Adjustments to Revenue</b>	<b>\$981,715</b>	<b>\$981,715</b>	<b>\$0</b>	<b>\$0</b>	<b>\$981,715</b>
<b>Total Net Revenue (4)</b>	<b>\$2,383,724</b>	<b>\$2,383,724</b>	<b>\$2,907,384</b>	<b>\$2,907,384</b>	<b>\$5,291,108</b>
<b>Total Net Revenue / Patient Day</b>	<b>\$ 515</b>	<b>\$ 515</b>	<b>\$ 275</b>	<b>\$ 275</b>	<b>\$ 348</b>

Second Full FFY	Form B.1 Revenues				
	From 10/01/2023 To 09/30/2024				
	General NF Beds	Total NF Beds	General ACH Beds	Total ACH Beds	Total Beds
<b>Patient Days (from Form C Utilization)</b>	<b>7665</b>	<b>7665</b>	<b>21536</b>	<b>21536</b>	<b>29201</b>
<b>Routine Services Revenue</b>					
Private Pay	\$1,015,126	\$1,015,126	\$6,181,040	\$6,181,040	\$7,196,166
Insurance	\$0	\$0	\$0	\$0	\$0
Medicare	\$2,997,785	\$2,997,785	\$0	\$0	\$2,997,785
Medicaid	\$0	\$0	\$0	\$0	\$0
TRICARE	\$0	\$0	\$0	\$0	\$0
County Assistance	\$0	\$0	\$0	\$0	\$0
<b>Total Routine Services Revenue</b>	<b>\$4,012,911</b>	<b>\$4,012,911</b>	<b>\$6,181,040</b>	<b>\$6,181,040</b>	<b>\$10,193,951</b>
<b>Ancillary Services Revenue</b>					
Physical Therapy	\$749,449	\$749,449	\$0	\$0	\$749,449
Speech Therapy	\$149,890	\$149,890	\$0	\$0	\$149,890
Occupational Therapy	\$749,449	\$749,449	\$0	\$0	\$749,449
Other Ancillary Services (1)	\$67,451	\$67,451	\$0	\$0	\$67,451
<b>Total Ancillary Services Revenue</b>	<b>\$1,716,239</b>	<b>\$1,716,239</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,716,239</b>
<b>Other Revenue</b>					
Investments	\$0	\$0	\$0	\$0	\$0
Other Revenues (2)	\$7,899	\$7,899	\$0	\$0	\$7,899
<b>Total Other Revenue</b>	<b>\$7,899</b>	<b>\$7,899</b>	<b>\$0</b>	<b>\$0</b>	<b>\$7,899</b>
<b>Total Revenue (3)</b>	<b>\$5,737,049</b>	<b>\$5,737,049</b>	<b>\$6,181,040</b>	<b>\$6,181,040</b>	<b>\$11,918,089</b>
<b>Total Revenue / Patient Day</b>	<b>\$ 748</b>	<b>\$ 748</b>	<b>\$ 287</b>	<b>\$ 287</b>	<b>\$ 408</b>
<b>Adjustments to Revenue</b>					
Charity Care	\$20,064	\$20,064	\$0	\$0	\$20,064
Bad Debt	\$0	\$0	\$0	\$0	\$0
Contractual Adjustments	\$1,648,788	\$1,648,788	\$0	\$0	\$1,648,788
<b>Total Adjustments to Revenue</b>	<b>\$1,668,852</b>	<b>\$1,668,852</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,668,852</b>
<b>Total Net Revenue (4)</b>	<b>\$4,068,197</b>	<b>\$4,068,197</b>	<b>\$6,181,040</b>	<b>\$6,181,040</b>	<b>\$10,249,237</b>
<b>Total Net Revenue / Patient Day</b>	<b>\$ 531</b>	<b>\$ 531</b>	<b>\$ 287</b>	<b>\$ 287</b>	<b>\$ 351</b>

Third Full FFY	Form B.1 Revenues From 10/01/2024 To 09/30/2025				
	General NF Beds	Total NF Beds	General ACH Beds	Total ACH Beds	Total Beds
<b>Patient Days (from Form C Utilization)</b>	<b>7665</b>	<b>7665</b>	<b>25550</b>	<b>25550</b>	<b>33215</b>
<b>Routine Services Revenue</b>					
Private Pay	\$1,065,716	\$1,065,716	\$7,686,595	\$7,686,595	\$8,752,311
Insurance	\$0	\$0	\$0	\$0	\$0
Medicare	\$3,088,999	\$3,088,999	\$0	\$0	\$3,088,999
Medicaid	\$0	\$0	\$0	\$0	\$0
TRICARE	\$0	\$0	\$0	\$0	\$0
County Assistance	\$0	\$0	\$0	\$0	\$0
<b>Total Routine Services Revenue</b>	<b>\$4,154,715</b>	<b>\$4,154,715</b>	<b>\$7,686,595</b>	<b>\$7,686,595</b>	<b>\$11,841,310</b>
<b>Ancillary Services Revenue</b>					
Physical Therapy	\$772,253	\$772,253	\$0	\$0	\$772,253
Speech Therapy	\$154,448	\$154,448	\$0	\$0	\$154,448
Occupational Therapy	\$772,253	\$772,253	\$0	\$0	\$772,253
Other Ancillary Services (1)	\$69,503	\$69,503	\$0	\$0	\$69,503
<b>Total Ancillary Services Revenue</b>	<b>\$1,768,457</b>	<b>\$1,768,457</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,768,457</b>
<b>Other Revenue</b>					
Investments	\$0	\$0	\$0	\$0	\$0
Other Revenues (2)	\$7,899	\$7,899	\$0	\$0	\$7,899
<b>Total Other Revenue</b>	<b>\$7,899</b>	<b>\$7,899</b>	<b>\$0</b>	<b>\$0</b>	<b>\$7,899</b>
<b>Total Revenue (3)</b>	<b>\$5,931,071</b>	<b>\$5,931,071</b>	<b>\$7,686,595</b>	<b>\$7,686,595</b>	<b>\$13,617,666</b>
<b>Total Revenue / Patient Day</b>	<b>\$ 774</b>	<b>\$ 774</b>	<b>\$ 301</b>	<b>\$ 301</b>	<b>\$ 410</b>
<b>Adjustments to Revenue</b>					
Charity Care	\$20,775	\$20,775	\$0	\$0	\$20,775
Bad Debt	\$0	\$0	\$0	\$0	\$0
Contractual Adjustments	\$1,698,954	\$1,698,954	\$0	\$0	\$1,698,954
<b>Total Adjustments to Revenue</b>	<b>\$1,719,729</b>	<b>\$1,719,729</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,719,729</b>
<b>Total Net Revenue (4)</b>	<b>\$4,211,342</b>	<b>\$4,211,342</b>	<b>\$7,686,595</b>	<b>\$7,686,595</b>	<b>\$11,897,937</b>
<b>Total Net Revenue / Patient Day</b>	<b>\$ 549</b>	<b>\$ 549</b>	<b>\$ 301</b>	<b>\$ 301</b>	<b>\$ 358</b>

- (1) Identify each type of ancillary service included on this line and explain how the total was determined  
(2) Identify each type of revenue included on this line and explain how the total was determined  
(3) Total Revenue = Routine Services Revenue + Ancillary Services Revenue + Other Revenue  
(4) Total Net Revenue = Total Revenue - Total Adjustments to Revenue

Spring Street Health Center  
Form B.2 Operating Costs Assumptions

Timeline:

Construction Commencement	6/1/2020
Healthcare Center Completion/Opening	10/1/222

All Costs - Annual Inflation 2%

Salaries:

*Incremental increases in staffing (approximately 5 - 10 basis points per month) for Aides, Therapies, Transportation, Housekeeping, and Laundry/Linen during fill-up period.*

Taxes and Benefits:

*Taxes and Benefits are assumed to be 25% of salaries.*

All Other Routine Service Costs:

*Other Routine Service Costs include general departmental supplies and is assumed to approximate 10% of total salary costs for each respective department.*

All Other Ancillary Costs:

*All Other Ancillary Costs include salaries, benefits, and other costs related to resident transportation*

Dietary:

*Dietary costs include contracted services and raw food, which are assumed to be \$30 and \$25 per patient day (in 2020 \$'s) respectively, based on provider experience with similar communities.*

Management Fees:

*Management fees are assumed to be 6% of total revenue.*

Rent:

*Rent costs do not begin until Year 2. Rent costs are assumed to cover annual debt service on total borrowings of \$32,262,259 amortized over 25 years at an annual interest rate of 3.50%. Rent is assumed to be expensed on a straight-line basis over the term of the lease effective upon opening in accordance with accounting standards. Please see Exhibit 11 regarding the Construction Loan Agreement.*

First Full FFY	Form B.2 Operating Costs From 10/01/2022 To 09/30/2023				
	General NF Beds	Total NF Beds	General ACH Beds	Total ACH Beds	Total Beds
Patient Days (from Form C Utilization)	4625	4625	10586	21536	26161
<b>Routine Services</b>					
Salaries	\$765,999	\$765,999	\$847,318	\$847,318	\$1,613,317
Taxes and Benefits (as a % of Salaries)	\$191,498	\$191,498	\$211,830	\$211,830	\$403,328
Medical Director	\$12,480	\$12,480	\$0	\$0	\$12,480
Medical Records	\$312	\$312	\$0	\$0	\$312
Pharmacy	\$6,240	\$6,240	\$0	\$0	\$6,240
Utilization Review	\$312	\$312	\$0	\$0	\$312
All Other Routine Services Costs *	\$76,599	\$76,599	\$84,732	\$84,732	\$161,331
<b>Total Routine Services</b>	<b>\$1,053,440</b>	<b>\$1,053,440</b>	<b>\$1,143,880</b>	<b>\$1,143,880</b>	<b>\$2,197,320</b>
<b>Dietary</b>	<b>\$264,650</b>	<b>\$264,650</b>	<b>\$605,753</b>	<b>\$605,753</b>	<b>\$870,403</b>
<b>Social Services</b>	<b>\$73,183</b>	<b>\$73,183</b>	<b>\$0</b>	<b>\$0</b>	<b>\$73,183</b>
<b>Patient Activities</b>	<b>\$36,662</b>	<b>\$36,662</b>	<b>\$36,662</b>	<b>\$36,662</b>	<b>\$73,324</b>
<b>Ancillary Services</b>					
Physical Therapy	\$202,965	\$202,965	\$0	\$0	\$202,965
Speech Therapy	\$47,743	\$47,743	\$0	\$0	\$47,743
Occupational Therapy	\$195,183	\$195,183	\$0	\$0	\$195,183
All Other Ancillary Services Costs *	\$13,024	\$13,024	\$8,984	\$8,984	\$22,008
<b>Total Ancillary Services</b>	<b>\$458,915</b>	<b>\$458,915</b>	<b>\$8,984</b>	<b>\$8,984</b>	<b>\$467,899</b>
<b>Total Direct Operating Costs (1)</b>	<b>\$1,886,850</b>	<b>\$1,886,850</b>	<b>\$1,795,279</b>	<b>\$1,795,279</b>	<b>\$3,682,129</b>
<b>Total Direct Operating Cost / Patient Day</b>	<b>\$408</b>	<b>\$408</b>	<b>\$170</b>	<b>\$83</b>	<b>\$141</b>
<b>Laundry and Linen</b>	<b>\$54,631</b>	<b>\$54,631</b>	<b>\$0</b>	<b>\$0</b>	<b>\$54,631</b>
<b>Housekeeping</b>	<b>\$180,361</b>	<b>\$180,361</b>	<b>\$0</b>	<b>\$0</b>	<b>\$180,361</b>
<b>Plant Operation and Maintenance</b>	<b>\$43,990</b>	<b>\$43,990</b>	<b>\$43,990</b>	<b>\$43,990</b>	<b>\$87,980</b>
<b>General and Administrative</b>					
Salaries	\$133,585	\$133,585	\$119,469	\$119,469	\$253,054
Taxes and Benefits (as a % of Salaries)	\$33,401	\$33,401	\$29,870	\$29,870	\$63,271
Management Fees	\$143,025	\$143,025	\$174,443	\$174,443	\$317,468
Central Office Overhead	\$0	\$0	\$0	\$0	\$0
Medicaid Assessment Fee	\$0	\$0	\$0	\$0	\$0
All Other Gen'l & Admin. Costs *	\$13,362	\$13,362	\$11,949	\$11,949	\$25,311
<b>Total General and Administrative</b>	<b>\$323,373</b>	<b>\$323,373</b>	<b>\$335,731</b>	<b>\$335,731</b>	<b>\$659,104</b>
<b>Property Ownership and Use</b>					
Depreciation	\$6,000	\$6,000	\$6,000	\$6,000	\$12,000
Rent	\$0	\$0	\$0	\$0	\$0
All Other Prop. Ownership & Use Costs *	\$0	\$0	\$0	\$0	\$0
<b>Total Property Ownership and Use</b>	<b>\$6,000</b>	<b>\$6,000</b>	<b>\$6,000</b>	<b>\$6,000</b>	<b>\$12,000</b>
<b>Total Indirect Operating Costs (2)</b>	<b>\$608,354</b>	<b>\$608,354</b>	<b>\$385,721</b>	<b>\$385,721</b>	<b>\$994,075</b>
<b>Total Indirect Operating Cost / Patient Day</b>	<b>\$132</b>	<b>\$132</b>	<b>\$36</b>	<b>\$18</b>	<b>\$38</b>
<b>Total Operating Cost (3)</b>	<b>\$2,495,204</b>	<b>\$2,495,204</b>	<b>\$2,181,000</b>	<b>\$2,181,000</b>	<b>\$4,676,204</b>
<b>Total Operating Cost / Patient Day</b>	<b>\$540</b>	<b>\$540</b>	<b>\$206</b>	<b>\$101</b>	<b>\$179</b>

Second Full FFY	Form B.2 Operating Costs From 10/01/2023 To 09/30/2024				
	General NF Beds	Total NF Beds	General ACH Beds	Total ACH Beds	Total Beds
Patient Days (from Form C Utilization)	7665	7665	21536	21536	29201
<b>Routine Services</b>					
Salaries	\$936,872	\$936,872	\$1,321,473	\$1,321,473	\$2,258,345
Taxes and Benefits (as a % of Salaries)	\$234,223	\$234,223	\$330,366	\$330,366	\$564,589
Medical Director	\$12,732	\$12,732	\$0	\$0	\$12,732
Medical Records	\$324	\$324	\$0	\$0	\$324
Pharmacy	\$6,372	\$6,372	\$0	\$0	\$6,372
Utilization Review	\$324	\$324	\$0	\$0	\$324
All Other Routine Services Costs *	\$93,686	\$93,686	\$132,146	\$132,146	\$225,832
<b>Total Routine Services</b>	<b>\$1,284,533</b>	<b>\$1,284,533</b>	<b>\$1,783,985</b>	<b>\$1,783,985</b>	<b>\$3,068,518</b>
Dietary	\$447,376	\$447,376	\$1,256,979	\$1,256,979	\$1,704,355
Social Services	\$74,651	\$74,651	\$0	\$0	\$74,651
Patient Activities	\$37,386	\$37,386	\$37,386	\$37,386	\$74,772
<b>Ancillary Services</b>					
Physical Therapy	\$349,678	\$349,678	\$0	\$0	\$349,678
Speech Therapy	\$82,263	\$82,263	\$0	\$0	\$82,263
Occupational Therapy	\$336,263	\$336,263	\$0	\$0	\$336,263
All Other Ancillary Services Costs *	\$22,437	\$22,437	\$17,949	\$17,949	\$40,386
<b>Total Ancillary Services</b>	<b>\$790,641</b>	<b>\$790,641</b>	<b>\$17,949</b>	<b>\$17,949</b>	<b>\$808,590</b>
<b>Total Direct Operating Costs (1)</b>	<b>\$2,634,587</b>	<b>\$2,634,587</b>	<b>\$3,096,299</b>	<b>\$3,096,299</b>	<b>\$5,730,886</b>
<b>Total Direct Operating Cost / Patient Day</b>	<b>\$344</b>	<b>\$344</b>	<b>\$144</b>	<b>\$144</b>	<b>\$196</b>
Laundry and Linen	\$94,133	\$94,133	\$0	\$0	\$94,133
Housekeeping	\$310,734	\$310,734	\$0	\$0	\$310,734
Plant Operation and Maintenance	\$44,870	\$44,870	\$44,870	\$44,870	\$89,740
<b>General and Administrative</b>					
Salaries	\$136,264	\$136,264	\$121,862	\$121,862	\$258,126
Taxes and Benefits (as a % of Salaries)	\$34,064	\$34,064	\$30,469	\$30,469	\$64,533
Management Fees	\$244,092	\$244,092	\$370,862	\$370,862	\$614,954
Central Office Overhead	\$0	\$0	\$0	\$0	\$0
Medicaid Assessment Fee	\$0	\$0	\$0	\$0	\$0
All Other Gen'l & Admin. Costs *	\$13,624	\$13,624	\$12,188	\$12,188	\$25,812
<b>Total General and Administrative</b>	<b>\$428,044</b>	<b>\$428,044</b>	<b>\$535,381</b>	<b>\$535,381</b>	<b>\$963,425</b>
<b>Property Ownership and Use</b>					
Depreciation	\$6,000	\$6,000	\$6,000	\$6,000	\$12,000
Rent	\$401,892	\$401,892	\$2,017,776	\$2,017,776	\$2,419,668
All Other Prop. Ownership & Use Costs *	\$0	\$0	\$0	\$0	\$0
<b>Total Property Ownership and Use</b>	<b>\$407,892</b>	<b>\$407,892</b>	<b>\$2,023,776</b>	<b>\$2,023,776</b>	<b>\$2,431,668</b>
<b>Total Indirect Operating Costs (2)</b>	<b>\$1,285,673</b>	<b>\$1,285,673</b>	<b>\$2,604,027</b>	<b>\$2,604,027</b>	<b>\$3,889,700</b>
<b>Total Indirect Operating Cost / Patient Day</b>	<b>\$168</b>	<b>\$168</b>	<b>\$121</b>	<b>\$121</b>	<b>\$133</b>
<b>Total Operating Cost (3)</b>	<b>\$3,920,260</b>	<b>\$3,920,260</b>	<b>\$5,700,326</b>	<b>\$5,700,326</b>	<b>\$9,620,586</b>
<b>Total Operating Cost / Patient Day</b>	<b>\$511</b>	<b>\$511</b>	<b>\$265</b>	<b>\$265</b>	<b>\$329</b>



Third Full FFY	Form B.2 Operating Costs From 10/01/2024 To 09/30/2025				
	General NF Beds	Total NF Beds	General ACH Beds	Total ACH Beds	Total Beds
Patient Days (from Form C Utilization)	7665	7665	25550	25550	33215
<b>Routine Services</b>					
Salaries	\$955,614	\$955,614	\$1,585,818	\$1,585,818	\$2,541,432
Taxes and Benefits (as a % of Salaries)	\$238,908	\$238,908	\$396,457		\$238,908
Medical Director	\$12,984	\$12,984	\$0		\$12,984
Medical Records	\$324	\$324	\$0		\$324
Pharmacy	\$6,492	\$6,492	\$0		\$6,492
Utilization Review	\$324	\$324	\$0		\$324
All Other Routine Services Costs *	\$95,559	\$95,559	\$158,584		\$95,559
<b>Total Routine Services</b>	<b>\$1,310,205</b>	<b>\$1,310,205</b>	<b>\$2,140,859</b>	<b>\$1,585,818</b>	<b>\$2,896,023</b>
Dietary	\$456,329	\$456,329	\$1,521,086	\$1,521,086	\$1,977,415
Social Services	\$76,146	\$76,146	\$0	\$0	\$76,146
Patient Activities	\$38,139	\$38,139	\$38,139	\$38,139	\$76,278
<b>Ancillary Services</b>					
Physical Therapy	\$356,669	\$356,669	\$0	\$356,669	\$713,338
Speech Therapy	\$83,902	\$83,902	\$0	\$83,902	\$167,804
Occupational Therapy	\$342,993	\$342,993	\$0	\$342,993	\$685,986
All Other Ancillary Services Costs *	\$22,883	\$22,883	\$22,883	\$45,766	\$68,649
<b>Total Ancillary Services</b>	<b>\$806,447</b>	<b>\$806,447</b>	<b>\$22,883</b>	<b>\$829,330</b>	<b>\$1,635,777</b>
<b>Total Direct Operating Costs (1)</b>	<b>\$2,687,266</b>	<b>\$2,687,266</b>	<b>\$3,722,967</b>	<b>\$3,974,373</b>	<b>\$6,661,639</b>
<b>Total Direct Operating Cost / Patient Day</b>	<b>\$351</b>	<b>\$351</b>	<b>\$146</b>	<b>\$156</b>	<b>\$201</b>
Laundry and Linen	\$96,007	\$96,007	\$0	\$0	\$96,007
Housekeeping	\$316,947	\$316,947	\$0	\$0	\$316,947
Plant Operation and Maintenance	\$45,767	\$45,767	\$45,767	\$45,767	\$91,534
<b>General and Administrative</b>					
Salaries	\$138,978	\$138,978	\$124,287	\$124,287	\$263,265
Taxes and Benefits (as a % of Salaries)	\$34,747	\$34,747	\$31,073	\$31,073	\$65,820
Management Fees	\$252,678	\$252,678	\$461,196	\$461,196	\$713,874
Central Office Overhead	\$0	\$0	\$0	\$0	\$0
Medicaid Assessment Fee	\$0	\$0	\$0	\$0	\$0
All Other Gen'l & Admin. Costs *	\$13,894	\$13,894	\$12,434	\$12,434	\$26,328
<b>Total General and Administrative</b>	<b>\$440,297</b>	<b>\$440,297</b>	<b>\$628,990</b>	<b>\$628,990</b>	<b>\$1,069,287</b>
<b>Property Ownership and Use</b>					
Depreciation	\$6,000	\$6,000	\$6,000	\$6,000	\$12,000
Rent	\$401,892	\$401,892	\$2,017,776	\$2,017,776	\$2,419,668
All Other Prop. Ownership & Use Costs *	\$0	\$0	\$0	\$0	\$0
<b>Total Property Ownership and Use</b>	<b>\$407,892</b>	<b>\$407,892</b>	<b>\$2,023,776</b>	<b>\$2,023,776</b>	<b>\$2,431,668</b>
<b>Total Indirect Operating Costs (2)</b>	<b>\$1,306,910</b>	<b>\$1,306,910</b>	<b>\$2,698,533</b>	<b>\$2,698,533</b>	<b>\$4,005,443</b>
<b>Total Indirect Operating Cost / Patient Day</b>	<b>\$171</b>	<b>\$171</b>	<b>\$106</b>	<b>\$106</b>	<b>\$121</b>
<b>Total Operating Cost (3)</b>	<b>\$3,994,176</b>	<b>\$3,994,176</b>	<b>\$6,421,500</b>	<b>\$6,672,906</b>	<b>\$10,667,082</b>
<b>Total Operating Cost / Patient Day</b>	<b>\$521</b>	<b>\$521</b>	<b>\$251</b>	<b>\$261</b>	<b>\$321</b>

(1) Total Direct Operating Costs = Total Routine Services + Dietary + Social Services + Patient Activities + Total Ancillary Services

(2) Total Indirect Operating Costs = Laundry and Linen + Housekeeping + Plant Oper. & Maintenance + Total Gen'l & Admin. + Total Prop. Ownership & Use

(3) Total Operating Cost = Total Direct Operating Costs + Total Indirect Operating Costs

\* Identify each type of cost included on this line and explain how the total was determined

First Full FFY	Form B.3 Income Statement From 10/01/2022 To 09/30/2023				
	General NF Beds	Total NF Beds	General ACH Beds	Total ACH Beds	Total Beds
Routine Services Revenues (1)	\$2,351,033	\$2,351,033	\$2,907,384	\$2,907,384	\$5,258,417
Ancillary Services Revenues (1)	\$1,009,641	\$1,009,641	\$0	\$0	\$1,009,641
Other Revenues (1)	\$4,765	\$4,765	\$0	\$0	\$4,765
Total Revenue (1)	\$3,365,439	\$3,365,439	\$2,907,384	\$2,907,384	\$6,272,823
Total Adjustments to Revenues (1)	\$981,715	\$981,715	\$0	\$0	\$981,715
Total Net Revenue (1)	\$2,383,724	\$2,383,724	\$2,907,384	\$2,907,384	\$5,291,108
Total Operating Costs (2)	\$2,495,204	\$2,495,204	\$2,181,000	\$2,181,000	\$4,676,204
Net Income (3)	(\$111,480)	(\$111,480)	\$726,384	\$726,384	\$614,904

Second Full FFY	Form B.3 Income Statement From 10/01/2023 To 09/30/2024				
	General NF Beds	Total NF Beds	General ACH Beds	Total ACH Beds	Total Beds
Routine Services Revenues (1)	\$4,012,911	\$4,012,911	\$6,181,040	\$6,181,040	\$10,193,951
Ancillary Services Revenues (1)	\$1,716,239	\$1,716,239	\$0	\$0	\$1,716,239
Other Revenues (1)	\$7,899	\$7,899	\$0	\$0	\$7,899
Total Revenue (1)	\$5,737,049	\$5,737,049	\$6,181,040	\$6,181,040	\$11,918,089
Total Adjustments to Revenues (1)	\$1,668,852	\$1,668,852	\$0	\$0	\$1,668,852
Total Net Revenue (1)	\$4,068,197	\$4,068,197	\$6,181,040	\$6,181,040	\$10,249,237
Total Operating Costs (2)	\$3,920,260	\$3,920,260	\$5,700,326	\$5,700,326	\$9,620,586
Net Income (3)	\$147,937	\$147,937	\$480,714	\$480,714	\$628,651

Third Full FFY	Form B.3 Income Statement From 10/01/2024 To 09/30/2025				
	General NF Beds	Total NF Beds	General ACH Beds	Total ACH Beds	Total Beds
Routine Services Revenues (1)	\$4,154,715	\$4,154,715	\$7,686,595	\$7,686,595	\$11,841,310
Ancillary Services Revenues (1)	\$1,768,457	\$1,768,457	\$0	\$0	\$1,768,457
Other Revenues (1)	\$7,899	\$7,899	\$0	\$0	\$7,899
Total Revenue (1)	\$5,931,071	\$5,931,071	\$7,686,595	\$7,686,595	\$13,617,666
Total Adjustments to Revenues (1)	\$1,719,729	\$1,719,729	\$0	\$0	\$1,719,729
Total Net Revenue (1)	\$4,211,342	\$4,211,342	\$7,686,595	\$7,686,595	\$11,897,937
Total Operating Costs (2)	\$3,994,176	\$3,994,176	\$6,421,500	\$6,672,906	\$10,667,082
Net Income (3)	\$217,166	\$217,166	\$1,265,095	\$1,013,689	\$1,230,855

(1) From Form F.3 Revenues

(2) From Form F.4 Operating Costs

(3) Net Income = Total Net Revenue - Total Operating Costs

# **EXHIBIT 13**

## **Manpower Budget**

**Bloomsbury Health Center  
Total Facility Staff Assumptions**

**Full Time Equivalents:**

*Full Time Equivalent ("FTE") numbers were determined based on management's experience with similar healthcare center staffing for related companies. They represent staffing levels at stabilized occupancy. FTE's were computed on a 40-hour per week basis for all positions except Aides, Housekeeping, and Laundry/Linen, which were computed on a 37.50-hour per week basis. No FTE's were assumed for Dietary as this will be a contracted service.*

**Total Salaries:**

*Total Salaries are the product of collective daily hours per position based on FTE's as described above times an average hourly rate for each position based on management's experience with similar healthcare center wages for related companies. During the fill-up period an increasing percentage was applied to daily hours for Aides, Physical Therapy, Speech Therapy, Occupational Therapy, Transportation, Laundry/Linen, and Housekeeping to correspond to increases in census. Management has assumed full staffing by September 2024 (FFY 2). Total Salaries include both skilled nursing and assisted living and are assumed to have an inflationary increase 2% per year.*

Total Facility Staff Include employees, contract employees and temporary employees but not independent contractors	Projected Staff					
	1st Full Fiscal Year		2nd Full Fiscal Year		3rd Full Fiscal Year	
	# of FTEs	Total Salary *	# of FTEs	Total Salary *	# of FTEs	Total Salary *
Registered Nurses (RNs)	3.88	\$294,262	3.88	\$300,149	3.88	\$306,156
Licensed Practical Nurses (LPNs)	4.00	\$225,712	4.00	\$230,212	4.00	\$234,822
Aides	49.49	\$680,921	49.49	\$1,307,310	49.49	\$1,571,361
Director of Nursing	1.00	\$97,748	1.00	\$99,700	1.00	\$101,700
Assistant Director of Nursing	-	\$0	-	\$0	-	\$0
MDS Nurse	1.00	\$86,732	1.00	\$88,469	1.00	\$90,238
Alzheimer's Coordinator	1.00	\$75,896	1.00	\$77,411	1.00	\$78,959
Staff Development Coordinator	1.00	\$76,016	1.00	\$77,546	1.00	\$79,102
Clerical	1.00	\$32,588	1.00	\$33,232	1.00	\$33,904
Medical Records	1.00	\$43,442	1.00	\$44,316	1.00	\$45,190
Physical Therapy	2.60	\$150,342	2.60	\$259,019	2.60	\$264,193
Speech Therapy	0.50	\$35,365	0.50	\$60,931	0.50	\$62,145
Occupational Therapy	2.50	\$144,578	2.50	\$249,080	2.50	\$254,064
Other Ancillary Services **	-	\$0	-	\$0	-	\$0
Dietary						
Social Services	1.00	\$54,210	1.00	\$55,294	1.00	\$56,400
Activities	1.00	\$54,306	1.00	\$55,386	1.00	\$56,496
Transportation	1.00	\$16,301	1.00	\$29,911	1.00	\$33,904
Laundry & Linen	2.80	\$40,468	2.80	\$69,726	2.80	\$71,115
Housekeeping	8.53	\$133,600	8.53	\$230,172	8.53	\$251,726
Plant Operation & Maintenance	1.00	\$39,234	1.00	\$46,533	1.00	\$50,849
Administration	4.00	\$253,054	4.00	\$258,126	4.00	\$263,265
Other ***						
<b>Total</b>	<b>88.30</b>	<b>\$2,534,774</b>	<b>88.30</b>	<b>\$3,572,523</b>	<b>88.30</b>	<b>\$3,905,589</b>

\*Exclusive of taxes and benefits.

\*\* Identify each type of position included on this line and explain how the total # of FTEs and total salaries was determined

\*\*\* Identify the type of position included on this line

# **EXHIBIT 14**

## **Physician Letters of Support**



Department of Family Medicine  
5 Charleston Center Drive, Suite 263  
MSC 192  
Charleston, SC 29425  
Tel 843 876 2926  
Fax 843 876 2918  
www.musc.edu

October 28, 2020

Louis Eubank, MSW, MPH  
Director, Certificate of Need Program  
S.C. Department of Health & Environmental Control  
2600 Bull Street  
Columbia, SC 29201

**SUBJECT:** Spring Street Health Center - Nursing Home

Dear Mr. Eubank:

I am a physician practicing in Charleston County and I am writing this letter in support for the Certificate of Need application submitted by Spring Street Senior Housing OPCO, LLC to construct a 25-bed nursing home in Downtown Charleston. Spring Street's community will include assisted living and memory care units and a nursing home.

With the tremendous growth in Charleston County and the overall aging of the population in the current *SC Health Plan*, DHEC has identified a severe need for additional public nursing home beds in the county. Spring Street wishes to help meet this need and provide comprehensive range of long-term care services.

I encourage your approval of this CON application for 25 public nursing home beds in Charleston. If I can provide any other information, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "T Steyer", with a long horizontal flourish extending to the right.

Terrence Steyer, MD FAAFP  
Professor  
Gregory-Chandler Endowed Chair in Family Medicine  
Department of Family Medicine  
Medical University of South Carolina



October 26, 2020

Louis Eubank, MSW, MPH  
Director, Certificate of Need Program  
S.C. Department of Health & Environmental Control  
2600 Bull Street  
Columbia, SC 29201

**SUBJECT:** Spring Street Health Center - Nursing Home


Dear Mr. Eubank:

I am a physician practicing in Charleston County and I am writing this letter in support for the Certificate of Need application submitted by Spring Street Senior Housing OPCO, LLC to construct a 25-bed nursing home in Downtown Charleston. Spring Street's community will include assisted living and memory care units and a nursing home.

With the tremendous growth in Charleston County and the overall aging of the population in the current *SC Health Plan*, DHEC has identified a severe need for additional public nursing home beds in the county. Spring Street wishes to help meet this need and provide comprehensive range of long-term care services.

I encourage your approval of this CON application for 25 public nursing home beds in Charleston. If I can provide any other information, please let me know.

Sincerely,

  
Signature

Natalie Christim, MD  
Name (printed)

MUSC Family Medicine  
Organization

135 Cannon St, Suite 405  
Address

Charleston SC 29425  
City State Zip

# **EXHIBIT 15**

## **Quality Assurance and Performance Improvement Plan**



# Liberty Healthcare & Rehabilitation Services

*Caring with Excellence*

Policy Title: Quality Assurance and Performance Improvement Plan

Issuing Date: November 2017

Policy #:

QA 1000

Revision Dates:

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## **Policy**

It is the policy of this organization to maintain a robust and active Quality Assurance Performance Improvement (QAPI) program that promotes safe quality of care for our patients.

## **Mission and Vision Statement**

To provide cost effective quality services that will achieve optimal outcomes.

Liberty Long Term Care will provide cost effective quality short term rehabilitation care and long term skilled nursing care with dignity and respect to residents who have entrusted us with this responsibility, while employing and developing competent, caring and professional employees.

Liberty Healthcare strives to be a dynamic healthcare provider while exhibiting the highest ethical values and providing quality, compassionate care and excellent service to all those with whose care we are entrusted. Liberty believes that to achieve these goals it is essential to create and maintain a culture which fosters communication with respect, dignity, professionalism, honesty and integrity towards and among all of our employees, business partners and, most importantly, our patients.

## **Purpose**

The purpose of QAPI in this organization is to take a proactive continuous approach to improving the care and experience for our patients, long term residents, caregivers, and other stakeholders. This program supports our vision of providing cost effective quality care while maintaining the dignity and autonomy of those entrusted to our care. To do this all employees will actively participate in these efforts and will support our mission to provide optimal outcomes.

## **Guiding Principles**

1. Quality Assurance and Performance Improvement (QAPI) has a prominent role in our management and is in line with monitoring reimbursement and maximizing revenue to promote profitability.

2. QAPI is integrated into the day to day operations of the organization and is used to make decisions.
3. Leaders must be active and enthusiastic QAPI role models promote the vision and mission of the organization.
4. Our organization uses data from comparative sources and input from caregivers, resident/patients, healthcare practitioners, families, and other stakeholders.
5. Our organization sets goals for performance and measure progress toward those goals.
6. Quality of care and quality of life for our patients and long term residents is the outcome of QAPI in our organization.
7. Our employees, in all departments and all services, are vital to the QAPI program.
8. QAPI focuses on systems and processes, not individuals. The emphasis is to identify system gaps rather than blaming employees.
9. Our organization supports performance improvement by encouraging our employees to support each other as well as be accountable for their own professional performance and practice.
10. Organizational and personal learning is essential to a success QAPI program.
11. Our organization uses coaching and counseling employees when errors are identified or systems breakdown occurs. However, individual accountability is also vital to the QAPI process.
12. Our organization is willing to explore and test new models of care always looking at what the future may require of our organization.
13. We believe that being active and visible partners in our local communities, state and national associations, and trade organizations if vital to our success.

### **Scope**

In this organization, the scope of QAPI is very broad and reaches into clinical care, quality of life, resident choice and care transitions. Several work processes are combined to achieve this scope. They include daily stand up and daily clinical reviews where patients are discussed as individuals to ensure goals are being met. Departmental audits review key stakeholder requirements such as therapy goals, food satisfaction, and financial stewardship. Satisfaction surveys for patients and staff are also utilized to improve quality of care. This program is complex and the scope is only summarized in this section. For full descriptions review the individual sections of the program.

The organization will utilize data provided by audits, electronic health records and Trendtracker to benchmark ourselves. This benchmarking will allow us to identify opportunities to improve and assist us in defining goals.

Clinical Care Services	We provide comprehensive clinical care to residents with acute and chronic disease, rehabilitative needs, as well as end-of-life care. All care is resident-centered and focused around choice and individualized treatment plans. We strive to meet each resident's goals of care, including developing and executing a transitional plan for discharge back to the community.
Food and Nutrition Services	We provide nutritious meals under the supervision of a licensed/registered dietitian and the day-to-day director of the Food and Nutrition Services department. We consider resident choices and preferences in accordance with their nutritional needs by providing several dining/meal options in a home-like environment. The facility's IDT (interdisciplinary team) will strive to reduce the occurrence of Unintended Weight Loss for their residents age 65 and over.
Pharmacy Services	We provide supervision and collaborate with the medical and nursing team at the facility by reviewing, dispensing, and monitoring medication effectiveness to ensure therapeutic goals are maintained for each and every resident.
Maintenance and Engineering	We provide comprehensive building safety, repairs, and inspections to ensure all aspects of safety are enforced, assuring the safety and well-being for each resident, visitor, and staff who enters the building.
Housekeeping	We provide and ensure that all health, sanitation, and OSHA requirements are met through regular cleaning, disinfection, and sanitation of all aspects of the building.
Administration	We align all business practices to ensure every resident has individualized care, and we work to support the providers with the resources and equipment to meet the care goals of those we care for.
Therapy	We provide an individualized plan of care for all residents, short term and long term, considering their prior level of function and their discharge destination. Comprehensive Occupational Therapy, Physical Therapy, and Speech therapy are provided with input from each patient and/or family in order to ensure individualized goals and functional outcomes.
Health Information Management	We ensure health information is processed, indexed and filed accurately; stored to provide protection from loss, damage or unauthorized use, for the retention set by State & Federal regulation; ensure the record contains sufficient information to identify the resident; ensure records are readily accessible by authorized personnel. We ensure a MPI/master patient index is maintained

### **Design**

The QAPI program for this organization will be implemented on an on-going basis and will address all ranges of services and departments in the facility. The goal of the program is to achieve safe and high quality interventions while protecting autonomy and choices in daily life for the residents.

Our foundational model for quality improvement is a data driven Plan Do Study Act (PDSA) cycles. These projects are established by the QAA Committee based on data collected from a variety of sources. These projects are then implemented by a Performance Improvement Action Committee described in this program.

### **Governance and Leadership**

**Responsibility and Accountability:** The administrator has responsibility and is accountable to the board of directors and our corporation for ensuring that QAPI is implemented throughout our organization. QAPI activities and discussion will be a standing item on our board of director meeting agendas. The administrator will attend all board of director meetings, report on and solicit input on all QAPI activities on a regular basis. The administrator is responsible for assuring that all QAPI activities and required documentation is provided to our corporation.

**Adequacy of Sourcing:** The administrator will establish a budget to ensure that QAPI activities are supported. These expenses may include, but are not limited to staff time for being involved in Performance Improvement Projects and meetings, monies needed for improvement projects, staff training and education, etc. This budget will be reviewed on a monthly basis by the administrator and revised as necessary. The administrator and QAA committee will work together to review budgetary needs and share decision making regarding performance improvement projects.

**Training and Staff Orientation:** QAPI principles and staff responsibilities related to QAPI and ongoing quality improvement will be included in orientation for all new employees. QAPI will be included in the three day organizational orientation that all new employees are required to attend. All staff will participate in ongoing annual QAPI training which will include quality improvement principles and practices, how to identify areas for improvement, updates on current performance improvement projects, and how staff can be involved in performance improvement projects

**Framework for QAPI:** All department managers, the administrator, the director of nursing, infection control and prevention officer, medical director, consulting pharmacist will provide QAPI leadership by being on the QAA committee. The QAA committee will meet at least quarterly. QAPI activities and outcomes will be on the agenda of every staff meeting and shared with residents and family members through their respective

councils and monthly newsletter. The minutes from all meetings will be posted throughout the organization. The QAA committee will report all activities to the board of directors during their regularly scheduled meetings.

The QAA committee will have responsibility for reviewing data, suggestions, and input from residents, staff, family members, and other stakeholders. The QAA committee will prioritize opportunities for improvement and determine which performance improvement projects will be initiated. When an issue or problem is identified that is not systemic and does not require a performance improvement project, the QAA committee will decide how to correct the issue or problem. These corrections may include an easy decision, corrective action plan, or rapid improvement cycle.

The committee will solicit individuals from the organization to participate in performance improvement projects. The committee will monitor progress, provide input, and ensure the individuals involved in the project have the resources they need. The QAA committee will use a charter for all QAPI projects.

**Reporting to the Governing Body:** The administrator will facilitate discussion on QAPI activities during the quarterly accountability call. QAPI will be a standing agenda item for these meetings. Input will be solicited from board members on QAPI activities. All current projects and outcomes will be reviewed during this call.

**Transparency:** Our organization is a learning environment. We believe in the practices and principles of a fair and just culture. All managers will promote staff involvement in improving quality. Staff will be encouraged to bring concerns, issues, and opportunities for improvement to any supervisor/manager. The managers will respond in a consistent manner to encourage, and not discourage, staff to bring forward opportunities for improvement. Staff will be encouraged to report errors and near misses to allow the organization to learn from those occurrences and make systemic changes to prevent recurrences. Staff will be held accountable for their behavioral choices and reckless behavior will not be tolerated. Our goal is to improve the systems that drive our actions.

### **Feedback, Data Systems, and Monitoring**

#### Monitoring of Care and Services

Quality Improvement is a coordinated effort involving many staff members. Meetings and processes are used to review key elements of care and services to validate that expectations are met. These include:

- Daily Stand Up Meetings
- Daily Clinical Review
- Case Mix Meeting
- Monthly Quality Meeting (includes pharmacy and infection control)
- Safety and Health Meetings (includes ergonomics)



- Reviews to Ensure Quality for Adverse events (REQ)

These systems allow our organization to review audits, monitor outcomes, review satisfaction surveys, adverse events, quality measures and re-hospitalization, survey findings, consultant reports, and grievances.

Data sources include interviews with resident, family and employees, grievances/concerns, quality measures, 5 star ranking, internal monitoring and trends analysis. When available this data is compared to benchmarks set by the facility and comparisons to state and national averages.

### **Performance Improvement Projects**

This facility will utilize Performance Improvement Projects (PIPs) to improve the care and services provided to our residents. PIPs will be data driven and will focus on care and services that are valuable to our residents, families, staff and other key stakeholders. PIPs will be prioritized based on importance to the organization. PIP teams will be chartered and expected to actively participate in open discussions and other team activities. PIPs teams will depend on tools such as brainstorming, root cause analysis, data analysis, and open discussion techniques to analyze the problem and determine interventions to improve quality. The Plan DO Study Act model of improvement will be used to guide the efforts.

Data gathered from feedback, data systems, and monitoring will be evaluated for negative trends or poor performance as compared to benchmarks or internal targets. This data includes but is not limited to, Quality Measures, Clinical Care areas, MDS data, State Survey Results, Resident/Family Satisfaction or Engagement, other internal and external metrics. Gaps and opportunities that are identified should be prioritized based on importance, risk, frequency, and resident impact. The QAA committee should prioritize potential PIPs. Prioritization should be based on:

- Prevalence- How often does this occur?
- Risk- The level to which this issue poses a risk to the well-being of our residents.
- Cost- What is the cost incurred each time this issue occurs?
- Relevance- How would addressing the issue improve the quality of life of our residents?
- Responsiveness- Would this initiative appeal to residents, families, staff or other key stakeholders?
- Feasibility- Do we have the ability to implement change in this area?
- Continuity- Does change in this area support organizational goals and priorities?

The organization will establish a project charter for each PIP that is initiated. The charter will include the name of the project, problem to be solved, background leading to the need for the project, the goals (also called aims), estimated time tables for starting and completing the project, and project team members and responsibilities. Project charters should be completed early in the PIP process, preferably at the first meeting in order to establish the purpose of the project. The project team should be involved in establishing the charter.

The Quality Committee will review all PIPs during the monthly Quality Assurance and Assessment Committee meeting. Reports should be presented to this committee by the PIP project leader.

During this review the committee should evaluate if the PIP is progressing as desired and if goals/aims are met. Suggestions and concerns should be reported to the PIP committee by the PIP Project Leader.

A summary report should be prepared by the project team leader and should be present by the resident/family council president unless facility staff are asked to report. The summary report should include: PIP title, problem to be solved, summary of actions taken, and progress towards meeting goal/aims.

*Starts 2018* A PIP story board is located in the employee break room. This board should be updated by the PIP project leader after the charter is created and with every change. The project board includes:

1. Problem. One sentence on the issue or opportunity being addressed by this PIP
2. AIM/GOAL. One sentence on what this PIP aims to achieve.
3. Intervention(s). Briefly describe what change was introduced to address the problem or opportunity. If there was more than one change, use bullet points to list the multiple interventions.
4. Measures/Indicators. List what measure(s) or indicator(s) are being used to monitor whether the change is effective.
5. Results. One or two sentences on the results. Consider including a graph with notes that gives a picture of the impact of the changes over time.
6. Lessons Learned. Document 1-2 key lessons that were learned through the PIP.
7. Next Steps. Performance improvement is a continuous process. In one to two sentences, describe the next steps.
8. Additional information. As space permits consider adding pictures or other visual items that help bring the story to life.

PIP teams are established by the QAA committee when a PIP is determined necessary. Characteristics of an effective team include having clear purpose, having defined roles, and demonstrating commitment. PIP teams should include individuals that can explore the problem. For example, nursing assistants should be included in resident care areas. Careful consideration should also be given to team members that may not be an obvious choice but who often have information that can be shared. For example, a housekeeper often has key interactions with patients that allows them to contribute on resident care areas. Family members and residents can also be team members.

As part of the charter process, team members should be assigned roles to facilitate team functions. These roles include:

- Facilitator: Mediates to resolve conflict and provides feedback and support to the team leaders/administrator
- Team Leader/Administrator: Administrator does not mean the administrator of the facility but is sometimes used to describe the team leader. The team leader leads and

directs the team activities and represents the team when providing communication to stakeholders. Team leaders should be organized and able to lead and promote positive discussion.

- Recorder: Takes minutes
- Sponsor: Can authorize whatever authority and resources the facilitator and team may find necessary.
- Team Member: Offers perspectives and ideas, participates in team meetings and adhere to ground rules.

PIP minutes are entered into the electronic record by the record keeper. Documentation includes the following:

1. Charters
2. Team Members
3. Root Cause/Analysis
4. AIMS
5. Interventions/Action Tables
6. Study/ Lessons Learned
7. Outcomes
8. Meeting minutes

#### **Systematic Analysis and Systematic Action**

This facility uses a systematic approach to determine when in-depth analysis is needed to fully understand the problem, its causes, and implications of a change. This facility applies a thorough and highly organized/structured approach to determine whether and how identified problems may be caused or exacerbated by the way care and services are organized or delivered. This facility's approach comprehensively assesses all involved systems to prevent future events and promote sustained improvement. This facility also has developed policies and procedures regarding expectations for the use of root cause analysis when problems are identified. This element includes a focus on continual learning and continuous improvement.

**Examples** of root cause analysis tools:

- Fish bone
- Five whys
- Generic root cause analysis forms

#### **Communications**

Quarterly accountability calls are used by LHRS to review progress related to QAPI. Additionally, the facilities utilize a risk management email group to communicate with LHRS about adverse events. Site visits are completed by LHRS staff to validate compliance with QAPI activities.

Internal communication is facilitated by the Administrator or committee chairs. This communication can occur by posting, time clock announcements, PCC notifications, individual notices, and/or inservice trainings.

Resident and families both have councils where communications can be shared. Written notices may also be posted related to QAPI activities. Other stakeholders such as discharge planner, physicians, or vendors may receive verbal or written communications.

### **Evaluation**

At a minimum, the QAA leadership and facility management teams will conduct a facility-wide systems evaluation using the Annual Facility Assessment. The team will thoughtfully and thoroughly consider the progress made in the last year toward achieving the designated QAPI goals and current status of measurement in meeting and sustaining the performance indicators. Other factors to consider will be current trends in the long-term care industry as well as strategic goals for the facility. Gaps in systems and processes will be identified and addressed in the coming year's QAPI plan.

### References

1. The Centers for Medicare & Medicaid Services. QAPI at a Glance: A Step by Step Guide to Implementing Quality Assurance and Performance Improvement (QAPI) in Your Nursing Home. <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-05.pdf>. Accessed August 18, 2014.
2. The Centers for Medicare & Medicaid Services. QAPI Process Tool Framework. <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/QAPI/Downloads/ProcessToolFramework.pdf>. Accessed August 18, 2014.
3. Carolinas Center for Medical Excellence. Atlantic Quality Innovation Network: Action Collaborative for Excellence in Long-Term Care 2014 QAPI Plan.

# **EXHIBIT 16**

## **Indigent Care Plan**

# Spring Street Senior Housing OPCO, LLC d/b/a "Spring Street Health Center"

## Indigent Care Plan

Spring Street Senior Housing OPCO, LLC d/b/a as "Spring Street at Mount Pleasant" recognizes the South Carolina Board of Health and Environmental Control's policy regarding the provision of health care services to indigents, as issued in a memorandum dated March 24, 1984. The policy states:

"It shall be the policy of the S.C. Board of Health and Environmental Control to require all applicants for certification of need to address in detail their plan of access to care for the indigent population in their application. This plan must separately identify bad debt and contractual adjustments from any indigent care as addressed in their plan for provision of indigent care. Applications which fail to address this issue adequately and clearly or which fail to reflect an adequate commitment to meeting this identified community need shall be denied by the staff subject to review on appeal by the board."

This indigent care plan has been prepared in response to the stated policy and is referenced in Part C of the CON application.

(1) *An Indigent Care Plan as required by the Board of Health and Environmental Control. It shall address at a minimum, the following:*

(a) *The existing and proposed admission and treatment policies of the facility or agency with regard to race, sex, creed, national origin, and ability to pay.*

Spring Street accepts referrals of patients needing nursing home services without regard to race, sex, creed, or national origin. Furthermore, Spring Street is willing to provide a reasonable amount of charity or indigent care as described below.

The contract with residents will address specifically financial resources and the obligations of Spring Street if the resident exhausts those resources. If this occurs, it is recognized that the resident would likely qualify for Medicaid, but the Skilled Nursing Center is not permitted to be a Medicaid provider. In this event, the resident will be referred to nursing home facilities that can accept Medicaid patients.

(b) *The proposed admission and treatment policies of the facility or agency with respect to admission and care of indigent patients including those patients unable to pay at the time of admission and those whose benefits expire while in the care of the facility or agency.*

All patients served by Spring Street must be admitted by a licensed physician. Patients are financially evaluated at the time of referral.

Spring Street does not restrict its admissions because of gender, race, creed, national origin, or ability to pay. However, there is a limit to the amount of indigent care that can be provided by the Skilled Nursing Center. Patients referred for care will be interviewed by a staff member to determine insurance coverage or payment status. Spring Street will consider as indigent those individuals who do not have adequate funds to pay for care prior to admission.

Patients unable to pay for services will be accepted on a non-discriminatory basis as long as the total indigent care provided does not exceed the amount budgeted. However, Spring Street may choose to exceed this budget commitment based on advice and counsel of the referring physicians and individual patient circumstances.

Typically, indigent care stays will be permitted for a period of thirty days until other arrangements can be made.

(c) *In existing facilities or agencies, provide the amount, in dollars and percent of gross revenues, that the facility or agency provided in indigent care during the past three fiscal years. NOTE: Indigent care does not include bad debt; contractual adjustments; or care which is reimbursed by a governmental program (Medicare, Medicaid, county indigent program), church, or philanthropic organization.*

Spring Street is not an existing facility.

(d) *Provide the proposed amount of indigent care the facility or agency projects to provide during the existing fiscal year and next fiscal year. This projection should be expressed in both dollars and a percent of gross revenues.*

Spring Street has budgeted the following amount of charity or indigent care:

	Year 1	Year 2	Year 3
Budgeted Charity Care	\$11,756	20,064	20,775
Percent of Gross Revenue	0.5%	0.5%	0.5%

The charity care amount budgeted is 0.5% of gross charges for each of the years. These figures are drawn from the projected statement of revenues. Nearly all nursing home patients who cannot afford the cost of care are eligible for Medicaid and the State's restriction on Medicaid nursing home beds limits Spring Street's ability to accept Medicaid admissions.

(e) *A discussion of why the above figures are adequate or inadequate for the needs of the community; the need of indigent care within the proposed service area; and any solutions, remedial plans or proposals by the facility or agency to better address the indigent care problem in the service area. Include any initiatives or undertakings the facility or agency has begun to address the indigent care problem in the proposed service area.*

It is difficult to gauge the adequacy of any amount of indigent care. The above figures represent a significant commitment on the part of Spring Street and the nursing home is willing to provide a reasonable amount of charity care to those patients who truly need it.

(f) *Describe any Board or Advisory Board established to implement or control the indigent problem at the facility or agency. Include the Board's functions, responsibilities, and limitations.*

No separate board or advisory board has been established nor is any judged to be needed.

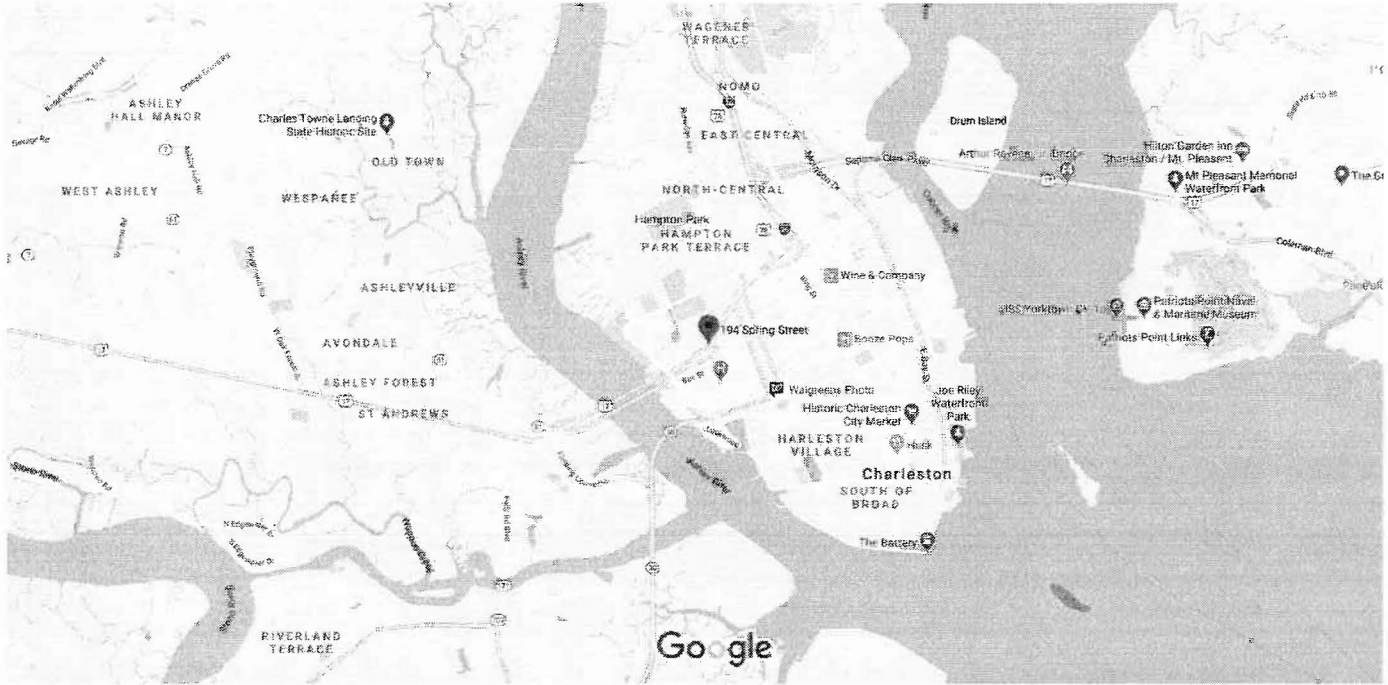


# **EXHIBIT 17**

## **Maps Identifying Project Location**



194 Spring St  
Spring Street Health Center



Map data ©2020 Google 2000 ft

Google Maps

194 Spring St  
Spring Street Health Center



Map data ©2020 Google 200 ft

Google Maps

194 Spring St  
Spring Street Health Center



Map data ©2020 Google 100 ft



Google Maps

194 Spring St  
Spring Street Health Center



Imagery ©2020 Landsat / Copernicus, Maxar Technologies, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2020 Google 2000 ft

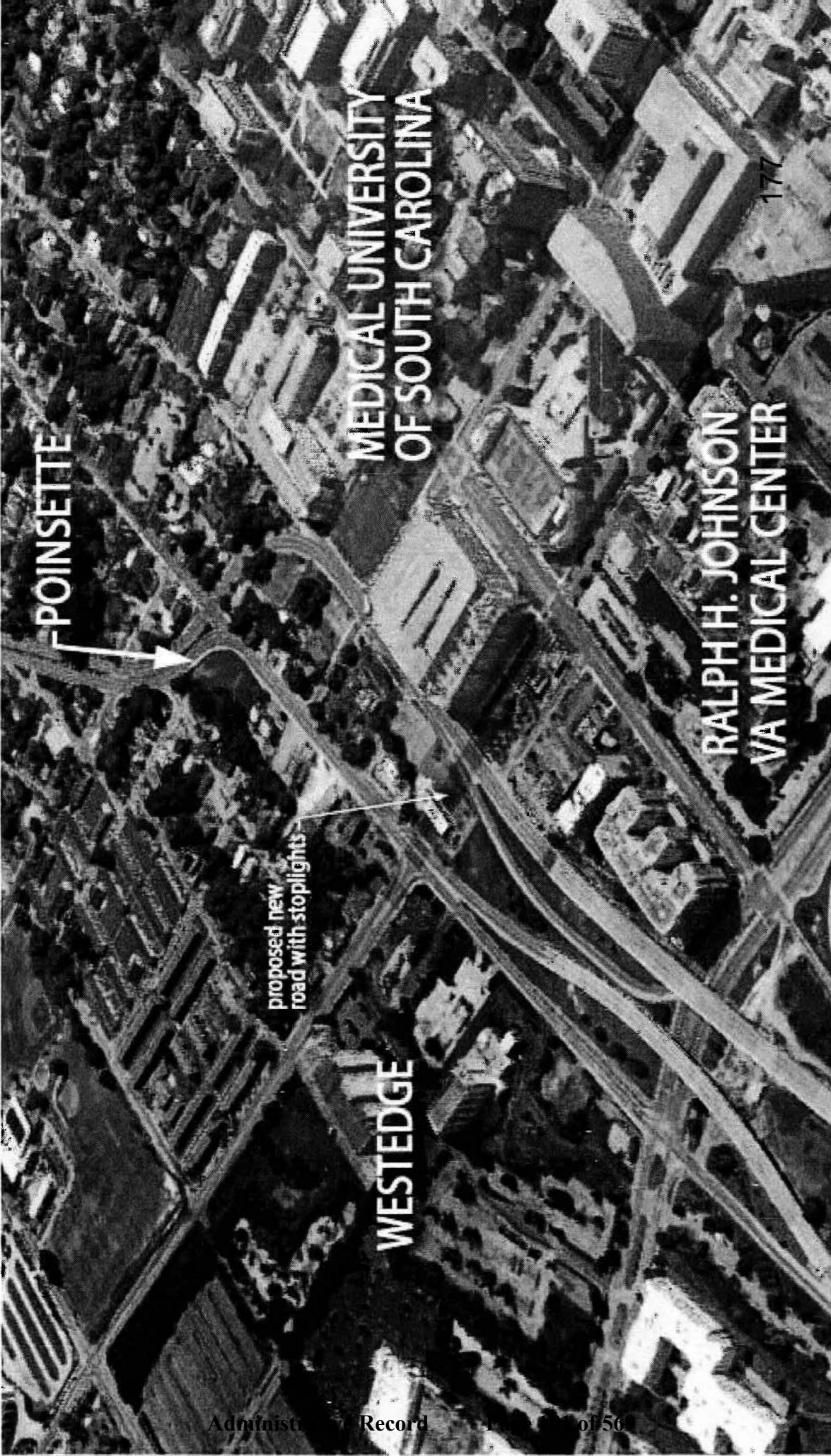
# **EXHIBIT 18**

## **Project Plot Plans**









POINSETTE

MEDICAL UNIVERSITY  
OF SOUTH CAROLINA

RALPH H. JOHNSON  
VA MEDICAL CENTER

177

proposed new  
road with stoplights

WESTEDGE

# **EXHIBIT 19**

## **Legal Description of the Project Site**







STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

AFFIDAVIT OF TRUE CONSIDERATION

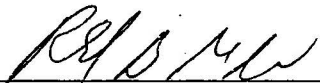
PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located 194 Spring St., Charleston, SC 29403, bearing Charleston County TMS No. 460-11-01-006 and was transferred by Liberty Southern CSL, LLC to Spring Street Senior Housing PROPCO LLC on April \_\_\_\_, 2020.
3. Check one of the following: This deed is:
  - (a) \_\_\_\_\_ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
  - (b) \_\_\_\_\_ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c)  X  exempt from the deed recording fee because (See Information section of affidavit): Item 12 – Confirming Title (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
  - (a) \_\_\_\_\_ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$.
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty which is \$ \_\_\_\_\_.
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes which is \_\_\_\_\_.
5. Check Yes \_\_\_\_\_ or No \_\_\_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \_\_\_\_\_.
6. The deed recording fee is computed as follows:

Place the amount listed in item 4 above here: \$ \_\_\_\_\_

Place the amount listed in item 5 above here: \$ \_\_\_\_\_  
(If no amount is listed, place zero here.)

Subtract Line 6(b) from Line 6(a) and place result here: \$ \_\_\_\_\_
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee is \$ \_\_\_\_\_.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.
9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

  
\_\_\_\_\_  
Responsible Person Connected with the Transaction  
  
Liberty Southern CSL, LLC,  
By Ronald B. McNeill, Authorized Board Member

SWORN to before me this 22  
day of April, 2020  
Catherine Hines Jacobs  
Notary Public for Brunswick  
Commission Expires: September 20, 2021

CATHERINE HINES JACOBS  
Notary Public, North Carolina  
Brunswick County  
My Commission Expires  
September 20, 2021

# RECORDER'S PAGE



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6201 FAIRVIEW RD  
SUITE 325  
CHARLOTTE NC 28210

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Michael Miller, Register Charleston County, SC		

**MAKER:**

LIBERTY SOUTHERN ETC

**RECIPIENT:**

SPRING STREET SENIOR ETC

# of Pages: 4

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County Fee	<EXEMPT>
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
<b>TOTAL</b>	<b>\$ 15.00</b>

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# **EXHIBIT 20**

## **Program Area Breakdown (in square feet) Letter**

October 29, 2020

Mr. Timothy Walsh, Senior Financial Analyst  
Liberty Senior Living  
2334 S 41<sup>st</sup> St  
Wilmington, NC 28403

Re: **Spring Street Health Center, CON Application, McMillan Pazdan Smith  
Architecture Project No. IN1338.01**

Dear Mr. Walsh,

In accordance with the SCDHEC requirements for a letter as part of the Certificate of Need Application and Process, we offer the following information:

Program Area Breakdown (in square feet):

The skilled nursing floor is located on the 5<sup>th</sup> floor of the building and consists of 14,233 square feet.

The breakdown of the skilled nursing space is as follows:

<b><i>Area</i></b>	<b><i>Square Footage</i></b>
Resident Units	7,096 SF
Nurse Touch Down	15 SF
Dining	1,103 SF
Sitting Area	243 SF
Nurse Station	104.5 SF
Office	107 SF
Med. Room	93 SF
Res. Bath	134 SF
Res Laundry	64 SF
Toilet	67 SF
Soiled Linen	54 SF
Elevator Lobby	148 SF
Storage	50 SF
Housekeeping	36 SF
Clean Linen	52 SF
Circulation	2,924 SF
Mechanical, Data, Elec Closets	1,942.5 SF
<b><i>Total</i></b>	<b><i>14,233</i></b>



mcmillan | pazdan | smith  
architecture

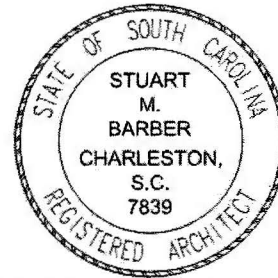
*ideas taking shape*

Please also refer to the schematic drawings included in the application.

Please do not hesitate to contact me should you require additional information.

Sincerely,

Stuart Barber, AIA, LEED AP  
Associate Principal  
McMillan Pazdan Smith Architecture



# **EXHIBIT 21**

## **Schematic Drawing**



# **EXHIBIT 22**

## **Documentation of Zoning**



## Zoning Verification Letter

Date: February 19, 2020  
To: Kaline Bell  
2235 Gateway Access Point, Suite 201  
Raleigh, NC 27607

Sent Via: Email

Dear whom it may concern:

This information is being provided in response to your request to verify the zoning for the following

referenced property: between **190 Spring St; TMS No. 4601101006**

BASE ZONING. The City of Charleston Interactive Zoning Map, which is available on-line at <http://gis.charleston-sc.gov/interactive/zoning/>, shows that the referenced property is located in the City of Charleston and has the following base zoning classification: **Mixed Use/Workforce Housing (MU2/WH)**

Adjacent Properties are zoned: **Mixed Use/Workforce Housing (MU2/WH), Diverse Residential (DR-2F)**

OVERLAY ZONING: The referenced property is also located in the following overlay zone: **Amusement and Recreation Overlay, Old City District, Short Term Rental Category 2**

OLD CITY HEIGHT DISTRICT: The referenced property is also located in the following Old City Height District: **5**

At the present time, the Zoning Division is not aware of a pending zoning violation on the referenced property. A Freedom of Information Act (FOIA) request is required if you are interested in additional information or documents on the referenced property. FOIA requests must be submitted to the City of Charleston Corporation Counsel, 50 Broad Street, Charleston, South Carolina 29401 via US Mail, or fax to 843-724-3706, or email [adegbolas@charleston-sc.gov](mailto:adegbolas@charleston-sc.gov)

NON-CONFORMING USES: The City cannot certify that a property conforms to the Zoning Ordinance. If this property contains a zoning legal non-conforming use, the use of the property is governed by Section 54-110 of the Zoning Ordinance.

Please let me know if I can be of further assistance.

Sincerely,

Sean Killion,  
Associate Planner, Zoning Division



# **EXHIBIT 23**

## **Confirmation of Utilities**



## Commercial Letter of Availability

November 5, 2020

R. Craig Spivey  
Liberty Senior Living  
2334 S. 41<sup>st</sup> Street  
Wilmington, NC 28403

Re: 190 Spring St. Charleston, SC 29403/ Charleston County TMS# 460-11-01-006

Dear Mr. Spivey:

I am pleased to inform you that Dominion Energy will be able to provide electric and gas service to the above referenced project. Electric and gas service will be provided in accordance with Dominion Energy General Terms and Conditions, other documents on file with the South Carolina Public Service Commission, and the company's standard operating policies and procedures. In order to begin engineering work for the project, the following information will need to be provided:

- 1.) Detailed utility site plan (AutoCAD format preferred) showing water, sewer, and storm drainage as well as requested service point/transformer location.
- 2.) Additional drawings that indicate wetlands boundaries, tree survey with barricade plan and buffer zones (if required), as well as any existing or additional easements will also be needed.
- 3.) Electric load breakdown by type with riser diagrams and desired metering specifications.
- 4.) Signed copy of this letter acknowledging its receipt and responsibility for its contents and authorization to begin engineering work with the understanding that Dominion Energy intends to serve the referenced project.

Dominion Energy construction standards and specifications are available upon request. Please note that for multi-occupancy residential developments per SC Public Service Commission Regulation 103-327(A): *All service delivered to new multi-occupancy residential premises at which units of such premises are separately rented, leased or owned shall be delivered by an electric utility on the basis of individual meter measurement for each dwelling.* For more information or questions, contact me by phone at (843-576-8447) or at [Steven.Morillo@dominionenergy.com](mailto:Steven.Morillo@dominionenergy.com).

Sincerely,

Steven M. Morillo  
Account Manager



PO Box B  
Charleston, SC 29402  
103 St. Philip Street (29403)

(843) 727-6800  
www.charlestonwater.com

**Board of Commissioners**

Thomas B. Pritchard, Chairman  
David E. Rivers, Vice Chairman  
William E. Koopman, Jr., Commissioner  
Mayor John J. Tecklenburg (Ex-Officio)  
Councilmember Perry K. Waring (Ex-Officio)

**Officers**

Kin Hill, P.E., Chief Executive Officer  
Mark Cline, P.E., Assistant Chief Executive Officer  
Dorothy Harrison, Chief Administrative Officer  
Wesley Ropp, CMA, Chief Financial Officer  
Russell Huggins, P.E., Capital Projects Officer

March 4, 2020

Mike Johnson  
Via email [mjohnson@forsberg-engineering.com](mailto:mjohnson@forsberg-engineering.com)

Water and Sewer Availability to TMS: 460-11-01-006  
Re: 5 story assisted living building – 122 beds plus fitness, lounge, kitchen and dining

This letter is to certify our willingness and ability to provide water and sewer service to the above referenced site in Charleston County, South Carolina. CWS currently has an 8" ductile iron water main and an 8" VCP gravity sewer main within an easement in the former ROW of Norman Street from which water and sewer service to the new building may be connected.

It will of course be a developer responsibility to ensure there are adequate pressures and quantities on the existing mains to serve this site with domestic water/fire flow and not negatively impact the existing developments. It will also be a developer's responsibility to ensure there is sufficient capacity in the existing mains to receive the newly proposed sewer flow. Please be advised any extensions or modifications to the infrastructure as well as any additional fire protection will be a developer's expense. All fees and cost associated with providing service to this site will be a developer expense and will be due prior to connection of any Charleston Water System's water system. This letter does not reserve capacity in the Charleston Water System infrastructure and it is incumbent upon the developer or his agent to confirm the availability herein granted past 12 months of this correspondence.

The Charleston Water System certifies the availability of service only insofar as its rights allow. Should access to our existing main/mains be denied by appropriate governing authorities, the Charleston Water System will have no other option than to deny service.

This letter is not to be construed as a letter of acceptance for operation and maintenance from the Department of Health and Environmental Control.

If there are any questions pertaining to this letter, please do not hesitate to call on me at (843) 727-6869.

Sincerely,

A handwritten signature in cursive script that reads "Lydia Owens".

Lydia Owens  
Charleston Water System

# **EXHIBIT 24**

## **Community Letters of Support**



## City of Charleston

JOHN J. TECKLENBURG  
MAYOR

October 28, 2020

Louis Eubank, MSW, MPH  
Director, Certificate of Need Program  
S.C. Department of Health & Environmental Control  
2600 Bull Street  
Columbia, SC 29201

Subject: Spring Street Health Center – Nursing Home

Dear Mr. Eubank:

With this letter, I am expressing my support for the Certificate of Need application submitted by Spring Street Senior Housing OPCO, LLC to construct a 25-bed nursing home in Downtown Charleston. Spring Street's community will include assisted living and memory care units and a nursing home.

With the tremendous growth in Charleston County and the overall aging of the population in the current *SC Health Plan*, DHEC has identified a severe need for additional public nursing home beds in the county. Spring Street wishes to help meet this need and provide comprehensive range of long-term care services.

I encourage your approval of this CON application for 25 public nursing home beds. If I can provide any other information, please let me know.

Most Sincerely Yours,

John J. Tecklenburg  
Mayor, City of Charleston

MARLON KIMPSON  
SENATOR, CHARLESTON AND DORCHESTER COUNTIES  
SENATORIAL DISTRICT NO. 42

OFFICE ADDRESS:  
P. O. BOX 142  
COLUMBIA, SOUTH CAROLINA 29202  
TELEPHONE (803) 212-6132  
FAX (803) 212-6132  
EMAIL: MARLONKIMPSON@SCSENATE.GOV

CHARLESTON COUNTY DELEGATION OFFICE  
P. O. BOX 190016  
NORTH CHARLESTON, SOUTH CAROLINA 29419  
TELEPHONE (843) 740-5855  
FAX (843) 308-4794



COMMITTEES:  
CORRECTIONS AND PENOLOGY  
JUDICIARY  
MEDICAL AFFAIRS  
TRANSPORTATION

November 10, 2020

Louis Eubank, MSW, MPH  
Director, Certificate of Need Program  
S.C. Department of Health & Environmental Control  
2600 Bull Street  
Columbia, SC 29201

**SUBJECT:** Spring Street Health Center - Nursing Home

Dear Mr. Eubank:

With this letter, I am expressing my support for the Certificate of Need application submitted by Spring Street Senior Housing OPCO, LLC to construct a 23-bed nursing home in Downtown Charleston. Spring Street's community will include assisted living and memory care units and a nursing home.

With the tremendous growth in Charleston County and the overall aging of the population in the current *SC Health Plan*, DHEC has identified a severe need for additional public nursing home beds in the county. Spring Street wishes to help meet this need and provide comprehensive range of long-term care services.

I encourage your approval of this CON application for 23 public nursing home beds. If I can provide any other information, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Marlon Kimpson".

Marlon Kimpson

MK/cc

# Fish, Game and Forestry Committee

GEORGE E. "CHIP" CAMPSEN III  
CHAIRMAN

THE SENATE OF SOUTH CAROLINA  
305 GRESSETTE OFFICE BUILDING  
P. O. BOX 142  
COLUMBIA, SOUTH CAROLINA 29202



BRIAN COHL  
DIRECTOR OF RESEARCH  
BRIANCOHL@SCSENATE.GOV

JULIE BOWERS  
ADMINISTRATIVE ASSISTANT

TEL: (803) 212-6340  
FAX: (803) 212-6356  
SFGFCOMM@SCSENATE.GOV

November 10, 2020

Louis Eubank, MSW, MPH  
Director, Certificate of Need Program, SC DHEC  
2600 Bull Street  
Columbia, SC 29201

Re: Support for Certificate of Need application submitted by Spring Street Senior Housing OCPO, LLC

Dear Mr. Eubank:

The tremendous growth in the Charleston area has created the need for additional senior care facilities. This is especially true on the peninsula, where no facilities have been built in years. Spring Street Senior Housing OPCO, LLC is proposing to construct a senior healthcare community on Spring Street and I encourage the department's approval of its Certificate of Need application.

The community will provide twenty-three beds with skilled nursing along with the possibility of an assisted living facility and a memory care unit. Although this community is not directly located in the portion of downtown Charleston that encompasses my state senate district, District 43, it will benefit all residents on the peninsula that seek its services.

Thank you for your consideration of Spring Street Senior Housing, OPCO, LLC's request and for your commitment to public service to the citizens of South Carolina.

Respectfully,

A handwritten signature in black ink, appearing to read "Chip Campsen".

Chip Campsen



# **EXHIBIT 25**


## **Documentation of Project Approval**

Spring Street Senior Housing OPCO, LLC d/b/a Spring Street Health Center

APPROVAL OF PROJECT

The undersigned, William B. Purvis, John A., McNeill, Jr. and Ronald B. McNeill, being the Managers of Spring Street Senior Housing JV Manager, LLC, the Manager of Spring Street Senior Housing JV OPCO, LLC, the Manager of Spring Street Senior Housing OPCO, LLC, (the "Company"), hereby authorize the Company to apply to the South Carolina Department of Health & Environmental Control for a Certificate of Need for a 23-bed nursing home that will be a part of its "Spring Street Health Center" development. The beds will be "non-institutional," public nursing home beds and, due to funding restrictions in SC, will not be eligible to participate in Medicaid. The project site is 194 Spring Street, Charleston (Charleston County), SC 29403. The nursing home component will be approximately 14,233 square feet and, based on DHEC's cost definitions, the total project cost for the nursing home component is approximately \$7,703,284.


IN WITNESS WHEREOF, the undersigned, being the Managers of Spring Street Senior Housing JV Manager, LLC, the Manager of Spring Street Senior Housing JV OPCO, the Manager of the Company, have executed this Consent on the date set forth next to the names below.

  
\_\_\_\_\_  
John A. McNeill, Jr., Manager

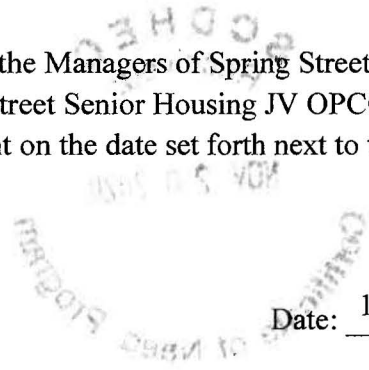
Date: 11/11/2020

  
\_\_\_\_\_  
Ronald B. McNeill, Manager

Date: 11/11/2020

  
\_\_\_\_\_  
William B. Purvis, Manager

Date: 11/11/2020





# Fish, Game and Forestry Committee

GEORGE E. "CHIP" CAMPSEN III  
CHAIRMAN

THE SENATE OF SOUTH CAROLINA  
305 GRESSETTE OFFICE BUILDING  
P. O. BOX 142  
COLUMBIA, SOUTH CAROLINA 29202



SCDHEC  
Received:

NOV 16 2020

Certificate of Need Program

BRIAN COHL  
DIRECTOR OF RESEARCH  
BRIANCOHL@SCSENATE.GOV

JULIE BOWERS  
ADMINISTRATIVE ASSISTANT

TEL: (803) 212-6340  
FAX: (803) 212-6356  
JFGFCOMM@SCSENATE.GOV

November 10, 2020

Louis Eubank, MSW, MPH  
Director, Certificate of Need Program, SC DHEC  
2600 Bull Street  
Columbia, SC 29201

Re: Support for Certificate of Need application submitted by Spring Street Senior Housing OCPO, LLC

Dear Mr. Eubank:

The tremendous growth in the Charleston area has created the need for additional senior care facilities. This is especially true on the peninsula, where no facilities have been built in years. Spring Street Senior Housing OPCO, LLC is proposing to construct a senior healthcare community on Spring Street and I encourage the department's approval of its Certificate of Need application.

The community will provide twenty-three beds with skilled nursing along with the possibility of an assisted living facility and a memory care unit. Although this community is not directly located in the portion of downtown Charleston that encompasses my state senate district, District 43, it will benefit all residents on the peninsula that seek its services.

Thank you for your consideration of Spring Street Senior Housing, OPCO, LLC's request and for your commitment to public service to the citizens of South Carolina.

Respectfully,

A handwritten signature in black ink that reads "Chip Campsen".

Chip Campsen



February 3, 2021

**Via Electronic Mail and U.S. Mail**

Ms. Margaret P. Murdock  
Certificate of Need Program  
South Carolina Department of Health  
and Environmental Control  
2600 Bull Street  
Columbia, SC 29201



RE: Nursing Home Certificate of Need Application #2827 Spring Street Senior Housing OPCO, LLC d/b/a Spring Street Health Care for the construction and establishment of a 23-bed skilled nursing facility in Charleston County - Affected Person Opposition Letter: NHC HealthCare/Charleston, LLC d/b/a NHC HealthCare, Charleston

Dear Ms. Murdock,

I am writing on behalf of NHC HealthCare/Charleston, LLC ("NHC") to notify the Department that NHC is an Affected Person, as defined in S.C. Code Ann. § 44-7-130(1) and S.C. Regs. 61-15, § 103.1, with respect to the above-referenced Certificate of Need Application.

NHC opposes this application on grounds that it does not comply with the purposes of the CON Act, applicable regulatory criteria, and standards in the State Health Plan. NHC reserves the right to raise any other grounds in its opposition to this application. NHC respectfully requests that DHEC conduct a project review meeting regarding this application.

Please contact me if you have any questions at 615-890-2020.

Sincerely,

**National HealthCare Corporation**

Dere R. Brown  
Director of Health Planning and Licensure/Certification  
Authorized Representative





M. Elizabeth Crum  
lcrum@burr.com  
Direct Dial: (803) 753-3240  
Direct Fax: (803) 933-1484

Burr & Forman LLP  
1221 Main Street  
Suite 1800  
Columbia, SC 29201

Mailing Address:  
Post Office Box 11390  
Columbia, SC 29211

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Office 803.799.9800  
Fax 803.753.3278

BURR.COM

January 15, 2021

**Via E-mail (murdocmp@dhec.sc.gov)**

Margaret P. Murdock  
Director, Certificate of Need Program  
Dept. of Health and Environmental Control  
301 Gervais St.  
Columbia, SC. 29201



**Re: Spring Street Senior Housing OPCO, LLC (d/b/a Spring Street Health Center)  
DHEC File # 2827 and Bishop Gadsden Episcopal Retirement Center  
Request For Affected Person Status**

Dear Ms. Murdock:

On behalf of our client, Bishop Gadsden Episcopal Retirement Center (BGERC or Bishop Gadsden), which is located in Charleston County, the service area for Spring Street Senior Housing OPCO, d/b/a/ Spring Street Health Center (Spring Street), CON application for a 23-bed non-institutional nursing home (Application), we would like to submit a request for affected person status on behalf of BGERC. Since Bishop Gadsden also provides nursing home services, Bishop Gadsden is an affected person pursuant to S.C. Code Ann. § 44-7-120(1). Please accept this request, pursuant to S.C. Code Ann. §§ 44-7-200 and 44-7-210 and S.C. Code Ann. Regs. 61-15, Section 103(1) that Bishop Gadsden be considered an affected person in the above CON project.

BGERC is opposing this project on the following grounds and reserves the right to provide additional grounds of opposition after we receive the "deemed complete" letter establishing the project review criteria that are most important in DHEC's review of the Spring Street Application. The Application does not comply with the 2020 South Carolina Health Plan, the project review criteria, and the applicable regulations in Reg. 61-15.

Margaret P. Murdock, Esq.  
Director, Certificate of Need Program  
Dept. of Health and Environmental Control  
January 15, 2021  
Page 2

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We request that we be notified when the Application is deemed complete, be provided a copy of that letter, and request that we be notified with any other actions, including requests for additional information that the Department takes regarding this project.

Thank you for your attention to this matter. Best Wishes for a New Year.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. Elizabeth Crum", with a horizontal line extending to the right.

M. Elizabeth Crum

MEC/dmo





# Lutheran Homes of South Carolina

*promoting the well-being of older adults*

2000 Ministry Drive      o: 803.749.5110  
Irmo, SC 29063-2366    f: 803.749.5111  
w: lutheranhomessc.org

Mr. Louis W. Eubank, Chief  
Bureau of Health Facilities and Services Development  
Office of Certificate of Need  
S.C. Department of Health and Environmental Control  
2600 Bull Street  
Columbia, SC 29201

January 15, 2021

RE: Certificate of Need Applications – Affected person/organization opposition letter per DHEC Regulation 61-15 Chapter 1, Section 103 relative to the following CON Applications:  
CON #2827 Spring Street Senior Housing Opco dba Spring Street Health Center

Dear Mr. Eubank:

We are writing to protest the above referenced Certificate of Need Applications which have been put forward by Liberty Senior Living. We feel this application should be denied for the following reasons:

- Duplication of effort in markets that are already saturated with skilled, Medicare nursing beds which can be clearly established based upon occupancy data from the impacted communities;
- Unrealistic projections relative to the availability of the labor force needed to staff this facility as noted in the attached documentation.
- Lack of local support for this programming as key information from the potential referral sources is not included in the applications nor are there any letters of support or agreement from the referral communities noted;
- Lack of quality indicator and survey history data in the application.
- Listing of Franke at Seaside as a referral source; (Franke has a SNF operation that serves our own campus.)

We ask that the DHEC bring pause to the process of approval of this applicant to allow the Department to explore the issues that have been expressed and make a fully informed decision on this application to better serve the needs of the citizens of South Carolina and the long term/post- acute care system that has been developed to do so.

Sincerely,

Frank Shepke  
President & CEO

Enc. – Documentation supporting reasons for denial

SCDHEC  
Received

JAN 20 2021

Certificate of Need Program

Comments to DHEC Opposing Liberty Senior Living (Spring Street Health Center) CON application #2827 in South Carolina - January 11, 2021

Upon review of the re-submitted CON application by the (Spring Street Senior Housing Opco dba Spring Street Health Center for application #2827 it is our belief that the proposed CON from Spring Street health will promote an unnecessary duplication of health care facilities and services, will not best serve the public needs and are incomplete in terms of critical information needed for full assessment by the state. It is also our belief that the proposed new nursing facility does not establish nor provide sufficient community need documentation, does not address an adequate plan for staffing resources and does not speak to the record of the applicants ability to provide quality to the skilled nursing population they seek to serve. They also create an economic hardship for existing providers due to changes in the long term care environment which has been exacerbated by the COVID-19 Pandemic and will over extend an already challenged system in terms of health system resources.

---

The applicant notes the following:

1. The applicant notes that it will work with local health care providers/practices to secure referrals and has sent out letters seeking support. Local support is one of the most critical elements for the success for the type of operations they propose and it should be questioned why no support letters or memoranda of understanding have been included from sources they cite as referrals.
2. The applicant notes the Franke at Seaside facility which is a Lutheran Homes campus would serve as a referral source. In fact, Franke at Seaside maintains its own 44 bed skilled nursing unit that is sized to meet the needs of the Franke Campus and in fact Franke is a continuing care retirement community (CCRC) and the nursing center was designed to operate to meet the skilled nursing needs of Franke residents. Lutheran Homes has not provided any support to the this CON applicant nor was it asked to be a referral source for such nor would we agree to do so.
3. The need for further Medicare licensed and other skilled nursing beds in this market has not been established. In fact as noted in the June 2016 report by MedPac (the Medicare Payment Advisory Committee) "*Health Care Spending and the Medicare Program*" the following are critical facts:
  - Medicare spending on Skilled Nursing Facility (SNF) payments as a percentage is only 5% of total Medicare spending and has been flat from the period of 2006-2014; (page 4) see attached
  - Aggregate spending for Fee for Service (FFS) Medicare beneficiaries has actually declined between 2011-2014; (page 5) see attached

MedPAC (Medicare Payment Advisory Committee: A Data Book – Health Care Spending and the Medicare Program - June 2016 <http://www.medpac.gov/docs/default-source/data-book/june-2016-data-book-health-care-spending-and-the-medicare-program.pdf>

4. The applicant has not demonstrated a plan for the sufficient recruitment of qualified staff that is realistic given the shortage of supply of qualified staff in the Charleston market. Any recruitment plan will involve the potential solicitation and recruitment of staff from existing facilities and further dilute the existing labor pool to the detriment of patient care for existing providers in their target markets. In conclusion it is for these reasons related to regulation, conformance with CON program application standards and conditions of the long-term care system in the state that this application #2827 should be denied by the South Carolina DHEC.

# APPENDIX A

## Skilled Nursing Bed Analysis



# South Carolina Revenue and Fiscal Affairs Office

## Population Counts and Projections 2000-2030

County	April 1, 2010 Census	July 1, 2015 Projection	July 1, 2020 Projection	July 1, 2025 Projection	July 1, 2030 Projection
Charleston	350,209	360,600	370,900	383,800	396,700
Lexington	262,391	277,100	291,800	312,500	333,200
Richland	384,504	404,400	424,300	440,100	456,000
<b>South Carolina Totals</b>	<b>4,625,364</b>	<b>4,823,200</b>	<b>5,020,800</b>	<b>5,235,500</b>	<b>5,451,700</b>

Source: U.S. Census Bureau, U.S. Census Bureau, Census 2000 and Census 2010, S.C. Department of Health and Environmental Control - Vital Records Department. Population projections calculated by South Carolina Department of Revenue and Fiscal Affairs - Health and Demographics Section. <http://abstract.sc.gov/chapter14/pop5.html>

## South Carolina Population Age 65 and Over (1950-2010)

County	2010	% Change 2000-2010
Charleston	44,721	21.3%
Lexington	32,111	46.0%
Richland	37,541	19.3%
<b>South Carolina Totals</b>	<b>631,874</b>	<b>30.2%</b>

Source: U.S. Census Bureau, Census of Population and Housing 1950-2010. <http://abstract.sc.gov/chapter14/pop21.html>

**Extrapolation of Census Projections for Aged 65+:** To further address the questions involving the growth of the aged 65+ population in the target counties impacted by the Liberty Senior Living CON application, Lutheran Homes has taken U.S. Census estimates of total population growth in these counties through 2030, and extrapolated the growth rate for seniors aged 65+ based upon the 2010 actual census numbers and the U.S. Census projections for the total population in these counties beginning in 2015 through 2030. The formula currently used by the State to determine bed need (population of 65+/1,000 \* 39) was applied to these estimates using the forecasted census growth rates. The following chart forecasts the future bed need based upon these projections and the current calculation method.

65+ Population Estimates	2010	2015	Bed need	2020	Bed need	2025	Bed need	2030	Bed need
Lexington	32,111	33,911	1,323	35,710	1,393	38,243	1,491	40,776	1,590
Richland	37,541	39,484	1,540	41,426	1,616	42,969	1,676	44,522	1,736
Charleston	44,721	46,048	1,796	47,363	1,847	49,011	1,911	50,658	1,976
Total Population Estimates	2010	2015	Growth Rate	2020	Growth Rate	2025	Growth Rate	2030	Growth Rate
Lexington	262,391	277,100	5.61%	291,800	5.30%	312,500	7.09%	333,200	6.62%
Richland	384,504	404,400	5.17%	424,300	4.92%	440,100	3.72%	456,000	3.61%
Charleston	350,209	360,600	2.97%	370,900	2.86%	383,800	3.48%	396,700	3.36%

**Source:** U.S. Census Bureau, U.S. Census Bureau, Census 2000 and Census 2010, S.C. Department of Health and Environmental Control - Vital Records Department. Population projections calculated by South Carolina Department of Revenue and Fiscal Affairs - Health and Demographics Section.

**Source:** U.S. Census Bureau, Census of Population and Housing 1950-2010.

**Source:** Lutheran Homes of South Carolina Internal Research: Extrapolated 65+ population projections for Lexington, Richland and Charleston counties based upon 2010 census of persons 65+ by county using U.S. Census estimates for total growth by county for the years 2015, 2020, 2025 and 2030.

**State Health Plan Bed Need Calculation:** Based upon the calculations offered by Lutheran Homes of South Carolina (LHSC) using U.S. Census calculated growth rates by County and extrapolated for the population aged 65+ which are conservative estimates based upon recent historical growth, there is a disparity in the total bed needs by the year 2020 as exhibited in the following table. Although LHSC does not dispute the logic of the State Health Plan, it should be noted again that this is a conservative estimate for planning purposes and reflects the fact that differing assumptions will generate different estimates. Given these projections, the only counties that would demonstrate a need for additional beds by 2019-2020 based upon the current 2017 state inventory are a marginal amount in Lexington County (133 beds) and a



greater amount in Charleston county (449 beds). In fact this analysis would indicate that there is the potential for over bedding in Richland County by 2019-2020 by (168 beds).

65+ Population Estimates	2019 Bed needs from current State Health Plan	2020 Bed needs from LHSC Projections using U.S. Census extrapolated data as calculated by LHSC	Difference in Projected Need between State Health Plan and U.S. Census extrapolated data as calculated by LHSC	Current existing Beds from State Health Plan	2020 Bed need difference from current State Health Plan bed inventory using U.S. extrapolated data as calculated by LHSC
Lexington	1,915	1,393	-522	1,260	133
Richland	2,198	1,616	-582	1,784	-168
Charleston	2,756	1,847	-909	1,398	449

**Conclusion:** The purpose of this analysis is to further underscore the vast differences in potential population projections and bed needs based upon the types of assumptions utilized. Although the State health plan is not disputed here, it should be noted that data and projections from a proprietary source such as that offered by the Liberty Senior Living Group should be closely scrutinized to understand the assumptions that led to the conclusions. The U.S. Census provides the most time tested and reliable methods for understanding and projecting population estimates. This analysis again is based upon current and projected U.S. Census data that was extrapolated for the 65+ population of the State.

## Census Tables

# South Carolina Population Age 65 and Over (1950-2010)

County	1950	1960	1970	1980	1990	2000	2010	% Change 2000-2010
Abbeville	1,624	1,867	2,121	2,821	3,520	3,842	4,203	9.4%
Aiken	3,306	4,432	6,318	10,023	13,796	18,287	24,619	34.6%
Allendale	804	900	937	1,281	1,486	1,421	1,375	-3.2%
Anderson	5,139	6,923	9,227	14,348	19,732	22,627	28,329	25.2%
Bamberg	1,081	1,352	1,470	2,005	2,165	2,314	2,565	10.8%
Barnwell	1,258	1,303	1,602	2,111	2,489	2,962	3,173	7.1%
Beaufort	1,554	1,837	2,286	5,303	10,664	18,754	33,032	76.1%
Berkeley	1,477	1,805	2,302	4,583	7,453	11,261	17,794	58.0%
Calhoun	981	973	1,083	1,411	1,768	2,102	2,470	17.5%
Charleston	7,621	10,390	13,638	21,442	29,881	36,858	44,721	21.3%
Cherokee	2,034	2,592	3,232	4,280	5,778	6,517	7,442	14.2%
Chester	2,142	2,493	2,760	3,550	4,293	4,317	4,835	12.0%
Chesterfield	1,911	2,370	2,765	4,027	4,921	5,120	6,332	23.7%
Clarendon	1,550	1,839	2,021	2,978	3,787	4,538	5,867	29.3%
Colleton	1,704	2,073	2,582	3,546	4,394	4,928	6,078	23.3%
Darlington	2,456	3,122	3,966	5,946	7,417	8,158	9,793	20.0%
Dillon	1,486	1,754	2,146	2,928	3,565	3,545	4,159	17.3%
Dorchester	1,275	1,611	1,978	3,669	6,136	8,791	13,849	57.5%
Edgefield	1,205	1,260	1,346	1,789	2,250	2,669	3,524	32.0%
Fairfield	1,466	1,617	1,859	2,441	3,041	3,094	3,565	15.2%
Florence	3,676	4,942	6,218	9,482	12,723	14,837	18,017	21.4%
Georgetown	1,488	1,905	2,316	3,871	5,954	8,354	11,920	42.7%

Greenville	8,629	13,109	17,989	27,391	38,063	44,573	57,581	29.2%
Greenwood	2,473	3,328	4,270	6,585	8,224	9,075	10,544	16.2%
Hampton	1,138	1,255	1,453	2,044	2,249	2,595	2,829	9.0%
Horry	2,247	3,368	4,998	9,395	18,229	29,470	46,070	56.3%
Jasper	654	919	1,010	1,535	1,949	2,269	2,769	22.0%
Kershaw	2,003	2,430	2,721	3,835	5,292	6,796	8,797	29.4%
Lancaster	1,815	2,445	3,159	5,182	6,709	7,413	11,737	58.3%
Laurens	2,937	3,493	4,272	6,015	7,805	9,168	9,988	8.9%
Lee	1,177	1,406	1,473	1,865	2,269	2,504	2,596	3.7%
Lexington	2,786	3,933	5,382	9,581	14,897	21,989	32,111	46.0%
McCormick	745	758	753	858	1,162	1,645	2,449	48.9%
Marion	1,538	2,019	2,491	3,435	4,240	4,298	4,852	12.9%
Marlboro	1,710	1,931	2,231	3,333	3,753	3,550	3,779	6.5%
Newberry	2,449	2,923	3,345	4,458	5,123	5,323	5,959	11.9%
Oconee	2,245	2,771	3,546	5,291	7,905	10,311	14,106	36.8%
Orangeburg	3,724	4,649	5,771	8,359	10,547	12,091	13,734	13.6%
Pickens	2,355	3,335	4,449	7,044	10,484	12,616	15,993	26.8%
Richland	7,849	11,584	14,901	20,542	27,133	31,475	37,541	19.3%
Saluda	1,271	1,406	1,503	2,022	2,350	2,778	3,195	15.0%
Spartanburg	7,878	10,925	14,519	21,350	28,785	31,740	38,227	20.4%
Sumter	2,771	3,738	4,833	6,795	9,621	11,760	13,921	18.4%
Union	1,924	2,397	2,773	3,659	4,494	4,670	4,769	2.1%
Williamsburg	1,786	2,252	2,624	3,674	4,438	4,856	5,039	3.8%
York	3,663	4,865	6,321	9,245	14,001	17,072	25,626	50.1%
<b>South Carolina</b>	<b>115,005</b>	<b>150,599</b>	<b>190,960</b>	<b>287,328</b>	<b>396,935</b>	<b>485,333</b>	<b>631,874</b>	<b>30.2%</b>

Source: U.S. Census Bureau, Census of Population and Housing 1950-2010.



## **Status of Population Projections Based on the 2010 Census Data**

Population projections are based on assumptions about the continuation of birth, death and migration trends measured from two census points into the future. The accuracy of projections depends on the extent to which future events unfold in a manner that mirrors these past observations. The population trends from 2000 to 2010 include the collapse of the housing market in 2008 and the lingering effects of the worst economic crisis since the 1930's. Population growth will likely be at very low levels for the next few years, but there is a lack of data available to measure the impact current economic trends will have on population growth: From 2008 to 2010 the number of births declined by 7.5%, the number of persons moving into South Carolina declined by 20.1%, and the number of legal immigration to the state declined by 12%. On June 27, 2011 the South Carolina Illegal Immigration Reform Act was signed into law. It requires employers to verify the legal status of new employees to ensure that illegal immigrants are not working in South Carolina. The number of illegal immigrants in the state is unknown.

South Carolina's population is aging; the median age in 2010 was 38 years, and was 23 years in 1960. Between 2000 and 2010 the age group 65 and over increased by 30%, compared to an increase by 41% in the age group 85 and over. People born between 1946 and 1963 (The Baby Boom Population) make up 24% of the total population and they started to turn 65 in 2011. Health and medicine is allowing more people to live past 85 years.

From 2000 to 2010 the state gained 613,352 persons; 201,282 from natural increase (number of births minus the number of deaths) and 412,070 from net migration (number of people moving to South Carolina minus the number of people leaving South Carolina). Natural increase accounted for all of the population growth from 1860 to 1970; from 1970 to 1980 natural increase accounted for 49% of total growth and has declined to 33% of growth from 2000 to 2010. The average number of deaths per year has increased from 18,600 in 1950 to 38,300 in 2010. The average number of births has remained fairly constant as the number of children per woman has decreased. In 1950 there was an average of 62,000 births and in 2010, an average of 58,500 births.

Births and deaths usually change gradually over time, but migration trends can lead to drastic changes from one decade to the next due to economic opportunities. Between 1970 and 1980 net in migration accounted for 51% of total population growth. Between 1980 and 1990 it accounted for 30% and between 2000 and 2010 for 67%. People move to South Carolina for jobs, school and retirement. Migration into the state from 1970 to 2010 has increased the number of persons born outside the state from 10% in 1970 to 41% in 2010. The percentage of people who changed residences between 2010 and 2011 (12%) was the lowest recorded rate since the Current Population Survey (U.S. Bureau of the Census) began collecting statistics on the movement of people in the United States in 1948.

Annual county population estimates produced by the U.S. Bureau of the Census and the state will be used to make corrections to the population projections. Estimates are

County	April 1, 2000 Census	April 1, 2010 Census	July 1, 2015 Projection	July 1, 2020 Projection	July 1, 2025 Projection	July 1, 2030 Projection
Edgefield	24,595	26,985	27,600	28,300	29,200	30,100
Fairfield	23,454	23,956	24,100	24,200	24,300	24,500
Florence	125,761	136,885	140,000	143,100	147,000	150,900
Georgetown	55,797	60,158	61,300	62,500	63,800	65,100
Greenville	379,616	451,225	473,300	495,400	518,800	542,300
Greenwood	66,271	69,661	70,600	71,500	73,100	74,700
Hampton	21,386	21,090	21,000	20,900	20,800	20,700
Horry	196,629	269,291	294,600	319,900	345,800	371,700
Jasper	20,678	24,777	26,000	27,300	28,000	28,800
Kershaw	52,647	61,697	64,400	67,200	70,000	72,800
Lancaster	61,351	76,652	81,700	86,700	91,000	95,300
Laurens	69,567	66,537	65,800	65,100	65,000	65,000
Lee	20,119	19,220	19,000	18,800	18,700	18,600
Lexington	216,014	262,391	277,100	291,800	312,500	333,200
McCormick	9,958	10,233	10,300	10,400	10,600	10,900
Marion	35,466	33,062	32,500	32,000	31,900	31,800
Marlboro	28,818	28,933	29,000	29,000	29,100	29,200
Newberry	36,108	37,508	37,900	38,200	39,000	39,800
Oconee	66,215	74,273	76,600	78,900	84,000	89,100
Orangeburg	91,582	92,501	92,800	93,000	93,500	94,100
Pickens	110,757	119,224	121,600	123,800	128,300	132,900
Richland	320,677	384,504	404,400	424,300	440,100	456,000
Saluda	19,181	19,875	20,000	20,200	20,300	20,400
Spartanburg	253,791	284,307	295,100	305,800	318,500	331,200
Sumter	104,646	107,456	108,200	108,900	109,200	109,500

County	April 1, 2000 Census	April 1, 2010 Census	July 1, 2015 Projection	July 1, 2020 Projection	July 1, 2025 Projection	July 1, 2030 Projection
Union	29,881	28,961	28,700	28,500	28,300	28,100
Williamsburg	37,217	34,423	33,800	33,100	33,000	32,900
York	164,614	226,073	248,800	271,500	296,100	320,700
South Carolina	4,012,012	4,625,364	4,823,200	5,020,800	5,235,500	5,451,700

Source: U.S. Census Bureau, U.S. Census Bureau, Census 2000 and Census 2010, S.C. Department of Health and Environmental Control - Vital Records Department. Population projections calculated by South Carolina Department of Revenue and Fiscal Affairs - Health and Demographics Section.



February 3, 2021

**Via Electronic Mail and U.S. Mail**

Ms. Margaret P. Murdock  
Certificate of Need Program  
South Carolina Department of Health  
and Environmental Control  
2600 Bull Street  
Columbia, SC 29201

RE: Nursing Home Certificate of Need Application #2827 Spring Street Senior Housing  
OPCO, LLC d/b/a Spring Street Health Care for the construction and establishment  
of a 23-bed skilled nursing facility in Charleston County - Affected Person  
Opposition Letter: NHC HealthCare/Charleston, LLC d/b/a NHC HealthCare,  
Charleston

Dear Ms. Murdock,

I am writing on behalf of NHC HealthCare/Charleston, LLC ("NHC") to notify the Department that NHC is an Affected Person, as defined in S.C. Code Ann. § 44-7-130(1) and S.C. Regs. 61-15, § 103.1, with respect to the above-referenced Certificate of Need Application.

NHC opposes this application on grounds that it does not comply with the purposes of the CON Act, applicable regulatory criteria, and standards in the State Health Plan. NHC reserves the right to raise any other grounds in its opposition to this application. NHC respectfully requests that DHEC conduct a project review meeting regarding this application.

Please contact me if you have any questions at 615-890-2020.

Sincerely,

**National HealthCare Corporation**

A handwritten signature in blue ink that reads "Dere R. Brown". The signature is written in a cursive style.

Dere R. Brown  
Director of Health Planning and Licensure/Certification  
Authorized Representative





2334 S. 41<sup>st</sup> Street • Wilmington, NC 28403  
(910) 815-3122 • FAX: (910) 815-3111

February 11, 2021

Louis Eubank, MSW, MPH  
Director, Certificate of Need Program  
Jennifer Hyman  
Project Coordinator, Certificate of Need Program  
S.C. Department of Health and Environmental Control  
Mailing address:  
2600 Bull Street  
Columbia, SC 29201

SUBJECT: Response to Affected Persons/Opposition Letters received by the Certificate of Need Program concerning CON #2827, Spring Street Health Center Application (the “Application”)

Dear Mr. Eubank and Ms. Hyman:

On behalf of Spring Street Senior Housing OPCO, LLC (the “the Applicant”), I am writing to respond to the three affected person/opposition letters received by the Certificate of Need (“CON”) Program. The CON Program received opposition from the following organizations:

1. Lutheran Homes of South Carolina
2. National Healthcare Corporation - Charleston
3. Bishop Gadsden Episcopal Retirement Center

**Lutheran Homes of South Carolina**

Lutheran Homes of South Carolina has opposed our Spring Street Health Center CON for the following (summarized) reasons:

- a. Duplication of effort in market
- b. Unrealistic projections relative to availability of the labor force
- c. Lack of local support including lack of support letters or agreement from referral communities
- d. Lack of quality indicator and survey history data
- e. Listing of Franke at Seaside as a referral source

The Applicant’s responses to these comments follow the same correspondence as above (a-e).

- a. Lutheran Homes states on page 4 in Appendix A of its opposition letter that “The formula currently used by the State to determine bed need (is) (population of 65+/1000 \* 39)”. This is not the current and accurate methodology according to the 2020 South Carolina Health Plan. The 2020 South Carolina Health Plans current methodology is as follows: A

ratio of 10 beds per 1,000 people in the population from age 65-74 and a ratio of 58 beds per 1,000 people in the population from age 75 and over.

Additionally, on pages 4 and 5 of Appendix A to its letter, Lutheran Homes provides its hypothetical disparity in the total bed needs. However, the numbers it provide in the table on page 5 do not accurately depict the current bed need from the 2020 SC Health Plan nor the correct current number of existing beds from the 2020 SC Health Plan. The Applicant is unaware where these numbers were taken from.

Nonetheless, taking into account the inaccurately used methodology, improper posting of bed needs, and incorrect listing of the number of existing beds recorded by Lutheran Homes on page 5 of their opposition letter, they still calculate a need in Charleston County of 449 nursing home beds. Lutheran Homes additionally states on page 5 "The State Health plan is not disputed here." According to the 2020 SC Health Plan, Charleston County has a need for 836 long-term care (nursing) beds.

The Applicant displayed in the CON application, and the 2020 SC Health Plan currently shows, the severe need for additional nursing home beds and that our project would not duplicate existing entities.

- b. As the Applicant displayed on page 19 of the CON application, the Liberty organization (affiliated entities of the Applicant) includes thirty-five nursing homes, eight assisted living facilities, two independent living communities, five Continuing Care Retirement Communities, and a home health and hospice company with twenty-nine locations serving various urban and rural counties in North Carolina, South Carolina, and Virginia and employing in excess of 5,000 people. The corporate office includes an in-house recruiting department that will assure Spring Street is properly staffed.

Spring Street will offer competitive pay and attractive benefits to recruit qualified staff including health insurance, life insurance, short and long-term disability insurance, 401(k) plan, and paid time off. Our in-house Human Resources staff periodically conducts salary surveys and adjusts to market demands as necessary. The facility will be active in the local community and interact consistently with area clinical training programs.

In addition, the Liberty organization has developed a number of strategies to enhance recruitment and retention of personnel, including:

- Flexible work schedules.
- Opportunities for advancement.
- Catch-a-Liberty Star recognition program
- Employee mentoring program
- Employee Years of Service recognition program
- Education / Tuition Assistance Program

- Annual staff satisfaction surveys
- Seminars, workshops, and other educational programs and encourage staff to stay abreast of the latest in geriatric nursing
- Recognition pins, employee bonuses, employee cookouts and parties, raffles, CNA Day and Nurses' Week
- Involvement of direct care staff in the quality assurance process
- Regular staff meetings to encourage employees to suggest improvements in all aspects of facility operations.

The Applicant does not anticipate any difficulties in recruiting the staff required for this proposed project. Liberty is also well versed in the Charleston market, having operated Shem Creek Health Center at South Bay at Mt. Pleasant (a 40-bed nursing home facility).

- c. Lutheran Homes states on page 1 of their opposition "local support is one of the most critical elements...and it should be questioned why no support letters have been included". Exhibit 8 of the Application presents a letter from Medical University of South Carolina (MUSC), which has expressed a willingness to enter into a Transfer Agreement with Spring Street Health Center should the project be issued a CON. Letters from physicians who support this project are presented in Exhibit 14 of the Application. Exhibit 24 includes community letters of support, which includes a letter from the Mayor of the City of Charleston. The Applicant believes they have presented ample support for this project in the Application and Exhibits.
- d. Lutheran Homes states on the cover page of its letter that the Applicant's "lack of quality indicator." The Applicant, however, provided extensive information in response to the Application requirements regarding the quality of healthcare services that will be provided. These answers can be found in the CON Application on pages 19-21. The Applicant additionally provided the Quality Assurance and Performance Improvement Plan for Spring Street Health Center, which can be found in Exhibit 15.

Lutheran Homes additionally stated on the cover page that the Applicant did not display "survey history data" in the Application. This proposal is for a new facility and therefore there is not any survey history data in the Application.

- e. Lutheran Homes is correct that the Applicant notes Franke at Seaside as a referral source in the Application. The Applicant listed all Assisted Living centers in the area, which includes Franke at Seaside. We respect Franke at Seaside's rejection as using Spring Street Health Center to refer any residents for nursing care. As they stated on page 1, they are currently sized to meet the needs of Franke residents. If that were to change and their nursing facility were to fill up, we would hope Franke at Seaside would seek the services of a brand new, state-of-the-art facility such as Spring Street Health Center that will be able to provide top-class care for the resident's needs. As stated in the Application, Spring Street Health Center will accept referrals of patients needing nursing home services without regard to race, sex, creed, color or national origin.



**NHC Healthcare Charleston**

NHC Healthcare Charleston has opposed the Spring Street Health Center CON on grounds that it does not comply with the CON Act, applicable regulatory criteria, and standards in the State Health Plan. However, NHC Healthcare Charleston provides no evidence or reasons as to why they believe the Application does not comply.

The Spring Street CON submission complies with the South Carolina Department of Health and Environmental Control Regulation No. 61-15, "Certificate of Need for Health Facilities and Services" effective May 25, 2012. This application fully satisfies the stipulated criteria for this type of project and is fully consistent with the 2020 South Carolina Health Plan (enacted March 13, 2020 for all by Chapter 3, which was enacted June 12, 2020) which includes specific standards relative to home health care services. The application fully describes the proposed project, documents the need, and demonstrates the financial viability of the project.


**Bishop Gadsden Episcopal Retirement Center**

Bishop Gadsden Episcopal Retirement Center has opposed our Spring Street Health Center CON on grounds that the Application does not comply with the 2020 South Carolina Health Plan, the project review criteria, and the applicable regulations in Reg. 61-15. However, Bishop Gadsden provides no evidence or reasons on why they believe the Application does not comply.

The Spring Street CON submission complies with the South Carolina Department of Health and Environmental Control Regulation No. 61-15, "Certificate of Need for Health Facilities and Services" effective May 25, 2012. This application fully satisfies the stipulated criteria for this type of project and is fully consistent with the 2020 South Carolina Health Plan (enacted March 13, 2020 for all by Chapter 3, which was enacted June 12, 2020) which includes specific standards relative to home health care services. The application fully describes the proposed project, documents the need, and demonstrates the financial viability of the project.

Thank you for your attention to this matter.

Best Regards,



Timothy Walsh  
Senior Financial Analyst  
Liberty Senior Living  
[TWalsh@libertyseniorliving.com](mailto:TWalsh@libertyseniorliving.com)  
(910) 332-1982

**Spring Street Senior Housing OPCO, LLC d/b/a Spring Street Health Center - CON #2827  
- Response to Affected Person Opposition Letters**

Timothy J. Walsh <TWalsh@libertyseniorliving.com>

Thu 2/11/2021 4:22 PM

To: Coninfo, Coninfo <Coninfo@dhec.sc.gov>; Hyman, Jennifer J. <HYMANJJ@dhec.sc.gov>

📎 1 attachments (139 KB)

Spring Street\_Health Center\_Response to Affected Person Opposition Letters - 2-11-21 (FINAL).pdf

**\*\*\* Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\***

Good afternoon Ms. Hyman:

On behalf of Spring Street Senior Housing OPCO, LLC (the “the Applicant”), please find attached a response to the three affected person/opposition letters received by the Certificate of Need (“CON”) Program.

If I can provide any further details, please let me know. Thank you!

Regards,

**Timothy J. Walsh**

Senior Financial Analyst

*Liberty Senior Living*

Office: 910-332-1982

Mobile: 910-512-9191

[TWalsh@libertyseniorliving.com](mailto:TWalsh@libertyseniorliving.com)

2334 S. 41<sup>st</sup> Street, Wilmington, NC 28403

Visit our website at [www.LibertySeniorLiving.com](http://www.LibertySeniorLiving.com)



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**Fw: CON Spring Street Senior Housing #2827**

Murdock, Margaret P. <murdocmp@dhec.sc.gov>

Wed 3/17/2021 6:49 PM

To: Goins, Arnisha D. <goinsad@dhec.sc.gov>

**Maggie Parham Murdock**

**Director**

Certificate of Need Program

Healthcare Quality, Bureau of Planning and Construction

**S.C. Dept. of Health & Environmental Control**

Office: (803) 545-4492

Mobile: (803) 360-5770

Connect: [www.scdhec.gov](http://www.scdhec.gov) [Facebook](#) [Twitter](#)

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**From:** Lynne Kerrison, CFO <Lynne.Kerrison@bishopgadsden.org>

**Sent:** Wednesday, March 17, 2021 2:58 PM

**To:** Murdock, Margaret P. <murdocmp@dhec.sc.gov>; Eubank, Louis W. <EUBANKLW@dhec.sc.gov>

**Cc:** lcrum@burr.com <lcrum@burr.com>; Sarah Tipton <Sarah.Tipton@bishopgadsden.org>; Aaron Roop, Vice President of Operations <Aaron.Roop@bishopgadsden.org>

**Subject:** CON Spring Street Senior Housing #2827

**\*\*\* Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\***

I am letting this group know that Bishop Gadsden filed paperwork for our opposition to this CON application via email and hard copy Wednesday March 17, 2021. If for some reason the email or hard copy does not arrive, please contact me as soon as possible.

Lynne Kerrison

*Lynne Loring Kerrison CPA, CFO*

*Bishop Gadsden Episcopal Retirement Community  
1 Bishop Gadsden Way  
Charleston, SC 29412*

*843-406-6298 (o)*

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# BISHOP GADSDEN



March 17, 2021

Ms. Margaret P. Murdock  
Director, Certificate of Need Program  
Mr. Louis Eubank  
Chief, Health Quality, Bureau of Planning and Construction  
Bureau of Health Facilities and Services Development  
S.C. Department of Health and Environmental Control  
301 Gervais Street  
Columbia, South Carolina 29201

Re: Charleston Co. Nursing Home certificate of Need Application #2827, Spring Street Senior Housing OPCO, LLC d/b/a Spring Street Health Center—Matter 2827:

Dear Ms. Murdock and Mr. Eubank:

Bishop Gadsden Episcopal Retirement Community is submitting this letter of opposition as an affected person to the above Certificate of Need Application for a new 23-bed non-institutional nursing home (application) to be located at 194 Spring Street, Charleston, South Carolina 29403. We received the “deemed complete” letter yesterday (March 16) and reserve the right to make additional comments.

The verbatim stated goal of the Certificate of Need Act reads as follows: *“The purpose of the Act is to promote cost containment, prevent unnecessary duplication of health care facilities and services, guide the establishment of health facilities and services which will best serve public need and ensure high quality services are provided in health facilities in this State.”*

The Spring Street Health Center application does not advance any of the stated objectives in the purpose of the CON Act. Its proposed nursing home would be a duplication of readily available services requiring unnecessary healthcare expenditures without compelling evidence of the ability to serve the public need and the community around it. With the owner’s affiliates’ average star quality rating of less than 3 stars, their record in other states does not support the goal of ensuring high quality services are provided in this state.

Furthermore, the application is deficient in the following regulatory requirements, including the four project review criteria identified in the “deemed complete” letter, as evidenced in the attached supporting documentation. Substantively, the application does not:

- Properly document and demonstrate the need
- Meet the required staffing and financial criteria
- Develop support and relationships throughout the community
- Meet numerous regulations and review requirements

1 Bishop Gadsden Way | Charleston, SC 29412  
843.762.3300 *phone*  
843.762.6119 *fax*  
www.BishopGadsden.org  
*A Life Care Retirement Community*

Ms. Margaret P. Murdock  
Page 2  
March 17, 2021

Bishop Gadsden, established in the city of Charleston in 1850 and on our present site on James Island since 1987, is a well-respected long-term care provider in the Charleston area with a long history of excellent quality and commitment to service in the community. Our facility is located within 5 miles of the proposed site of this applicant.

We are available at your request to answer any questions you may have about our opposition. You can contact us at (843-762-3300) or our attorney, Liz Crum (803-753-3240). We respectfully request this application be denied.

Sincerely,



Sarah E. H. Tipton  
President/CEO

Enclosures

cc: Liz Crum, Esq., Burr & Forman, LLP

BISHOP GADSDEN

# Opposition to Liberty Health – Spring Street *Charleston, SC*



# Opposition Overview

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- Bishop Gadsden opposes Spring Street Senior Housing OPCO, LLC's (Spring Street)( A/K/A Liberty Health) Certificate of Need (CON) application to construct a nursing facility in Charleston
- DHEC should deny the CON application because Spring Street failed to completely and sufficiently address the Project Review Criteria (PRC) of **Reg. 61-15 Certification of Need for Health Facilities:**
  - Spring Street did not:
    - Properly document and demonstrate need
    - Meet required financial and staff related criteria
    - Develop relationships and support throughout the community
    - Meet numerous regulations and review criteria

# Failure to Document Community Need

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SECTION 802. CRITERIA FOR PROJECT REVIEW (2.)

## Failure to Document Need

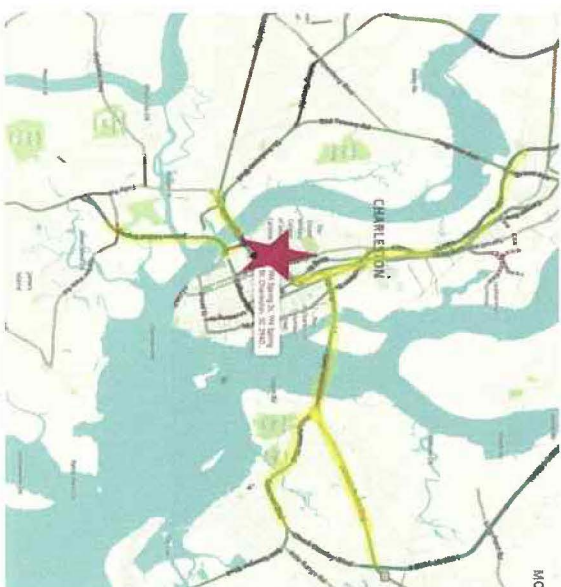
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- Spring Street failed to address points required *within Part B – Question 11*, relying only on the State Health Plan’s need and failing to include:
  - Documentation to support need within the target population, the county per the Plan.
  - Discussion of existing facilities and services within the service area.
  - The projects will **unnecessarily duplicate** existing entities and services.
  - Need methodologies and projected utilization are flawed.
- It appears that Spring Street has not used data to develop a credible need, and has not properly assessed nor does not fully understand the local nursing home market.

# Failure to Document Need

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- The target population per Spring Street CON is the County Of Charleston
- Charleston County is 1358 square miles-(916 square miles of land and 442 square miles of water
- The largest county in South Carolina
- Spring Street is located on the peninsula on an extremely busy thoroughfare
  - The only access to the thoroughfare is via the interstate or bridges
  - The area is highly congested
  - The area is prone to extensive flooding
- This location is not easily accessible by the vast majority of the residents of Charleston County
- Spring Street does not address parking for staff, residents, families, visitors or vendors, etc. (this area of Charleston has an inadequate supply of parking) and zoning requirements in Charleston mandate parking by use. While Spring Street is properly zoned for use, there is no mention of its meeting the parking requirements or having an exemption.
- The target population is not clearly identified as to size, location, distribution and socioeconomic status and does not provide evidence that services support this target population**



## Failure to Document Need

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- Spring Street will not be serving the residents of Charleston County living the closest to the facility. The population in the zip code (29403) of the proposed Spring Street skilled facility represents 58% of the residents over the age of 65 with an annual income below \$50,000 (Exhibit 13 attached)*
- Can someone with an income of \$50K actually afford to be at facility?**

# Distribution (Accessibility)

---

SECTION 802. CRITERIA FOR PROJECT REVIEW (3.)

# Community Need—Duplication of Services

---

- Decline in Nursing Facility occupancy is an industry wide problem.
- Life expectancy in the United States dropped during the first half of 2020 and as data is compiled for remaining months of 2020 it has the potential drop further. This is the largest drop since the 1940's (Exhibit 6 attached)
- According to the NIC Skilled Nursing Monthly Report data through November 2020 states that total occupancy fell to a new low of 74.2% (Exhibit 7 attached)
  - South Carolina fell to an average of 74.9% in 2020 (Exhibit 8 attached)
  - Charleston County fell to an average of 76.4% in Q4 2020
- Industry trends for average length of stay is steadily decreasing. The National SNF average length of stay (ALOS) is trending down as evidenced by Medicare cost reports.



# Community Need-Duplication of Services

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- Managed Medicare plans utilization is increasing while private pay and traditional Medicare is decreasing. Revenue per patient day (RPPD) under Managed Medicare Plans is significantly less than private pay and traditional Medicare
- NIC Skilled Nursing Monthly Report includes graphs to support these trends (Exhibit 11 attached).
- Demand for Nursing Facilities is now shifting to Home Health and Home Care services as demonstrated in Exhibit 9 and Exhibit 10 (attached).
- During 2020 Home Health Agencies has significant growth in census
- Home Care Services have been developed to offer similar services as Nursing Facilities in a home setting
- Developing technologies are supporting ability for patients to recover and live in the home setting without the need for an intervening stay at a nursing home.

# Community Need-Duplication of Services

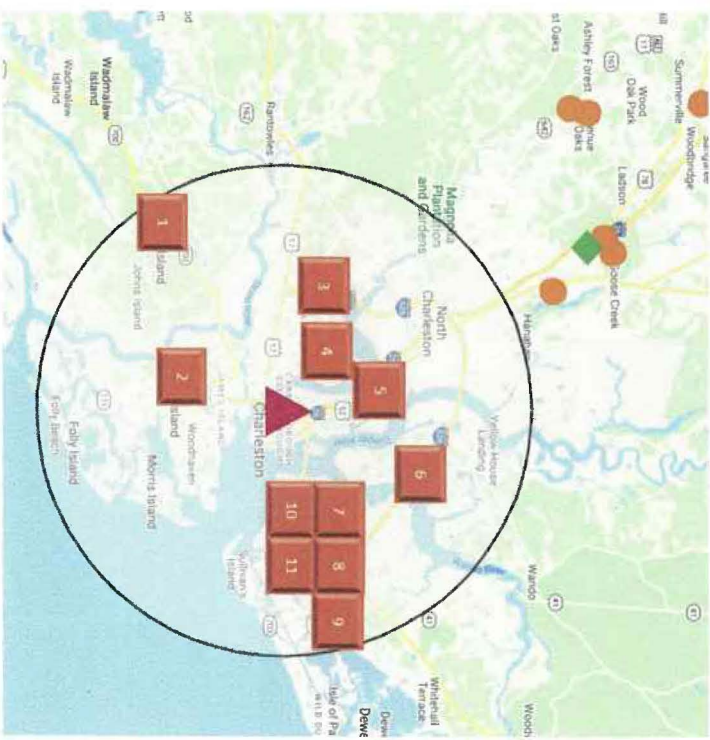
- This chart (Exhibit 12 attached) uses current data and demonstrates sufficient beds to cover needs in Charleston County for Medicare and Private Pay
- The conservative estimate (Column A) puts current excess capacity at 1,120 beds and scenarios based on current trends project excess capacity to be as great as 4,569 beds (Column E)
- Data compiled utilizing Medicare cost reports

	A	B	C	D	E
<b>Occupancy</b>	0%	90%	80%	75%	AUDS
Total Medicare licensed beds	1483				1483
Calendar days	365				365
total patient days	541,295				541,295
Medicare payer mix	19.80%				19.80%
Medicare days	107,176				107,176
<b>Medicare Average length of stay</b>	29				15
Annual Medicare Capacity	3,696	1,335	1,186	1,112	7,145
Average beds in use	-	148	297	371	-
Beds available					
Total 2019 Charleston County discharges to SNF	2,576				2,576
Excess bed capacity	1,120				4,569

\*\*\*\*\*Spring Street will only serve Medicare residents and Private Pay  
 \*\*\*\*\* Spring Street will not serve Medicaid patients  
 \*\*\*\*\* National trend for Occupancy to decrease—Home Health to increase  
 \*\*\*\*\*Industry trend is for average length of stay to decrease

# Community Need-Duplication of Services

- There are currently 11 established nursing facilities within a 10 mile radius of the Spring Street project
- The current providers represent 1184 beds and are geographically dispersed to serve the population
- Each of these facilities has excess capacity to serve the surrounding population
- Represents current nursing facilities in a 10-mile radius of proposed site
- Represents proposed site at 194 Spring Street



**This Clearly demonstrates duplication of Services**

# Community Need-Duplication of Services

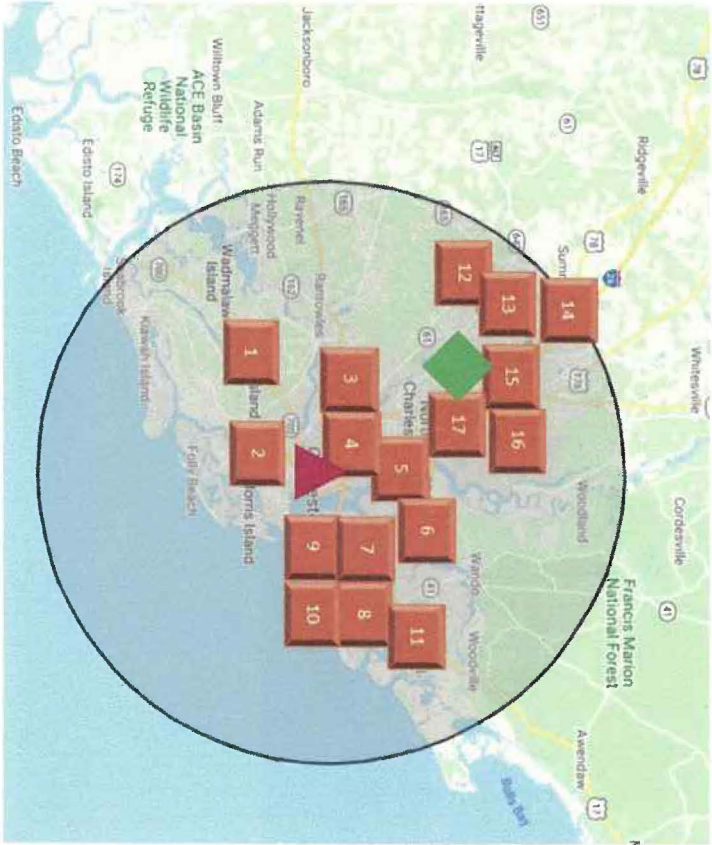
□ There are an additional six facilities and one additional facility in advanced planning stages that represent an additional 792 beds within a 20 Mile Radius of the Spring Street project

■ Represents current nursing facilities in a 20-mile radius of proposed site

▲ Represents proposed site at 194 Spring Street

◆ Represents nursing facility currently in planning (North Charleston Post-Acute)

**This Clearly demonstrates duplication of Services**



# Community Need

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## *Adverse Effects on other Facilities*

Section 802 (23) (a) The impact on the current and projected occupancy rates or use rates of existing facilities and services should be weighed against the increased accessibility offered by the proposed services

**The Spring Street project would adversely effect the existing facilities in Charleston and as discussed further below and offers NO increased accessibility**



# Failure to Demonstrate Provisions for Access/Indigent Care

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SECTION 802 CRITERIA FOR PROJECT REVIEW 31

# Indigent Care Support

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Spring Street failed to provide historical performance from other facilities in Spring Street's consolidated group for evidence of adequate provisions for access/indigent care.

The indigent care plan outlined in the application would most likely provide care for less than 5 residents a year:

- Budgeted charity care of \$11,756 year 1, \$20,064 year 2 and \$20,775 year 3 is depicted in the CON application. The net revenue per patient day is \$348 year 1, \$351 year 2, and \$358 year 3. This equates to a total of 33 indigent care days year 1, 57 days year 2 and 56 days year 3.
- The estimated population of Charleston County age 65 and with an income level below \$50,000 is **20,610** in 2020.
- With the forecasted population growth depicted in Spring Street's application of 17.89% by the year 2025, it should be assumed that the population of the income level \$50,000 and below in Charleston County will increase to **24,300** residents..

**Spring Street does not demonstrate commitment to support indigent and low-income residents of the Charleston community as required. (802-3 (f/g)) (31)**



# Lack of Evidence of Community Support Acceptability

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SECTION 802. CRITERIA FOR PROJECT REVIEW 4.

# Community Support

- Corporate headquarters of Spring Street Health Center are located in Florida and it is a Delaware LLC.
- The majority of their other facilities are outside the state of SC.
- 40% of the facilities Spring Street states (pg. 12 of the CON application) will transfer patients to the Spring Street location have a skilled nursing facility attached to their Assisted Living and Memory Care facilities and most likely will not discharge to Spring Street.
- The Medical University of South Carolina transfer agreement support letter states “we will consider entering into a transfer agreement...”
- The two letters from local physicians and the mayor state a 25 bed facility---this is a 21 room facility with two double occupancy rooms, totaling 23 beds-NOT 25



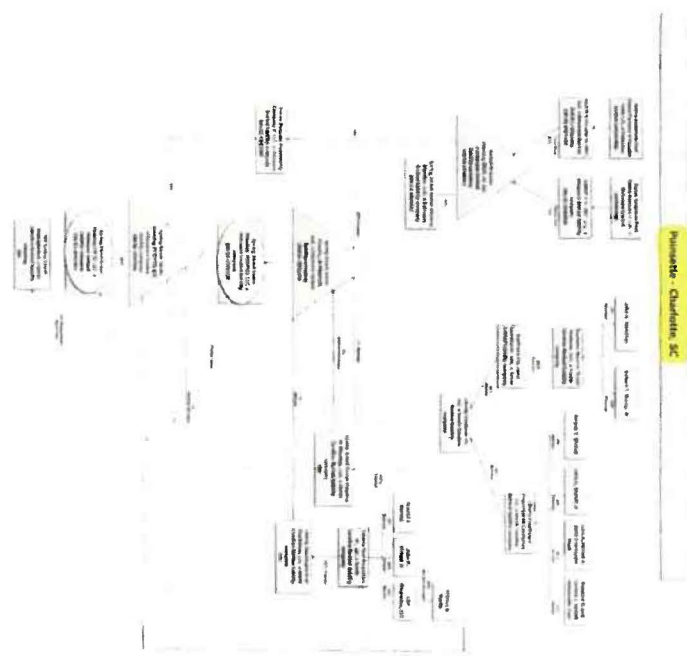
# Community Support

The organizational chart provided in the Spring Street Senior Housing OPCO, LLC CON application is labeled

- POINSETTE – CHARLOTTE SC

Spring Street did not include an appropriate organizational chart

The regulations' require a list of names, addresses, % of ownership, person responsible and attorneys' representing the proposal---this information is not depicted clearly on the organizational chart PART A, ¶ 7.



# Staff Resources

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# Staffing Resources

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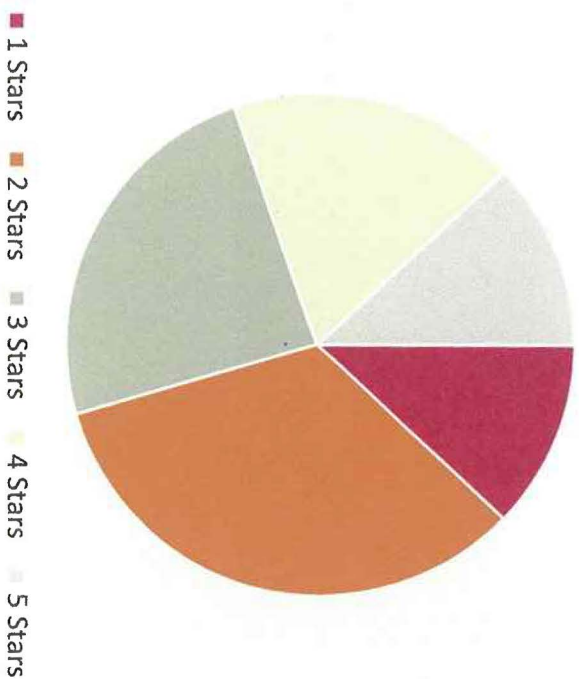
- Liberty will need experienced, qualified staff for care of the targeted population
  - Potential to adversely impacting existing care providers as Spring Street's recruitment will draw highly qualified staff from existing care providers
- Charleston Regional Business Journal* (June 26<sup>th</sup>) details significant challenges currently facing the region for recruitment of cooks, wait staff, and utility/dishwashers and qualified medical staff (Exhibit 1 attached)
- Charleston Region historical and forecasted occupational cluster employment trends depicts medical (nurses and nurse aides) as the third highest growth in job needs by 2023. (Exhibit 2 attached)
- South Carolina is experiencing a critical shortage of nurses and it ranked fourth in the United States with greatest forecasted deficit (Exhibit 3 attached)

# Staffing Resources

- It is possible that Liberty's reputation will result in Challenges recruiting the experienced, qualified staffing needed
- Currently Liberty operates 15 facilities that are 1 or 2 Stars as rated by CMS

Average Rating	2.85
1 Stars	4
2 Stars	11
3 Stars	8
4 Stars	6
5 Stars	4

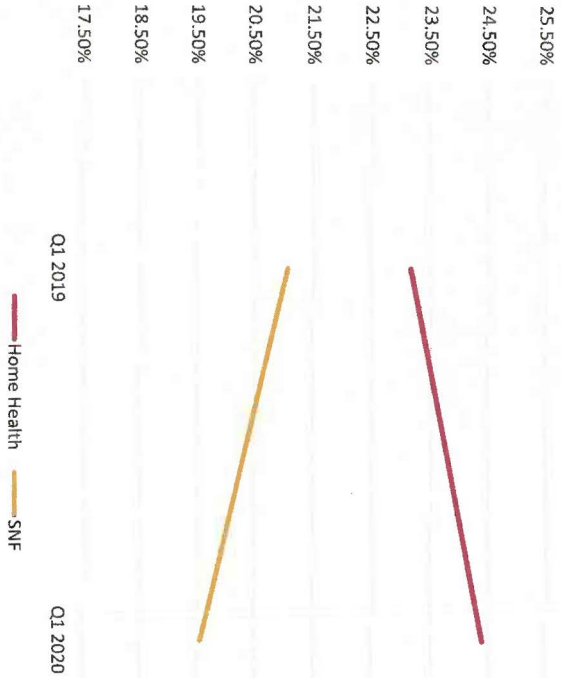
Liberty Star Rating Distribution



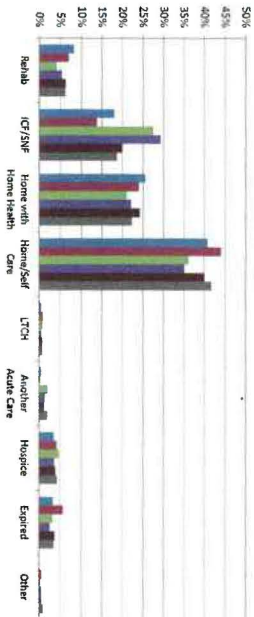


# Exhibit 9

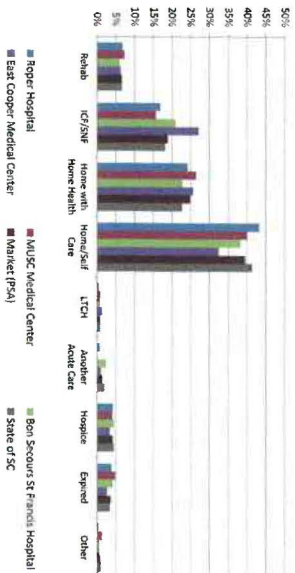
## Discharge Disposition Q1 '19 vs Q1 '20



PSA Bishop Gadsden: YE 2019Q1 Discharge Status Conversion Rate Compared to Market and State, Ages 65+



PSA Bishop Gadsden: YE 2020Q1 Discharge Status Conversion Rate Compared to Market and State, Ages 65+





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January 15, 2021

**Via E-mail (murdocmp@dhec.sc.gov)**

Margaret P. Murdock  
Director, Certificate of Need Program  
Dept. of Health and Environmental Control  
301 Gervais St.  
Columbia, SC. 29201



**Re: Spring Street Senior Housing OPCO, LLC (d/b/a Spring Street Health Center)  
DHEC File # 2827 and Bishop Gadsden Episcopal Retirement Center  
Request For Affected Person Status**

Dear Ms. Murdock:

On behalf of our client, Bishop Gadsden Episcopal Retirement Center (BGERC or Bishop Gadsden), which is located in Charleston County, the service area for Spring Street Senior Housing OPCO, d/b/a/ Spring Street Health Center (Spring Street), CON application for a 23-bed non-institutional nursing home (Application), we would like to submit a request for affected person status on behalf of BGERC. Since Bishop Gadsden also provides nursing home services, Bishop Gadsden is an affected person pursuant to S.C. Code Ann. § 44-7-120(1). Please accept this request, pursuant to S.C. Code Ann. §§ 44-7-200 and 44-7-210 and S.C. Code Ann. Regs. 61-15, Section 103(1) that Bishop Gadsden be considered an affected person in the above CON project.

BGERC is opposing this project on the following grounds and reserves the right to provide additional grounds of opposition after we receive the "deemed complete" letter establishing the project review criteria that are most important in DHEC's review of the Spring Street Application. The Application does not comply with the 2020 South Carolina Health Plan, the project review criteria, and the applicable regulations in Reg. 61-15.

Margaret P. Murdock, Esq.  
Director, Certificate of Need Program  
Dept. of Health and Environmental Control  
January 15, 2021  
Page 2

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We request that we be notified when the Application is deemed complete, be provided a copy of that letter, and request that we be notified with any other actions, including requests for additional information that the Department takes regarding this project.

Thank you for your attention to this matter. Best Wishes for a New Year.

Very truly yours,



M. Elizabeth Crum

MEC/dmo



# Lutheran Homes of South Carolina

*promoting the well-being of older adults*

500 Ministry Drive  
Irmo, SC 29063-2366  
o: 803.749.5110  
f: 803.749.5111  
w: lutheranhomessc.org

Mr. Louis W. Eubank, Chief  
Bureau of Health Facilities and Services Development  
Office of Certificate of Need  
S.C. Department of Health and Environmental Control  
2600 Bull Street  
Columbia, SC 29201

January 15, 2021

RE: Certificate of Need Applications – Affected person/organization opposition letter per DHEC Regulation 61-15 Chapter 1, Section 103 relative to the following CON Applications:  
CON #2827 Spring Street Senior Housing Opco dba Spring Street Health Center

Dear Mr. Eubank:

We are writing to protest the above referenced Certificate of Need Applications which have been put forward by Liberty Senior Living. We feel this application should be denied for the following reasons:

- Duplication of effort in markets that are already saturated with skilled, Medicare nursing beds which can be clearly established based upon occupancy data from the impacted communities;
- Unrealistic projections relative to the availability of the labor force needed to staff this facility as noted in the attached documentation.
- Lack of local support for this programming as key information from the potential referral sources is not included in the applications nor are there any letters of support or agreement from the referral communities noted;
- Lack of quality indicator and survey history data in the application.
- Listing of Franke at Seaside as a referral source; (Franke has a SNF operation that serves our own campus.)

We ask that the DHEC bring pause to the process of approval of this applicant to allow the Department to explore the issues that have been expressed and make a fully informed decision on this application to better serve the needs of the citizens of South Carolina and the long term/post- acute care system that has been developed to do so.

Sincerely,

Frank Shepke  
President & CEO

Enc. – Documentation supporting reasons for denial



Comments to DHEC Opposing Liberty Senior Living (Spring Street Health Center) CON application  
#2827 in South Carolina - January 11, 2021

Upon review of the re-submitted CON application by the (Spring Street Senior Housing Opco dba Spring Street Health Center for application #2827 it is our belief that the proposed CON from Spring Street health will promote an unnecessary duplication of health care facilities and services, will not best serve the public needs and are incomplete in terms of critical information needed for full assessment by the state. It is also our belief that the proposed new nursing facility does not establish nor provide sufficient community need documentation, does not address an adequate plan for staffing resources and does not speak to the record of the applicants ability to provide quality to the skilled nursing population they seek to serve. They also create an economic hardship for existing providers due to changes in the long term care environment which has been exacerbated by the COVID-19 Pandemic and will over extend an already challenged system in terms of health system resources.

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The applicant notes the following:

1. The applicant notes that it will work with local health care providers/practices to secure referrals and has sent out letters seeking support. Local support is one of the most critical elements for the success for the type of operations they propose and it should be questioned why no support letters or memoranda of understanding have been included from sources they cite as referrals.
2. The applicant notes the Franke at Seaside facility which is a Lutheran Homes campus would serve as a referral source. In fact, Franke at Seaside maintains its own 44 bed skilled nursing unit that is sized to meet the needs of the Franke Campus and in fact Franke is a continuing care retirement community (CCRC) and the nursing center was designed to operate to meet the skilled nursing needs of Franke residents. Lutheran Homes has not provided any support to the this CON applicant nor was it asked to be a referral source for such nor would we agree to do so.
3. The need for further Medicare licensed and other skilled nursing beds in this market has not been established. In fact as noted in the June 2016 report by MedPac (the Medicare Payment Advisory Committee) "*Health Care Spending and the Medicare Program*" the following are critical facts:
  - Medicare spending on Skilled Nursing Facility (SNF) payments as a percentage is only 5% of total Medicare spending and has been flat from the period of 2006-2014; (page 4) see attached
  - Aggregate spending for Fee for Service (FFS) Medicare beneficiaries has actually declined between 2011-2014; (page 5) see attached

MedPAC (Medicare Payment Advisory Committee: A Data Book – Health Care Spending and the Medicare Program - June 2016 <http://www.medpac.gov/docs/default-source/data-book/june-2016-data-book-health-care-spending-and-the-medicare-program.pdf>

4. The applicant has not demonstrated a plan for the sufficient recruitment of qualified staff that is realistic given the shortage of supply of qualified staff in the Charleston market. Any recruitment plan will involve the potential solicitation and recruitment of staff from existing facilities and further dilute the existing labor pool to the detriment of patient care for existing providers in their target markets. In conclusion it is for these reasons related to regulation, conformance with CON program application standards and conditions of the long-term care system in the state that this application #2827 should be denied by the South Carolina DHEC.

# APPENDIX A

## Skilled Nursing Bed Analysis





# South Carolina Revenue and Fiscal Affairs Office

## Population Counts and Projections 2000-2030

County	April 1, 2010 Census	July 1, 2015 Projection	July 1, 2020 Projection	July 1, 2025 Projection	July 1, 2030 Projection
Charleston	350,209	360,600	370,900	383,800	396,700
Lexington	262,391	277,100	291,800	312,500	333,200
Richland	384,504	404,400	424,300	440,100	456,000
<b>South Carolina Totals</b>	<b>4,625,364</b>	<b>4,823,200</b>	<b>5,020,800</b>	<b>5,235,500</b>	<b>5,451,700</b>

Source: U.S. Census Bureau, U.S. Census Bureau, Census 2000 and Census 2010, S.C. Department of Health and Environmental Control - Vital Records Department. Population projections calculated by South Carolina Department of Revenue and Fiscal Affairs - Health and Demographics Section. <http://abstract.sc.gov/chapter14/pop5.html>

## South Carolina Population Age 65 and Over (1950-2010)

County	2010	% Change 2000-2010
Charleston	44,721	21.3%
Lexington	32,111	46.0%
Richland	37,541	19.3%
<b>South Carolina Totals</b>	<b>631,874</b>	<b>30.2%</b>

Source: U.S. Census Bureau, Census of Population and Housing 1950-2010. <http://abstract.sc.gov/chapter14/pop21.html>

**Extrapolation of Census Projections for Aged 65+:** To further address the questions involving the growth of the aged 65+ population in the target counties impacted by the Liberty Senior Living CON application, Lutheran Homes has taken U.S. Census estimates of total population growth in these counties through 2030, and extrapolated the growth rate for seniors aged 65+ based upon the 2010 actual census numbers and the U.S Census projections for the total population in these counties beginning in 2015 through 2030. The formula currently used by the State to determine bed need (population of 65+/1,000 \* 39) was applied to these estimates using the forecasted census growth rates. The following chart forecasts the future bed need based upon these projections and the current calculation method.

65+ Population Estimates	2010	2015	Bed need	2020	Bed need	2025	Bed need	2030	Bed need
Lexington	32,111	33,911	1,323	35,710	1,393	38,243	1,491	40,776	1,590
Richland	37,541	39,484	1,540	41,426	1,616	42,969	1,676	44,522	1,736
Charleston	44,721	46,048	1,796	47,363	1,847	49,011	1,911	50,658	1,976
Total Population Estimates	2010	2015	Growth Rate	2020	Growth Rate	2025	Growth Rate	2030	Growth Rate
Lexington	262,391	277,100	5.61%	291,800	5.30%	312,500	7.09%	333,200	6.62%
Richland	384,504	404,400	5.17%	424,300	4.92%	440,100	3.72%	456,000	3.61%
Charleston	350,209	360,600	2.97%	370,900	2.86%	383,800	3.48%	396,700	3.36%

**Source:** U.S. Census Bureau, U.S. Census Bureau, Census 2000 and Census 2010, S.C. Department of Health and Environmental Control - Vital Records Department. Population projections calculated by South Carolina Department of Revenue and Fiscal Affairs - Health and Demographics Section.

**Source:** U.S. Census Bureau, Census of Population and Housing 1950-2010.

**Source:** Lutheran Homes of South Carolina Internal Research: Extrapolated 65+ population projections for Lexington, Richland and Charleston counties based upon 2010 census of persons 65+ by county using U.S. Census estimates for total growth by county for the years 2015, 2020, 2025 and 2030.

**State Health Plan Bed Need Calculation:** Based upon the calculations offered by Lutheran Homes of South Carolina (LHSC) using U.S. Census calculated growth rates by County and extrapolated for the population aged 65+ which are conservative estimates based upon recent historical growth, there is a disparity in the total bed needs by the year 2020 as exhibited in the following table. Although LHSC does not dispute the logic of the State Health Plan, it should be noted again that this is a conservative estimate for planning purposes and reflects the fact that differing assumptions will generate different estimates. Given these projections, the only counties that would demonstrate a need for additional beds by 2019-2020 based upon the current 2017 state inventory are a marginal amount in Lexington County (133 beds) and a



greater amount in Charleston county (449 beds). In fact this analysis would indicate that there is the potential for over bedding in Richland County by 2019-2020 by (168 beds).

65+ Population Estimates	2019 Bed needs from current State Health Plan	2020 Bed needs from LHSC Projections using U.S. Census extrapolated data as calculated by LHSC	Difference in Projected Need between State Health Plan and U.S. Census extrapolated data as calculated by LHSC	Current existing Beds from State Health Plan	2020 Bed need difference from current State Health Plan bed inventory using U.S. extrapolated data as calculated by LHSC
Lexington	1,915	1,393	-522	1,260	133
Richland	2,198	1,616	-582	1,784	-168
Charleston	2,756	1,847	-909	1,398	449

**Conclusion:** The purpose of this analysis is to further underscore the vast differences in potential population projections and bed needs based upon the types of assumptions utilized. Although the State health plan is not disputed here, it should be noted that data and projections from a proprietary source such as that offered by the Liberty Senior Living Group should be closely scrutinized to understand the assumptions that led to the conclusions. The U.S. Census provides the most time tested and reliable methods for understanding and projecting population estimates. This analysis again is based upon current and projected U.S. Census data that was extrapolated for the 65+ population of the State.

## Census Tables

# South Carolina Population Age 65 and Over (1950-2010)

County	1950	1960	1970	1980	1990	2000	2010	% Change 2000-2010
Abbeville	1,624	1,867	2,121	2,821	3,520	3,842	4,203	9.4%
Aiken	3,306	4,432	6,318	10,023	13,796	18,287	24,619	34.6%
Allendale	804	900	937	1,281	1,486	1,421	1,375	-3.2%
Anderson	5,139	6,923	9,227	14,348	19,732	22,627	28,329	25.2%
Bamberg	1,081	1,352	1,470	2,005	2,165	2,314	2,565	10.8%
Barnwell	1,258	1,303	1,602	2,111	2,489	2,962	3,173	7.1%
Beaufort	1,554	1,837	2,286	5,303	10,664	18,754	33,032	76.1%
Berkeley	1,477	1,805	2,302	4,583	7,453	11,261	17,794	58.0%
Calhoun	981	973	1,083	1,411	1,768	2,102	2,470	17.5%
Charleston	7,621	10,390	13,638	21,442	29,881	36,858	44,721	21.3%
Cherokee	2,034	2,592	3,232	4,280	5,778	6,517	7,442	14.2%
Chester	2,142	2,493	2,760	3,550	4,293	4,317	4,835	12.0%
Chesterfield	1,911	2,370	2,765	4,027	4,921	5,120	6,332	23.7%
Clarendon	1,550	1,839	2,021	2,978	3,787	4,538	5,867	29.3%
Colleton	1,704	2,073	2,582	3,546	4,394	4,928	6,078	23.3%
Darlington	2,456	3,122	3,966	5,946	7,417	8,158	9,793	20.0%
Dillon	1,486	1,754	2,146	2,928	3,565	3,545	4,159	17.3%
Dorchester	1,275	1,611	1,978	3,669	6,136	8,791	13,849	57.5%
Edgefield	1,205	1,260	1,346	1,789	2,250	2,669	3,524	32.0%
Fairfield	1,466	1,617	1,859	2,441	3,041	3,094	3,565	15.2%
Florence	3,676	4,942	6,218	9,482	12,723	14,837	18,017	21.4%
Georgetown	1,488	1,905	2,316	3,871	5,954	8,354	11,920	42.7%

Greenville	8,629	13,109	17,989	27,391	38,063	44,573	57,581	29.2%
Greenwood	2,473	3,328	4,270	6,585	8,224	9,075	10,544	16.2%
Hampton	1,138	1,255	1,453	2,044	2,249	2,595	2,829	9.0%
Horry	2,247	3,368	4,998	9,395	18,229	29,470	46,070	56.3%
Jasper	654	919	1,010	1,535	1,949	2,269	2,769	22.0%
Kershaw	2,003	2,430	2,721	3,835	5,292	6,796	8,797	29.4%
Lancaster	1,815	2,445	3,159	5,182	6,709	7,413	11,737	58.3%
Laurens	2,937	3,493	4,272	6,015	7,805	9,168	9,988	8.9%
Lee	1,177	1,406	1,473	1,865	2,269	2,504	2,596	3.7%
Lexington	2,786	3,933	5,382	9,581	14,897	21,989	32,111	46.0%
McCormick	745	758	753	858	1,162	1,645	2,449	48.9%
Marion	1,538	2,019	2,491	3,435	4,240	4,298	4,852	12.9%
Marlboro	1,710	1,931	2,231	3,333	3,753	3,550	3,779	6.5%
Newberry	2,449	2,923	3,345	4,458	5,123	5,323	5,959	11.9%
Oconee	2,245	2,771	3,546	5,291	7,905	10,311	14,106	36.8%
Orangeburg	3,724	4,649	5,771	8,359	10,547	12,091	13,734	13.6%
Pickens	2,355	3,335	4,449	7,044	10,484	12,616	15,993	26.8%
Richland	7,849	11,584	14,901	20,542	27,133	31,475	37,541	19.3%
Saluda	1,271	1,406	1,503	2,022	2,350	2,778	3,195	15.0%
Spartanburg	7,878	10,925	14,519	21,350	28,785	31,740	38,227	20.4%
Sumter	2,771	3,738	4,833	6,795	9,621	11,760	13,921	18.4%
Union	1,924	2,397	2,773	3,659	4,494	4,670	4,769	2.1%
Williamsburg	1,786	2,252	2,624	3,674	4,438	4,856	5,039	3.8%
York	3,663	4,865	6,321	9,245	14,001	17,072	25,626	50.1%
<b>South Carolina</b>	<b>115,005</b>	<b>150,599</b>	<b>190,960</b>	<b>287,328</b>	<b>396,935</b>	<b>485,333</b>	<b>631,874</b>	<b>30.2%</b>

Source: U.S. Census Bureau, Census of Population and Housing 1950-2010.

## Status of Population Projections Based on the 2010 Census Data

Population projections are based on assumptions about the continuation of birth, death and migration trends measured from two census points into the future. The accuracy of projections depends on the extent to which future events unfold in a manner that mirrors these past observations. The population trends from 2000 to 2010 include the collapse of the housing market in 2008 and the lingering effects of the worst economic crisis since the 1930's. Population growth will likely be at very low levels for the next few years, but there is a lack of data available to measure the impact current economic trends will have on population growth: From 2008 to 2010 the number of births declined by 7.5%, the number of persons moving into South Carolina declined by 20.1%, and the number of legal immigration to the state declined by 12%. On June 27, 2011 the South Carolina Illegal Immigration Reform Act was signed into law. It requires employers to verify the legal status of new employees to ensure that illegal immigrants are not working in South Carolina. The number of illegal immigrants in the state is unknown.

South Carolina's population is aging; the median age in 2010 was 38 years, and was 23 years in 1960. Between 2000 and 2010 the age group 65 and over increased by 30%, compared to an increase by 41% in the age group 85 and over. People born between 1946 and 1963 (The Baby Boom Population) make up 24% of the total population and they started to turn 65 in 2011. Health and medicine is allowing more people to live past 85 years.

From 2000 to 2010 the state gained 613,352 persons; 201,282 from natural increase (number of births minus the number of deaths) and 412,070 from net migration (number of people moving to South Carolina minus the number of people leaving South Carolina). Natural increase accounted for all of the population growth from 1860 to 1970; from 1970 to 1980 natural increase accounted for 49% of total growth and has declined to 33% of growth from 2000 to 2010. The average number of deaths per year has increased from 18,600 in 1950 to 38,300 in 2010. The average number of births has remained fairly constant as the number of children per woman has decreased. In 1950 there was an average of 62,000 births and in 2010, an average of 58,500 births.

Births and deaths usually change gradually over time, but migration trends can lead to drastic changes from one decade to the next due to economic opportunities. Between 1970 and 1980 net in migration accounted for 51% of total population growth. Between 1980 and 1990 it accounted for 30% and between 2000 and 2010 for 67%. People move to South Carolina for jobs, school and retirement. Migration into the state from 1970 to 2010 has increased the number of persons born outside the state from 10% in 1970 to 41% in 2010. The percentage of people who changed residences between 2010 and 2011 (12%) was the lowest recorded rate since the Current Population Survey (U.S. Bureau of the Census) began collecting statistics on the movement of people in the United States in 1948.

Annual county population estimates produced by the U.S. Bureau of the Census and the state will be used to make corrections to the population projections. Estimates are



based on registered births and deaths from the S.C. Department of Health and Environmental Control, migration data from the IRS and group quarters population (people living in dorms, barracks, prisons and nursing homes) collected by the South Carolina Department of Revenue and Fiscal Affairs - Health and Demographics Section. As soon as data becomes available we will produce additional population projections. [Please click here for more information about population projections.](#)

## Population Counts and Projections 2000-2030

County	April 1, 2000 Census	April 1, 2010 Census	July 1, 2015 Projection	July 1, 2020 Projection	July 1, 2025 Projection	July 1, 2030 Projection
Abbeville	26,167	25,417	25,300	25,100	25,000	24,900
Aiken	142,552	160,099	165,600	171,200	176,800	182,500
Allendale	11,211	10,419	10,300	10,100	10,000	9,900
Anderson	165,740	187,126	193,300	199,500	209,000	218,500
Bamberg	16,658	15,987	15,800	15,700	15,400	15,200
Barnwell	23,478	22,621	22,400	22,200	22,100	22,000
Beaufort	120,937	162,233	175,900	189,500	202,400	215,300
Berkeley	142,651	177,843	187,800	197,700	208,400	219,100
Calhoun	15,185	15,175	15,200	15,200	15,100	15,100
Charleston	309,969	350,209	360,600	370,900	383,800	396,700
Cherokee	52,537	55,342	56,100	56,800	57,000	57,300
Chester	34,068	33,140	32,900	32,700	32,500	32,400
Chesterfield	42,768	46,734	47,800	48,900	49,600	50,300
Clarendon	32,502	34,971	35,600	36,300	37,400	38,600
Colleton	38,264	38,892	39,000	39,200	39,300	39,500
Darlington	67,394	68,681	69,000	69,300	69,900	70,500
Dillon	30,722	32,062	32,400	32,800	33,100	33,400
Dorchester	96,413	136,555	152,000	167,400	178,800	190,200

County	April 1, 2000 Census	April 1, 2010 Census	July 1, 2015 Projection	July 1, 2020 Projection	July 1, 2025 Projection	July 1, 2030 Projection
Edgefield	24,595	26,985	27,600	28,300	29,200	30,100
Fairfield	23,454	23,956	24,100	24,200	24,300	24,500
Florence	125,761	136,885	140,000	143,100	147,000	150,900
Georgetown	55,797	60,158	61,300	62,500	63,800	65,100
Greenville	379,616	451,225	473,300	495,400	518,800	542,300
Greenwood	66,271	69,661	70,600	71,500	73,100	74,700
Hampton	21,386	21,090	21,000	20,900	20,800	20,700
Horry	196,629	269,291	294,600	319,900	345,800	371,700
Jasper	20,678	24,777	26,000	27,300	28,000	28,800
Kershaw	52,647	61,697	64,400	67,200	70,000	72,800
Lancaster	61,351	76,652	81,700	86,700	91,000	95,300
Laurens	69,567	66,537	65,800	65,100	65,000	65,000
Lee	20,119	19,220	19,000	18,800	18,700	18,600
Lexington	216,014	262,391	277,100	291,800	312,500	333,200
McCormick	9,958	10,233	10,300	10,400	10,600	10,900
Marion	35,466	33,062	32,500	32,000	31,900	31,800
Marlboro	28,818	28,933	29,000	29,000	29,100	29,200
Newberry	36,108	37,508	37,900	38,200	39,000	39,800
Oconee	66,215	74,273	76,600	78,900	84,000	89,100
Orangeburg	91,582	92,501	92,800	93,000	93,500	94,100
Pickens	110,757	119,224	121,600	123,800	128,300	132,900
Richland	320,677	384,504	404,400	424,300	440,100	456,000
Saluda	19,181	19,875	20,000	20,200	20,300	20,400
Spartanburg	253,791	284,307	295,100	305,800	318,500	331,200
Sumter	104,646	107,456	108,200	108,900	109,200	109,500

County	April 1, 2000 Census	April 1, 2010 Census	July 1, 2015 Projection	July 1, 2020 Projection	July 1, 2025 Projection	July 1, 2030 Projection
Union	29,881	28,961	28,700	28,500	28,300	28,100
Williamsburg	37,217	34,423	33,800	33,100	33,000	32,900
York	164,614	226,073	248,800	271,500	296,100	320,700
<b>South Carolina</b>	4,012,012	4,625,364	4,823,200	5,020,800	5,235,500	5,451,700

**Source:** U.S. Census Bureau, U.S. Census Bureau, Census 2000 and Census 2010, S.C. Department of Health and Environmental Control - Vital Records Department. Population projections calculated by South Carolina Department of Revenue and Fiscal Affairs - Health and Demographics Section.





February 3, 2021

**Via Electronic Mail and U.S. Mail**

Ms. Margaret P. Murdock  
Certificate of Need Program  
South Carolina Department of Health  
and Environmental Control  
2600 Bull Street  
Columbia, SC 29201

RE: Nursing Home Certificate of Need Application #2827 Spring Street Senior Housing  
OPCO, LLC d/b/a Spring Street Health Care for the construction and establishment  
of a 23-bed skilled nursing facility in Charleston County - Affected Person  
Opposition Letter: NHC HealthCare/Charleston, LLC d/b/a NHC HealthCare,  
Charleston

Dear Ms. Murdock,

I am writing on behalf of NHC HealthCare/Charleston, LLC ("NHC") to notify the  
Department that NHC is an Affected Person, as defined in S.C. Code Ann. § 44-7-130(1)  
and S.C. Regs. 61-15, § 103.1, with respect to the above-referenced Certificate of Need  
Application.

NHC opposes this application on grounds that it does not comply with the purposes of the  
CON Act, applicable regulatory criteria, and standards in the State Health Plan. NHC  
reserves the right to raise any other grounds in its opposition to this application. NHC  
respectfully requests that DHEC conduct a project review meeting regarding this  
application.

Please contact me if you have any questions at 615-890-2020.

Sincerely,

**National HealthCare Corporation**

A handwritten signature in blue ink that reads "Dere R. Brown".

Dere R. Brown  
Director of Health Planning and Licensure/Certification  
Authorized Representative



# LIBERTY Senior Living

2334 S. 41<sup>st</sup> Street • Wilmington, NC 28403  
(910) 815-3122 • FAX: (910) 815-3111

February 11, 2021

Louis Eubank, MSW, MPH  
Director, Certificate of Need Program  
Jennifer Hyman  
Project Coordinator, Certificate of Need Program  
S.C. Department of Health and Environmental Control  
Mailing address:  
2600 Bull Street  
Columbia, SC 29201

SUBJECT: Response to Affected Persons/Opposition Letters received by the Certificate of Need Program concerning CON #2827, Spring Street Health Center Application (the "Application")

Dear Mr. Eubank and Ms. Hyman:

On behalf of Spring Street Senior Housing OPCO, LLC (the "the Applicant"), I am writing to respond to the three affected person/opposition letters received by the Certificate of Need ("CON") Program. The CON Program received opposition from the following organizations:

1. Lutheran Homes of South Carolina
2. National Healthcare Corporation - Charleston
3. Bishop Gadsden Episcopal Retirement Center

### *Lutheran Homes of South Carolina*

Lutheran Homes of South Carolina has opposed our Spring Street Health Center CON for the following (summarized) reasons:

- a. Duplication of effort in market
- b. Unrealistic projections relative to availability of the labor force
- c. Lack of local support including lack of support letters or agreement from referral communities
- d. Lack of quality indicator and survey history data
- e. Listing of Franke at Seaside as a referral source

The Applicant's responses to these comments follow the same correspondence as above (a-e).

- a. Lutheran Homes states on page 4 in Appendix A of its opposition letter that "The formula currently used by the State to determine bed need (is) (population of 65+/1000 \* 39)". This is not the current and accurate methodology according to the 2020 South Carolina Health Plan. The 2020 South Carolina Health Plans current methodology is as follows: A

ratio of 10 beds per 1,000 people in the population from age 65-74 and a ratio of 58 beds per 1,000 people in the population from age 75 and over.

Additionally, on pages 4 and 5 of Appendix A to its letter, Lutheran Homes provides its hypothetical disparity in the total bed needs. However, the numbers it provide in the table on page 5 do not accurately depict the current bed need from the 2020 SC Health Plan nor the correct current number of existing beds from the 2020 SC Health Plan. The Applicant is unaware where these numbers were taken from.

Nonetheless, taking into account the inaccurately used methodology, improper posting of bed needs, and incorrect listing of the number of existing beds recorded by Lutheran Homes on page 5 of their opposition letter, they still calculate a need in Charleston County of 449 nursing home beds. Lutheran Homes additionally states on page 5 "The State Health plan is not disputed here." According to the 2020 SC Health Plan, Charleston County has a need for 836 long-term care (nursing) beds.

The Applicant displayed in the CON application, and the 2020 SC Health Plan currently shows, the severe need for additional nursing home beds and that our project would not duplicate existing entities.

- b. As the Applicant displayed on page 19 of the CON application, the Liberty organization (affiliated entities of the Applicant) includes thirty-five nursing homes, eight assisted living facilities, two independent living communities, five Continuing Care Retirement Communities, and a home health and hospice company with twenty-nine locations serving various urban and rural counties in North Carolina, South Carolina, and Virginia and employing in excess of 5,000 people. The corporate office includes an in-house recruiting department that will assure Spring Street is properly staffed.

Spring Street will offer competitive pay and attractive benefits to recruit qualified staff including health insurance, life insurance, short and long-term disability insurance, 401(k) plan, and paid time off. Our in-house Human Resources staff periodically conducts salary surveys and adjusts to market demands as necessary. The facility will be active in the local community and interact consistently with area clinical training programs.

In addition, the Liberty organization has developed a number of strategies to enhance recruitment and retention of personnel, including:

- Flexible work schedules.
- Opportunities for advancement.
- Catch-a-Liberty Star recognition program
- Employee mentoring program
- Employee Years of Service recognition program
- Education / Tuition Assistance Program

- Annual staff satisfaction surveys
- Seminars, workshops, and other educational programs and encourage staff to stay abreast of the latest in geriatric nursing
- Recognition pins, employee bonuses, employee cookouts and parties, raffles, CNA Day and Nurses' Week
- Involvement of direct care staff in the quality assurance process
- Regular staff meetings to encourage employees to suggest improvements in all aspects of facility operations.

The Applicant does not anticipate any difficulties in recruiting the staff required for this proposed project. Liberty is also well versed in the Charleston market, having operated Shem Creek Health Center at South Bay at Mt. Pleasant (a 40-bed nursing home facility).

- c. Lutheran Homes states on page 1 of their opposition "local support is one of the most critical elements...and it should be questioned why no support letters have been included". Exhibit 8 of the Application presents a letter from Medical University of South Carolina (MUSC), which has expressed a willingness to enter into a Transfer Agreement with Spring Street Health Center should the project be issued a CON. Letters from physicians who support this project are presented in Exhibit 14 of the Application. Exhibit 24 includes community letters of support, which includes a letter from the Mayor of the City of Charleston. The Applicant believes they have presented ample support for this project in the Application and Exhibits.
- d. Lutheran Homes states on the cover page of its letter that the Applicant's "lack of quality indicator." The Applicant, however, provided extensive information in response to the Application requirements regarding the quality of healthcare services that will be provided. These answers can be found in the CON Application on pages 19-21. The Applicant additionally provided the Quality Assurance and Performance Improvement Plan for Spring Street Health Center, which can be found in Exhibit 15.

Lutheran Homes additionally stated on the cover page that the Applicant did not display "survey history data" in the Application. This proposal is for a new facility and therefore there is not any survey history data in the Application.

- e. Lutheran Homes is correct that the Applicant notes Franke at Seaside as a referral source in the Application. The Applicant listed all Assisted Living centers in the area, which includes Franke at Seaside. We respect Franke at Seaside's rejection as using Spring Street Health Center to refer any residents for nursing care. As they stated on page 1, they are currently sized to meet the needs of Franke residents. If that were to change and their nursing facility were to fill up, we would hope Franke at Seaside would seek the services of a brand new, state-of-the-art facility such as Spring Street Health Center that will be able to provide top-class care for the resident's needs. As stated in the Application, Spring Street Health Center will accept referrals of patients needing nursing home services without regard to race, sex, creed, color or national origin.



**NHC Healthcare Charleston**

NHC Healthcare Charleston has opposed the Spring Street Health Center CON on grounds that it does not comply with the CON Act, applicable regulatory criteria, and standards in the State Health Plan. However, NHC Healthcare Charleston provides no evidence or reasons as to why they believe the Application does not comply.

The Spring Street CON submission complies with the South Carolina Department of Health and Environmental Control Regulation No. 61-15, "Certificate of Need for Health Facilities and Services" effective May 25, 2012. This application fully satisfies the stipulated criteria for this type of project and is fully consistent with the 2020 South Carolina Health Plan (enacted March 13, 2020 for all by Chapter 3, which was enacted June 12, 2020) which includes specific standards relative to home health care services. The application fully describes the proposed project, documents the need, and demonstrates the financial viability of the project.

**Bishop Gadsden Episcopal Retirement Center**

Bishop Gadsden Episcopal Retirement Center has opposed our Spring Street Health Center CON on grounds that the Application does not comply with the 2020 South Carolina Health Plan, the project review criteria, and the applicable regulations in Reg. 61-15. However, Bishop Gadsden provides no evidence or reasons on why they believe the Application does not comply.

The Spring Street CON submission complies with the South Carolina Department of Health and Environmental Control Regulation No. 61-15, "Certificate of Need for Health Facilities and Services" effective May 25, 2012. This application fully satisfies the stipulated criteria for this type of project and is fully consistent with the 2020 South Carolina Health Plan (enacted March 13, 2020 for all by Chapter 3, which was enacted June 12, 2020) which includes specific standards relative to home health care services. The application fully describes the proposed project, documents the need, and demonstrates the financial viability of the project.

Thank you for your attention to this matter.

Best Regards,



Timothy Walsh  
Senior Financial Analyst  
Liberty Senior Living  
[TWalsh@libertyseniorliving.com](mailto:TWalsh@libertyseniorliving.com)  
(910) 332-1982

**Spring Street Senior Housing OPCO, LLC d/b/a Spring Street Health Center - CON #2827  
- Response to Affected Person Opposition Letters**

Timothy J. Walsh <TWalsh@libertyseniorliving.com>

Thu 2/11/2021 4:22 PM

To: Coninfo, Coninfo <Coninfo@dhec.sc.gov>; Hyman, Jennifer J. <HYMANJJ@dhec.sc.gov>

📎 1 attachments (139 KB)

Spring Street\_Health Center\_Response to Affected Person Opposition Letters - 2-11-21 (FINAL).pdf;

**\*\*\* Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\***

Good afternoon Ms. Hyman:

On behalf of Spring Street Senior Housing OPCO, LLC (the “the Applicant”), please find attached a response to the three affected person/opposition letters received by the Certificate of Need (“CON”) Program.

If I can provide any further details, please let me know. Thank you!

Regards,

**Timothy J. Walsh**

Senior Financial Analyst

*Liberty Senior Living*

Office: 910-332-1982

Mobile: 910-512-9191

[TWalsh@libertyseniorliving.com](mailto:TWalsh@libertyseniorliving.com)

2334 S. 41<sup>st</sup> Street, Wilmington, NC 28403

Visit our website at [www.LibertySeniorLiving.com](http://www.LibertySeniorLiving.com)



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**Fw: CON Spring Street Senior Housing #2827**

Murdock, Margaret P. <murdocmp@dhec.sc.gov>

Wed 3/17/2021 6:49 PM

To: Goins, Arnisha D. <goinsad@dhec.sc.gov>

**Maggie Parham Murdock**

**Director**

Certificate of Need Program

Healthcare Quality, Bureau of Planning and Construction

**S.C. Dept. of Health & Environmental Control**

Office: (803) 545-4492

Mobile: (803) 360-5770

Connect: [www.scdhec.gov](http://www.scdhec.gov) [Facebook](#) [Twitter](#)

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**From:** Lynne Kerrison, CFO <Lynne.Kerrison@bishopgadsden.org>

**Sent:** Wednesday, March 17, 2021 2:58 PM

**To:** Murdock, Margaret P. <murdocmp@dhec.sc.gov>; Eubank, Louis W. <EUBANKLW@dhec.sc.gov>

**Cc:** lcrum@burr.com <lcrum@burr.com>; Sarah Tipton <Sarah.Tipton@bishopgadsden.org>; Aaron Roop, Vice President of Operations <Aaron.Roop@bishopgadsden.org>

**Subject:** CON Spring Street Senior Housing #2827

**\*\*\* Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\***

I am letting this group know that Bishop Gadsden filed paperwork for our opposition to this CON application via email and hard copy Wednesday March 17, 2021. If for some reason the email or hard copy does not arrive, please contact me as soon as possible.

Lynne Kerrison

*Lynne Loring Kerrison CPA, CFO*

*Bishop Gadsden Episcopal Retirement Community  
1 Bishop Gadsden Way  
Charleston, SC 29412*

*843-406-6298 (o)*

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# BISHOP GADSDEN



March 17, 2021

Ms. Margaret P. Murdock  
Director, Certificate of Need Program  
Mr. Louis Eubank  
Chief, Health Quality, Bureau of Planning and Construction  
Bureau of Health Facilities and Services Development  
S.C. Department of Health and Environmental Control  
301 Gervais Street  
Columbia, South Carolina 29201

Re: Charleston Co. Nursing Home certificate of Need Application #2827, Spring Street Senior Housing OPCO, LLC d/b/a Spring Street Health Center—Matter 2827:

Dear Ms. Murdock and Mr. Eubank:

Bishop Gadsden Episcopal Retirement Community is submitting this letter of opposition as an affected person to the above Certificate of Need Application for a new 23-bed non-institutional nursing home (application) to be located at 194 Spring Street, Charleston, South Carolina 29403. We received the “deemed complete” letter yesterday (March 16) and reserve the right to make additional comments.

The verbatim stated goal of the Certificate of Need Act reads as follows: “*The purpose of the Act is to promote cost containment, prevent unnecessary duplication of health care facilities and services, guide the establishment of health facilities and services which will best serve public need and ensure high quality services are provided in health facilities in this State.*”

The Spring Street Health Center application does not advance any of the stated objectives in the purpose of the CON Act. Its proposed nursing home would be a duplication of readily available services requiring unnecessary healthcare expenditures without compelling evidence of the ability to serve the public need and the community around it. With the owner’s affiliates’ average star quality rating of less than 3 stars, their record in other states does not support the goal of ensuring high quality services are provided in this state.

Furthermore, the application is deficient in the following regulatory requirements, including the four project review criteria identified in the “deemed complete” letter, as evidenced in the attached supporting documentation. Substantively, the application does not:

- Properly document and demonstrate the need
- Meet the required staffing and financial criteria
- Develop support and relationships throughout the community
- Meet numerous regulations and review requirements

1 Bishop Gadsden Way | Charleston, SC 29412  
843.762.3300 *phone*  
843.762.6119 *fax*  
www.BishopGadsden.org  
*A Life Care Retirement Community*

Ms. Margaret P. Murdock

Page 2

March 17, 2021

Bishop Gadsden, established in the city of Charleston in 1850 and on our present site on James Island since 1987, is a well-respected long-term care provider in the Charleston area with a long history of excellent quality and commitment to service in the community. Our facility is located within 5 miles of the proposed site of this applicant.

We are available at your request to answer any questions you may have about our opposition. You can contact us at (843-762-3300) or our attorney, Liz Crum (803-753-3240). We respectfully request this application be denied.

Sincerely,

A handwritten signature in blue ink that reads "Sarah E. H. Tipton". The signature is written in a cursive, flowing style.

Sarah E. H. Tipton  
President/CEO

Enclosures

cc: Liz Crum, Esq., Burr & Forman, LLP

BISHOP GADSDEN

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# Opposition to Liberty Health – Spring Street *Charleston, SC*

# Opposition Overview

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- Bishop Gadsden opposes Spring Street Senior Housing OPSCO, LLC's (Spring Street) (A/K/A Liberty Health) Certificate of Need (CON) application to construct a nursing facility in Charleston
- DHEC should deny the CON application because Spring Street failed to completely and sufficiently address the Project Review Criteria (PRC) of **Reg. 61-15 Certification of Need for Health Facilities:**
  - Spring Street did not:
    - Properly document and demonstrate need
    - Meet required financial and staff related criteria
    - Develop relationships and support throughout the community
    - Meet numerous regulations and review criteria

# Failure to Document Community Need

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SECTION 802. CRITERIA FOR PROJECT REVIEW (2.)

## Failure to Document Need

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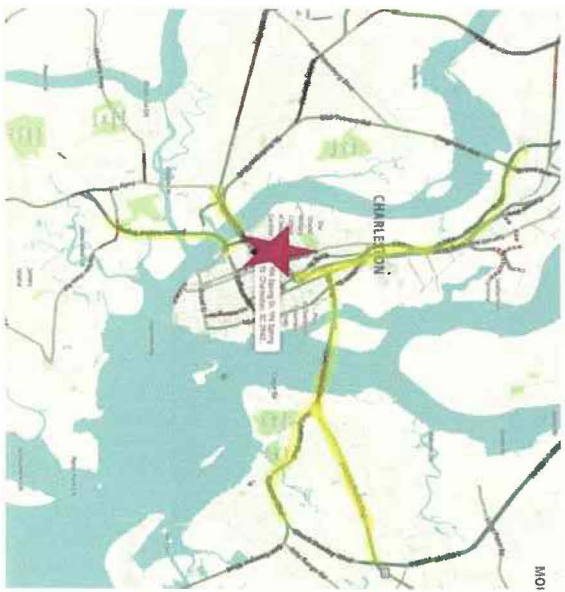
- Spring Street failed to address points required *within Part B – Question 11*, relying only on the State Health Plan's need and failing to include:
  - Documentation to support need within the target population, the county per the Plan.
  - Discussion of existing facilities and services within the service area.
  - The projects will **unnecessarily duplicate** existing entities and services.
  - Need methodologies and projected utilization are flawed.
- It appears that Spring Street has not used data to develop a credible need, and has not properly assessed nor does not fully understand the local nursing home market.



# Failure to Document Need

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- The target population per Spring Street CON is the County Of Charleston
- Charleston County is 1358 square miles-(916 square miles of land and 442 square miles of water
- The largest county in South Carolina
- Spring Street is located on the peninsula on an extremely busy thoroughfare
- The only access to the thoroughfare is via the interstate or bridges
- The area is highly congested
- The area is prone to extensive flooding
- This location is not easily accessible by the vast majority of the residents of Charleston County
- Spring Street does not address parking for staff, residents, families, visitors or vendors, etc. (this area of Charleston has an inadequate supply of parking) and zoning requirements in Charleston mandate parking by use. While Spring Street is properly zoned for use, there is no mention of its meeting the parking requirements or having an exemption.
- The target population is not clearly identified as to size, location, distribution and socioeconomic status and does not provide evidence that services support this target population**



## Failure to Document Need

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- Spring Street will not be serving the residents of Charleston County living the closest to the facility. The population in the zip code (29403) of the proposed Spring Street skilled facility represents 58% of the residents over the age of 65 with an annual income below \$50,000 (Exhibit 13 attached)*
- Can someone with an income of \$50K actually afford to be at facility?**

# Distribution (Accessibility)

SECTION 802. CRITERIA FOR PROJECT REVIEW (3.)

# Community Need—Duplication of Services

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- Decline in Nursing Facility occupancy is an industry wide problem.
- Life expectancy in the United States dropped during the first half of 2020 and as data is compiled for remaining months of 2020 it has the potential drop further. This is the largest drop since the 1940's (Exhibit 6 attached)
- According to the NIC Skilled Nursing Monthly Report data through November 2020 states that total occupancy fell to a new low of 74.2% (Exhibit 7 attached)
  - South Carolina fell to an average of 74.9% in 2020 (Exhibit 8 attached)
  - Charleston County fell to an average of 76.4% in Q4 2020
- Industry trends for average length of stay is steadily decreasing. The National SNF average length of stay (ALOS) is trending down as evidenced by Medicare cost reports.

# Community Need-Duplication of Services

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- Managed Medicare plans utilization is increasing while private pay and traditional Medicare is decreasing. Revenue per patient day (RPPD) under Managed Medicare Plans is significantly less than private pay and traditional Medicare
- NIC Skilled Nursing Monthly Report includes graphs to support these trends (Exhibit 11 attached).
- Demand for Nursing Facilities is now shifting to Home Health and Home Care services as demonstrated in Exhibit 9 and Exhibit 10 (attached).
- During 2020 Home Health Agencies has significant growth in census
- Home Care Services have been developed to offer similar services as Nursing Facilities in a home setting
- Developing technologies are supporting ability for patients to recover and live in the home setting without the need for an intervening stay at a nursing home.

# Community Need-Duplication of Services

- This chart (Exhibit 12 attached) uses current data and demonstrates sufficient beds to cover needs in Charleston County for Medicare and Private Pay
- The conservative estimate (Column A) puts current excess capacity at 1,120 beds and scenarios based on current trends project excess capacity to be as great as 4,569 beds (Column E)
- Data compiled utilizing Medicare cost reports

	A	B	C	D	E
<b>Occupancy</b>	0%	90%	80%	75%	ALDS
Total Medicare licensed beds	1483				1483
Calendar days	365				365
total patient days	541,295				541,295
Medicare payer mix	19.80%				19.80%
Medicare days	107,176				107,176
<b>Medicare Average length of stay</b>	<b>29</b>				<b>15</b>
Annual Medicare Capacity	3,696				7,145
Average beds in use	-	1,335	1,186	1,112	-
Beds available		148	297	371	
Total 2019 Charleston County discharges to SNF	2,576				2,576
Excess bed capacity	1,120				4,569

\*\*\*\*\*Spring Street will only serve Medicare residents and Private Pay  
 \*\*\*\*\* Spring Street will not serve Medicaid patients  
 \*\*\*\*\* National trend for Occupancy to decrease-----Home Health to increase  
 \*\*\*\*\* Industry trend is for average length of stay to decrease



# Community Need-Duplication of Services

- There are currently 11 established nursing facilities within a 10 mile radius of the Spring Street project
- The current providers represent 1184 beds and are geographically dispersed to serve the population
- Each of these facilities has excess capacity to serve the surrounding population

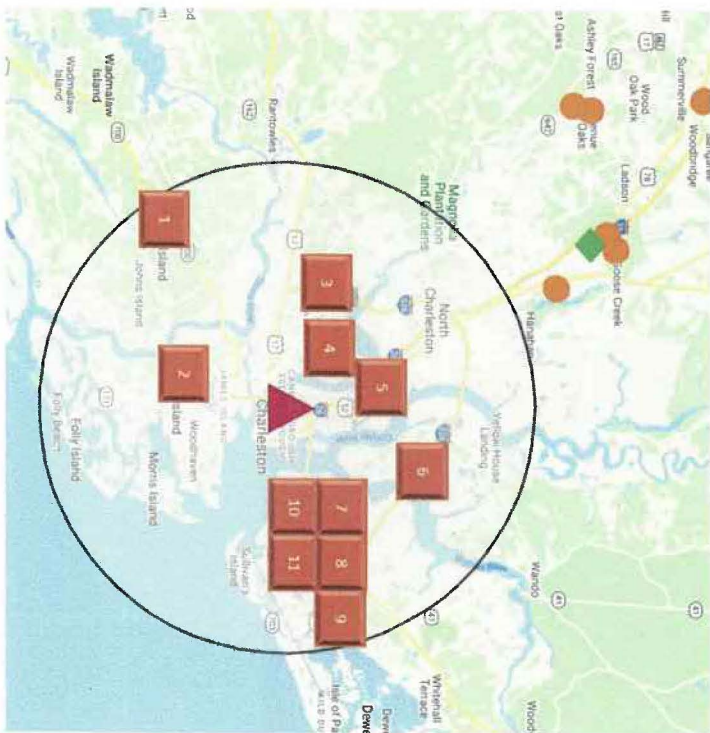


Represents current nursing facilities in a 10-mile radius of proposed site



Represents proposed site at 194 Spring Street

**This Clearly demonstrates duplication of Services**





# Community Need-Duplication of Services

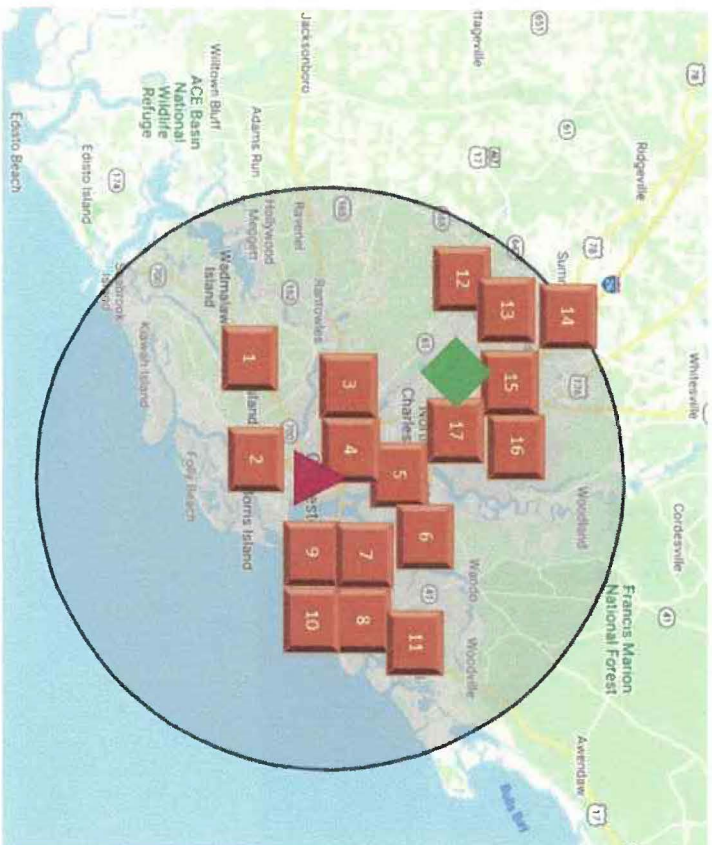
❑ There are an additional six facilities and one additional facility in advanced planning stages that represent an additional 792 beds within a 20 Mile Radius of the Spring Street project

■ Represents current nursing facilities in a 20-mile radius of proposed site

▲ Represents proposed site at 194 Spring Street

◆ Represents nursing facility currently in planning (North Charleston Post-Acute)

**This Clearly demonstrates duplication of Services**



# Community Need

---

## *Adverse Effects on other Facilities*

Section 802 (23) (a) The impact on the current and projected occupancy rates or use rates of existing facilities and services should be weighed against the increased accessibility offered by the proposed services

**The Spring Street project would adversely effect the existing facilities in Charleston and as discussed further below and offers NO increased accessibility**

# Failure to Demonstrate Provisions for Access/Indigent Care

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SECTION 802 CRITERIA FOR PROJECT REVIEW 31

# Indigent Care Support

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Spring Street failed to provide historical performance from other facilities in Spring Street's consolidated group for evidence of adequate provisions for access/indigent care.

The indigent care plan outlined in the application would most likely provide care for less than 5 residents a year:

- Budgeted charity care of \$11,756 year 1, \$20,064 year 2 and \$20,775 year 3 is depicted in the CON application. The net revenue per patient day is \$348 year 1, \$351 year 2, and \$358 year 3. This equates to a total of 33 indigent care days year 1, 57 days year 2 and 56 days year 3.
- The estimated population of Charleston County age 65 and with an income level below \$50,000 is **20,610** in 2020.
- With the forecasted population growth depicted in Spring Street's application of 17.89% by the year 2025, it should be assumed that the population of the income level \$50,000 and below in Charleston County will increase to **24,300** residents..

**Spring Street does not demonstrate commitment to support indigent and low-income residents of the Charleston community as required. (802-3 (f/g)) (31)**

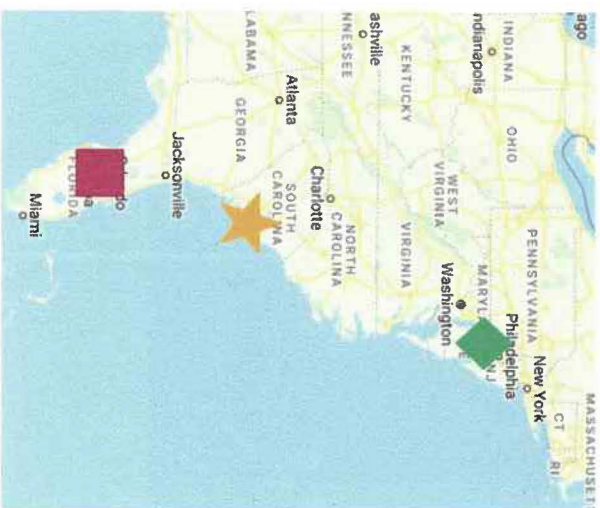
# Lack of Evidence of Community Support Acceptability




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SECTION 802. CRITERIA FOR PROJECT REVIEW 4.

# Community Support

- Corporate headquarters of Spring Street Health Center are located in Florida and it is a Delaware LLC.
- The majority of their other facilities are outside the state of SC.
- 40% of the facilities Spring Street states (pg. 12 of the CON application) will transfer patients to the Spring Street location have a skilled nursing facility attached to their Assisted Living and Memory Care facilities and most likely will not discharge to Spring Street.
- The Medical University of South Carolina transfer agreement support letter states "we will consider entering into a transfer agreement..."
- The two letters from local physicians and the mayor state a 25 bed facility---this is a 21 room facility with two double occupancy rooms, totaling 23 beds-NOT 25



-  Spring Street Site
-  Corporate Headquarters
-  LLC Registration State



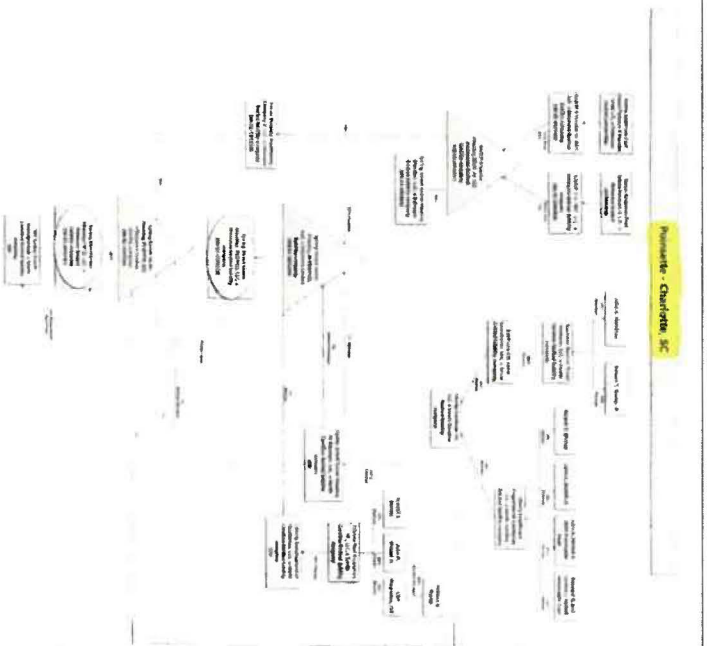
# Community Support

The organizational chart provided in the Spring Street Senior Housing OP/CO, LLC CON application is labeled

- POINSETTE – CHARLOTTE SC

Spring Street did not include an appropriate organizational chart

The regulations require a list of names, addresses, % of ownership, person responsible and attorneys' representing the proposal---this information is not depicted clearly on the organizational chart PART A, ¶ 7.





# Staff Resources

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# Staffing Resources

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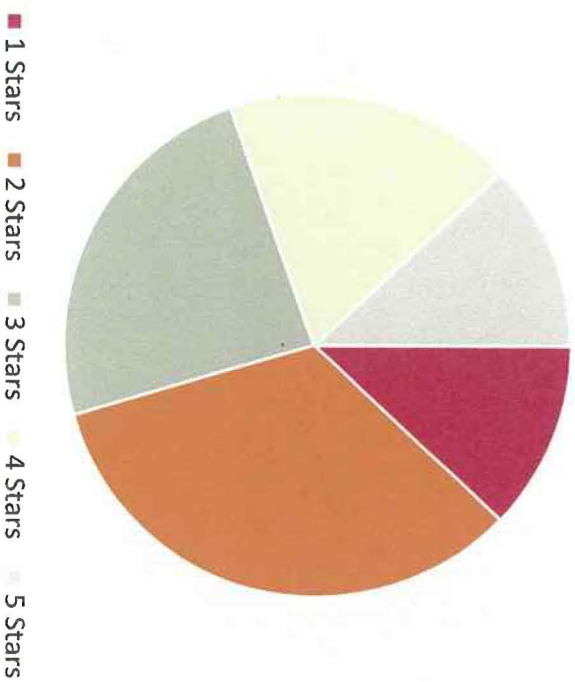
- Liberty will need experienced, qualified staff for care of the targeted population
  - Potential to adversely impacting existing care providers as Spring Street's recruitment will draw highly qualified staff from existing care providers
- Charleston Regional Business Journal* (June 26<sup>th</sup>) details significant challenges currently facing the region for recruitment of cooks, wait staff, and utility/dishwashers and qualified medical staff (Exhibit 1 attached)
- Charleston Region historical and forecasted occupational cluster employment trends depicts medical (nurses and nurse aides) as the third highest growth in job needs by 2023. (Exhibit 2 attached)
- South Carolina is experiencing a critical shortage of nurses and it ranked fourth in the United States with greatest forecasted deficit (Exhibit 3 attached)

# Staffing Resources

- It is possible that Liberty's reputation will result in Challenges recruiting the experienced, qualified staffing needed
- Currently Liberty operates 15 facilities that are 1 or 2 Stars as rated by CMS

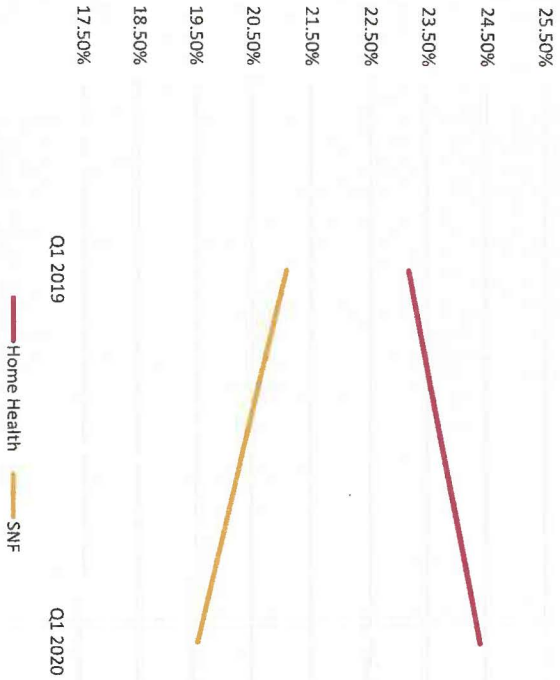
Average Rating	2.85
1 Stars	4
2 Stars	11
3 Stars	8
4 Stars	6
5 Stars	4

Liberty Star Rating Distribution

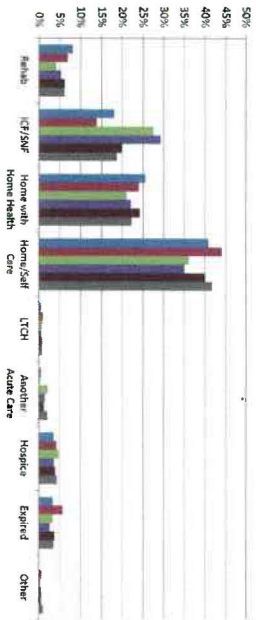


# Exhibit 9

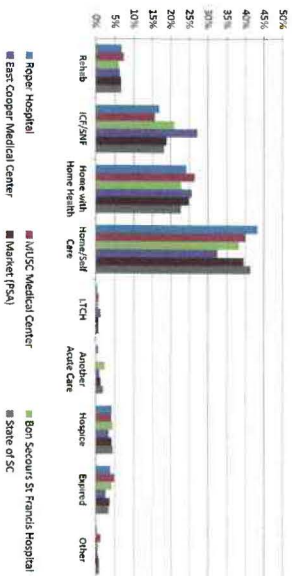
Discharge Disposition  
Q1 '19 vs Q1 '20



PSA Bishop Gadsden: YE 2019Q1 Discharge Status Conversion Rate Compared to Market and State, Ages 65+



PSA Bishop Gadsden: YE 2020Q1 Discharge Status Conversion Rate Compared to Market and State, Ages 65+



# Exhibit 10

[www.ziegler.com](http://www.ziegler.com)

## ZIEGLER INVESTMENT BANKING SENIOR LIVING FINANCE Z-NEWS

Page 1 | Week of January 11, 2021

**Technology:** Technology has quickly become our saving grace across many levels. Providers have learned that stakeholders are willing to adopt technologies and that there are successful, innovative solutions to some of our most pressing issues. In 2021, rather than focusing on the speed of deployment as was seen in 2020, we will see greater focus on refinement and meaningful integration of technology solutions. Technology is here to stay.

**Skilled Nursing:** It is likely that this will be the one area continuing to experience instability in the year ahead. With dramatic drops in occupancy and shifts to intensive home health and home care services, occupancy will not likely rebound quickly. Providers will be assessing their unit



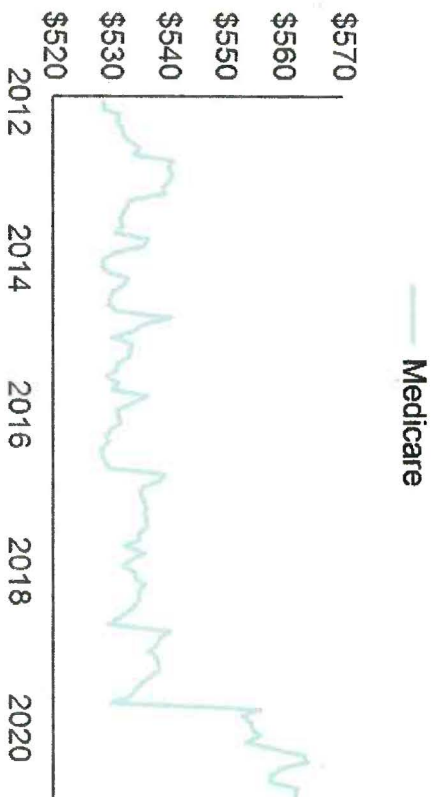
# Exhibit 11

## Skilled Nursing Monthly Report

Data through November 2020

<http://www.nic.org/nic-map> | 410-267-0504  
National Investment Center for Seniors Housing & Care (NIC)

### Revenue Per Patient Day



# Exhibit 12

	A	B	C	D	E
<b>Occupancy</b>	<b>0%</b>	<b>90%</b>	<b>80%</b>	<b>75%</b>	<b>ALOS</b>
Total Medicare licensed beds	1483				1483
Calendar days	365				365
total patient days	541,295				541,295
Medicare payer mix	19.80%				19.80%
Medicare days	107,176				107,176
<b>Medicare Average length of stay</b>	<b>29</b>				<b>15</b>
Annual Medicare Capacity	3,696				7,145
Average beds in use	-	1,335	1,186	1,112	-
Beds available		148	297	371	
Total 2019 Charleston County discharges to SNF	2,576				2,576
Excess bed capacity	1,120				4,569

\*\*\*\*\*Spring Street will only serve Medicare residents and Private Pay  
 \*\*\*\*\* Spring Street will not serve Medicaid patients  
 \*\*\*\*\* National trend for Occupancy to decrease-----Home Health to increase  
 \*\*\*\*\*Industry trend is for average length of stay to decrease



# Exhibit 13

## Charleston County, SC AIQ Households

	Age				Total
	Under 64 <sup>(1)</sup>	65-74	75-84	85 and Over	
<b><u>29403</u></b>					
Less than \$50,000	1,231	754	503	221	2,709
\$50,000 - \$100,000	513	396	165	50	1,124
\$100,000 - \$200,000	306	215	71	15	607
Greater than \$200,000	383	116	20	6	525

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BURR.COM

January 15, 2021

Via E-mail (murdocmp@dhec.sc.gov)

Margaret P. Murdock  
Director, Certificate of Need Program  
Dept. of Health and Environmental Control  
301 Gervais St.  
Columbia, SC. 29201



**Re: Spring Street Senior Housing OPCO, LLC (d/b/a Spring Street Health Center)  
DHEC File # 2827 and Bishop Gadsden Episcopal Retirement Center  
Request For Affected Person Status**

Dear Ms. Murdock:

On behalf of our client, Bishop Gadsden Episcopal Retirement Center (BGERC or Bishop Gadsden), which is located in Charleston County, the service area for Spring Street Senior Housing OPCO, d/b/a/ Spring Street Health Center (Spring Street), CON application for a 23-bed non-institutional nursing home (Application), we would like to submit a request for affected person status on behalf of BGERC. Since Bishop Gadsden also provides nursing home services, Bishop Gadsden is an affected person pursuant to S.C. Code Ann. § 44-7-120(1). Please accept this request, pursuant to S.C. Code Ann. §§ 44-7-200 and 44-7-210 and S.C. Code Ann. Regs. 61-15, Section 103(1) that Bishop Gadsden be considered an affected person in the above CON project.

BGERC is opposing this project on the following grounds and reserves the right to provide additional grounds of opposition after we receive the "deemed complete" letter establishing the project review criteria that are most import in DHEC's review of the Spring Street Application. The Application does not comply with the 2020 South Carolina Health Plan, the project review criteria, and the applicable regulations in Reg. 61-15.

Margaret P. Murdock, Esq.  
Director, Certificate of Need Program  
Dept. of Health and Environmental Control  
January 15, 2021  
Page 2

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We request that we be notified when the Application is deemed complete, be provided a copy of that letter, and request that we be notified with any other actions, including requests for additional information that the Department takes regarding this project.

Thank you for your attention to this matter. Best Wishes for a New Year.

Very truly yours,

  
M. Elizabeth Crum

MEC/dmo



# Lutheran Homes of South Carolina

*promoting the well-being of older adults*

2000 Ministry Drive      o: 803.749.5110  
Irmo, SC 29063-2366    f: 803.749.5111  
w: lutheranhomessc.org

Mr. Louis W. Eubank, Chief  
Bureau of Health Facilities and Services Development  
Office of Certificate of Need  
S.C. Department of Health and Environmental Control  
2600 Bull Street  
Columbia, SC 29201

January 15, 2021

RE: Certificate of Need Applications – Affected person/organization opposition letter per DHEC Regulation 61-15 Chapter 1, Section 103 relative to the following CON Applications:  
CON #2827 Spring Street Senior Housing Opco dba Spring Street Health Center

Dear Mr. Eubank:

We are writing to protest the above referenced Certificate of Need Applications which have been put forward by Liberty Senior Living. We feel this application should be denied for the following reasons:

- Duplication of effort in markets that are already saturated with skilled, Medicare nursing beds which can be clearly established based upon occupancy data from the impacted communities;
- Unrealistic projections relative to the availability of the labor force needed to staff this facility as noted in the attached documentation.
- Lack of local support for this programming as key information from the potential referral sources is not included in the applications nor are there any letters of support or agreement from the referral communities noted;
- Lack of quality indicator and survey history data in the application.
- Listing of Franke at Seaside as a referral source; (Franke has a SNF operation that serves our own campus.)

We ask that the DHEC bring pause to the process of approval of this applicant to allow the Department to explore the issues that have been expressed and make a fully informed decision on this application to better serve the needs of the citizens of South Carolina and the long term/post- acute care system that has been developed to do so.

Sincerely,

Frank Shepke  
President & CEO

Enc. – Documentation supporting reasons for denial





**Comments to DHEC Opposing Liberty Senior Living (Spring Street Health Center) CON application  
#2827 in South Carolina - January 11, 2021**

Upon review of the re-submitted CON application by the (Spring Street Senior Housing Opco dba Spring Street Health Center for application #2827 it is our belief that the proposed CON from Spring Street health will promote an unnecessary duplication of health care facilities and services, will not best serve the public needs and are incomplete in terms of critical information needed for full assessment by the state. It is also our belief that the proposed new nursing facility does not establish nor provide sufficient community need documentation, does not address an adequate plan for staffing resources and does not speak to the record of the applicants ability to provide quality to the skilled nursing population they seek to serve. They also create an economic hardship for existing providers due to changes in the long term care environment which has been exacerbated by the COVID-19 Pandemic and will over extend an already challenged system in terms of health system resources.

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The applicant notes the following:

1. The applicant notes that it will work with local health care providers/practices to secure referrals and has sent out letters seeking support. Local support is one of the most critical elements for the success for the type of operations they propose and it should be questioned why no support letters or memoranda of understanding have been included from sources they cite as referrals.
2. The applicant notes the Franke at Seaside facility which is a Lutheran Homes campus would serve as a referral source. In fact, Franke at Seaside maintains its own 44 bed skilled nursing unit that is sized to meet the needs of the Franke Campus and in fact Franke is a continuing care retirement community (CCRC) and the nursing center was designed to operate to meet the skilled nursing needs of Franke residents. Lutheran Homes has not provided any support to the this CON applicant nor was it asked to be a referral source for such nor would we agree to do so.
3. The need for further Medicare licensed and other skilled nursing beds in this market has not been established. In fact as noted in the June 2016 report by MedPac (the Medicare Payment Advisory Committee) "*Health Care Spending and the Medicare Program*" the following are critical facts:
  - Medicare spending on Skilled Nursing Facility (SNF) payments as a percentage is only 5% of total Medicare spending and has been flat from the period of 2006-2014; (page 4) see attached
  - Aggregate spending for Fee for Service (FFS) Medicare beneficiaries has actually declined between 2011-2014; (page 5) see attached

*MedPAC (Medicare Payment Advisory Committee: A Data Book – Health Care Spending and the Medicare Program - June 2016* <http://www.medpac.gov/docs/default-source/data-book/june-2016-data-book-health-care-spending-and-the-medicare-program.pdf>

4. The applicant has not demonstrated a plan for the sufficient recruitment of qualified staff that is realistic given the shortage of supply of qualified staff in the Charleston market. Any recruitment plan will involve the potential solicitation and recruitment of staff from existing facilities and further dilute the existing labor pool to the detriment of patient care for existing providers in their target markets. In conclusion it is for these reasons related to regulation, conformance with CON program application standards and conditions of the long-term care system in the state that this application #2827 should be denied by the South Carolina DHEC.

# APPENDIX A

## Skilled Nursing Bed Analysis



# South Carolina Revenue and Fiscal Affairs Office

## Population Counts and Projections 2000-2030

County	April 1, 2010 Census	July 1, 2015 Projection	July 1, 2020 Projection	July 1, 2025 Projection	July 1, 2030 Projection
Charleston	350,209	360,600	370,900	383,800	396,700
Lexington	262,391	277,100	291,800	312,500	333,200
Richland	384,504	404,400	424,300	440,100	456,000
<b>South Carolina Totals</b>	<b>4,625,364</b>	<b>4,823,200</b>	<b>5,020,800</b>	<b>5,235,500</b>	<b>5,451,700</b>

**Source:** U.S. Census Bureau, U.S. Census Bureau, Census 2000 and Census 2010, S.C. Department of Health and Environmental Control - Vital Records Department. Population projections calculated by South Carolina Department of Revenue and Fiscal Affairs - Health and Demographics Section. <http://abstract.sc.gov/chapter14/pop5.html>

## South Carolina Population Age 65 and Over (1950-2010)

County	2010	% Change 2000-2010
Charleston	44,721	21.3%
Lexington	32,111	46.0%
Richland	37,541	19.3%
<b>South Carolina Totals</b>	<b>631,874</b>	<b>30.2%</b>

**Source:** U.S. Census Bureau, Census of Population and Housing 1950-2010. <http://abstract.sc.gov/chapter14/pop21.html>



**Extrapolation of Census Projections for Aged 65+:** To further address the questions involving the growth of the aged 65+ population in the target counties impacted by the Liberty Senior Living CON application, Lutheran Homes has taken U.S. Census estimates of total population growth in these counties through 2030, and extrapolated the growth rate for seniors aged 65+ based upon the 2010 actual census numbers and the U.S Census projections for the total population in these counties beginning in 2015 through 2030. The formula currently used by the State to determine bed need (population of 65+/1,000 \* 39) was applied to these estimates using the forecasted census growth rates. The following chart forecasts the future bed need based upon these projections and the current calculation method.

65+ Population Estimates	2010	2015	Bed need	2020	Bed need	2025	Bed need	2030	Bed need
Lexington	32,111	33,911	1,323	35,710	1,393	38,243	1,491	40,776	1,590
Richland	37,541	39,484	1,540	41,426	1,616	42,969	1,676	44,522	1,736
Charleston	44,721	46,048	1,796	47,363	1,847	49,011	1,911	50,658	1,976
Total Population Estimates	2010	2015	Growth Rate	2020	Growth Rate	2025	Growth Rate	2030	Growth Rate
Lexington	262,391	277,100	5.61%	291,800	5.30%	312,500	7.09%	333,200	6.62%
Richland	384,504	404,400	5.17%	424,300	4.92%	440,100	3.72%	456,000	3.61%
Charleston	350,209	360,600	2.97%	370,900	2.86%	383,800	3.48%	396,700	3.36%

**Source:** U.S. Census Bureau, U.S. Census Bureau, Census 2000 and Census 2010, S.C. Department of Health and Environmental Control - Vital Records Department. Population projections calculated by South Carolina Department of Revenue and Fiscal Affairs - Health and Demographics Section.

**Source:** U.S. Census Bureau, Census of Population and Housing 1950-2010.

**Source:** Lutheran Homes of South Carolina Internal Research: Extrapolated 65+ population projections for Lexington, Richland and Charleston counties based upon 2010 census of persons 65+ by county using U.S. Census estimates for total growth by county for the years 2015, 2020, 2025 and 2030.

**State Health Plan Bed Need Calculation:** Based upon the calculations offered by Lutheran Homes of South Carolina (LHSC) using U.S. Census calculated growth rates by County and extrapolated for the population aged 65+ which are conservative estimates based upon recent historical growth, there is a disparity in the total bed needs by the year 2020 as exhibited in the following table. Although LHSC does not dispute the logic of the State Health Plan, it should be noted again that this is a conservative estimate for planning purposes and reflects the fact that differing assumptions will generate different estimates. Given these projections, the only counties that would demonstrate a need for additional beds by 2019-2020 based upon the current 2017 state inventory are a marginal amount in Lexington County (133 beds) and a

greater amount in Charleston county (449 beds). In fact this analysis would indicate that there is the potential for over bedding in Richland County by 2019-2020 by (168 beds).

65+ Population Estimates	2019 Bed needs from current State Health Plan	2020 Bed needs from LHSC Projections using U.S. Census extrapolated data as calculated by LHSC	Difference in Projected Need between State Health Plan and U.S. Census extrapolated data as calculated by LHSC	Current existing Beds from State Health Plan	2020 Bed need difference from current State Health Plan bed inventory using U.S. extrapolated data as calculated by LHSC
Lexington	1,915	1,393	-522	1,260	133
Richland	2,198	1,616	-582	1,784	-168
Charleston	2,756	1,847	-909	1,398	449

**Conclusion:** The purpose of this analysis is to further underscore the vast differences in potential population projections and bed needs based upon the types of assumptions utilized. Although the State health plan is not disputed here, it should be noted that data and projections from a proprietary source such as that offered by the Liberty Senior Living Group should be closely scrutinized to understand the assumptions that led to the conclusions. The U.S. Census provides the most time tested and reliable methods for understanding and projecting population estimates. This analysis again is based upon current and projected U.S. Census data that was extrapolated for the 65+ population of the State.

## Census Tables

# South Carolina Population Age 65 and Over (1950-2010)

County	1950	1960	1970	1980	1990	2000	2010	% Change 2000-2010
Abbeville	1,624	1,867	2,121	2,821	3,520	3,842	4,203	9.4%
Aiken	3,306	4,432	6,318	10,023	13,796	18,287	24,619	34.6%
Allendale	804	900	937	1,281	1,486	1,421	1,375	-3.2%
Anderson	5,139	6,923	9,227	14,348	19,732	22,627	28,329	25.2%
Bamberg	1,081	1,352	1,470	2,005	2,165	2,314	2,565	10.8%
Barnwell	1,258	1,303	1,602	2,111	2,489	2,962	3,173	7.1%
Beaufort	1,554	1,837	2,286	5,303	10,664	18,754	33,032	76.1%
Berkeley	1,477	1,805	2,302	4,583	7,453	11,261	17,794	58.0%
Calhoun	981	973	1,083	1,411	1,768	2,102	2,470	17.5%
Charleston	7,621	10,390	13,638	21,442	29,881	36,858	44,721	21.3%
Cherokee	2,034	2,592	3,232	4,280	5,778	6,517	7,442	14.2%
Chester	2,142	2,493	2,760	3,550	4,293	4,317	4,835	12.0%
Chesterfield	1,911	2,370	2,765	4,027	4,921	5,120	6,332	23.7%
Clarendon	1,550	1,839	2,021	2,978	3,787	4,538	5,867	29.3%
Colleton	1,704	2,073	2,582	3,546	4,394	4,928	6,078	23.3%
Darlington	2,456	3,122	3,966	5,946	7,417	8,158	9,793	20.0%
Dillon	1,486	1,754	2,146	2,928	3,565	3,545	4,159	17.3%
Dorchester	1,275	1,611	1,978	3,669	6,136	8,791	13,849	57.5%
Edgefield	1,205	1,260	1,346	1,789	2,250	2,669	3,524	32.0%
Fairfield	1,466	1,617	1,859	2,441	3,041	3,094	3,565	15.2%
Florence	3,676	4,942	6,218	9,482	12,723	14,837	18,017	21.4%
Georgetown	1,488	1,905	2,316	3,871	5,954	8,354	11,920	42.7%

Greenville	8,629	13,109	17,989	27,391	38,063	44,573	57,581	29.2%
Greenwood	2,473	3,328	4,270	6,585	8,224	9,075	10,544	16.2%
Hampton	1,138	1,255	1,453	2,044	2,249	2,595	2,829	9.0%
Horry	2,247	3,368	4,998	9,395	18,229	29,470	46,070	56.3%
Jasper	654	919	1,010	1,535	1,949	2,269	2,769	22.0%
Kershaw	2,003	2,430	2,721	3,835	5,292	6,796	8,797	29.4%
Lancaster	1,815	2,445	3,159	5,182	6,709	7,413	11,737	58.3%
Laurens	2,937	3,493	4,272	6,015	7,805	9,168	9,988	8.9%
Lee	1,177	1,406	1,473	1,865	2,269	2,504	2,596	3.7%
Lexington	2,786	3,933	5,382	9,581	14,897	21,989	32,111	46.0%
McCormick	745	758	753	858	1,162	1,645	2,449	48.9%
Marion	1,538	2,019	2,491	3,435	4,240	4,298	4,852	12.9%
Marlboro	1,710	1,931	2,231	3,333	3,753	3,550	3,779	6.5%
Newberry	2,449	2,923	3,345	4,458	5,123	5,323	5,959	11.9%
Oconee	2,245	2,771	3,546	5,291	7,905	10,311	14,106	36.8%
Orangeburg	3,724	4,649	5,771	8,359	10,547	12,091	13,734	13.6%
Pickens	2,355	3,335	4,449	7,044	10,484	12,616	15,993	26.8%
Richland	7,849	11,584	14,901	20,542	27,133	31,475	37,541	19.3%
Saluda	1,271	1,406	1,503	2,022	2,350	2,778	3,195	15.0%
Spartanburg	7,878	10,925	14,519	21,350	28,785	31,740	38,227	20.4%
Sumter	2,771	3,738	4,833	6,795	9,621	11,760	13,921	18.4%
Union	1,924	2,397	2,773	3,659	4,494	4,670	4,769	2.1%
Williamsburg	1,786	2,252	2,624	3,674	4,438	4,856	5,039	3.8%
York	3,663	4,865	6,321	9,245	14,001	17,072	25,626	50.1%
<b>South Carolina</b>	<b>115,005</b>	<b>150,599</b>	<b>190,960</b>	<b>287,328</b>	<b>396,935</b>	<b>485,333</b>	<b>631,874</b>	<b>30.2%</b>

Source: U.S. Census Bureau, Census of Population and Housing 1950-2010.



## Status of Population Projections Based on the 2010 Census Data

Population projections are based on assumptions about the continuation of birth, death and migration trends measured from two census points into the future. The accuracy of projections depends on the extent to which future events unfold in a manner that mirrors these past observations. The population trends from 2000 to 2010 include the collapse of the housing market in 2008 and the lingering effects of the worst economic crisis since the 1930's. Population growth will likely be at very low levels for the next few years, but there is a lack of data available to measure the impact current economic trends will have on population growth: From 2008 to 2010 the number of births declined by 7.5%, the number of persons moving into South Carolina declined by 20.1%, and the number of legal immigration to the state declined by 12%. On June 27, 2011 the South Carolina Illegal Immigration Reform Act was signed into law. It requires employers to verify the legal status of new employees to ensure that illegal immigrants are not working in South Carolina. The number of illegal immigrants in the state is unknown.

South Carolina's population is aging; the median age in 2010 was 38 years, and was 23 years in 1960. Between 2000 and 2010 the age group 65 and over increased by 30%, compared to an increase by 41% in the age group 85 and over. People born between 1946 and 1963 (The Baby Boom Population) make up 24% of the total population and they started to turn 65 in 2011. Health and medicine is allowing more people to live past 85 years.

From 2000 to 2010 the state gained 613,352 persons; 201,282 from natural increase (number of births minus the number of deaths) and 412,070 from net migration (number of people moving to South Carolina minus the number of people leaving South Carolina). Natural increase accounted for all of the population growth from 1860 to 1970; from 1970 to 1980 natural increase accounted for 49% of total growth and has declined to 33% of growth from 2000 to 2010. The average number of deaths per year has increased from 18,600 in 1950 to 38,300 in 2010. The average number of births has remained fairly constant as the number of children per woman has decreased. In 1950 there was an average of 62,000 births and in 2010, an average of 58,500 births.

Births and deaths usually change gradually over time, but migration trends can lead to drastic changes from one decade to the next due to economic opportunities. Between 1970 and 1980 net in migration accounted for 51% of total population growth. Between 1980 and 1990 it accounted for 30% and between 2000 and 2010 for 67%. People move to South Carolina for jobs, school and retirement. Migration into the state from 1970 to 2010 has increased the number of persons born outside the state from 10% in 1970 to 41% in 2010. The percentage of people who changed residences between 2010 and 2011 (12%) was the lowest recorded rate since the Current Population Survey (U.S. Bureau of the Census) began collecting statistics on the movement of people in the United States in 1948.

Annual county population estimates produced by the U.S. Bureau of the Census and the state will be used to make corrections to the population projections. Estimates are

based on registered births and deaths from the S.C. Department of Health and Environmental Control, migration data from the IRS and group quarters population (people living in dorms, barracks, prisons and nursing homes) collected by the South Carolina Department of Revenue and Fiscal Affairs - Health and Demographics Section. As soon as data becomes available we will produce additional population projections. [Please click here for more information about population projections.](#)

## Population Counts and Projections 2000-2030

County	April 1, 2000 Census	April 1, 2010 Census	July 1, 2015 Projection	July 1, 2020 Projection	July 1, 2025 Projection	July 1, 2030 Projection
Abbeville	26,167	25,417	25,300	25,100	25,000	24,900
Aiken	142,552	160,099	165,600	171,200	176,800	182,500
Allendale	11,211	10,419	10,300	10,100	10,000	9,900
Anderson	165,740	187,126	193,300	199,500	209,000	218,500
Bamberg	16,658	15,987	15,800	15,700	15,400	15,200
Barnwell	23,478	22,621	22,400	22,200	22,100	22,000
Beaufort	120,937	162,233	175,900	189,500	202,400	215,300
Berkeley	142,651	177,843	187,800	197,700	208,400	219,100
Calhoun	15,185	15,175	15,200	15,200	15,100	15,100
Charleston	309,969	350,209	360,600	370,900	383,800	396,700
Cherokee	52,537	55,342	56,100	56,800	57,000	57,300
Chester	34,068	33,140	32,900	32,700	32,500	32,400
Chesterfield	42,768	46,734	47,800	48,900	49,600	50,300
Clarendon	32,502	34,971	35,600	36,300	37,400	38,600
Colleton	38,264	38,892	39,000	39,200	39,300	39,500
Darlington	67,394	68,681	69,000	69,300	69,900	70,500
Dillon	30,722	32,062	32,400	32,800	33,100	33,400
Dorchester	96,413	136,555	152,000	167,400	178,800	190,200

County	April 1, 2000 Census	April 1, 2010 Census	July 1, 2015 Projection	July 1, 2020 Projection	July 1, 2025 Projection	July 1, 2030 Projection
Edgefield	24,595	26,985	27,600	28,300	29,200	30,100
Fairfield	23,454	23,956	24,100	24,200	24,300	24,500
Florence	125,761	136,885	140,000	143,100	147,000	150,900
Georgetown	55,797	60,158	61,300	62,500	63,800	65,100
Greenville	379,616	451,225	473,300	495,400	518,800	542,300
Greenwood	66,271	69,661	70,600	71,500	73,100	74,700
Hampton	21,386	21,090	21,000	20,900	20,800	20,700
Horry	196,629	269,291	294,600	319,900	345,800	371,700
Jasper	20,678	24,777	26,000	27,300	28,000	28,800
Kershaw	52,647	61,697	64,400	67,200	70,000	72,800
Lancaster	61,351	76,652	81,700	86,700	91,000	95,300
Laurens	69,567	66,537	65,800	65,100	65,000	65,000
Lee	20,119	19,220	19,000	18,800	18,700	18,600
Lexington	216,014	262,391	277,100	291,800	312,500	333,200
McCormick	9,958	10,233	10,300	10,400	10,600	10,900
Marion	35,466	33,062	32,500	32,000	31,900	31,800
Marlboro	28,818	28,933	29,000	29,000	29,100	29,200
Newberry	36,108	37,508	37,900	38,200	39,000	39,800
Oconee	66,215	74,273	76,600	78,900	84,000	89,100
Orangeburg	91,582	92,501	92,800	93,000	93,500	94,100
Pickens	110,757	119,224	121,600	123,800	128,300	132,900
Richland	320,677	384,504	404,400	424,300	440,100	456,000
Saluda	19,181	19,875	20,000	20,200	20,300	20,400
Spartanburg	253,791	284,307	295,100	305,800	318,500	331,200
Sumter	104,646	107,456	108,200	108,900	109,200	109,500



County	April 1, 2000 Census	April 1, 2010 Census	July 1, 2015 Projection	July 1, 2020 Projection	July 1, 2025 Projection	July 1, 2030 Projection
Union	29,881	28,961	28,700	28,500	28,300	28,100
Williamsburg	37,217	34,423	33,800	33,100	33,000	32,900
York	164,614	226,073	248,800	271,500	296,100	320,700
<b>South Carolina</b>	4,012,012	4,625,364	4,823,200	5,020,800	5,235,500	5,451,700

**Source:** U.S. Census Bureau, U.S. Census Bureau, Census 2000 and Census 2010, S.C. Department of Health and Environmental Control - Vital Records Department. Population projections calculated by South Carolina Department of Revenue and Fiscal Affairs - Health and Demographics Section.



February 3, 2021

**Via Electronic Mail and U.S. Mail**

Ms. Margaret P. Murdock  
Certificate of Need Program  
South Carolina Department of Health  
and Environmental Control  
2600 Bull Street  
Columbia, SC 29201

RE: Nursing Home Certificate of Need Application #2827 Spring Street Senior Housing  
OPCO, LLC d/b/a Spring Street Health Care for the construction and establishment  
of a 23-bed skilled nursing facility in Charleston County - Affected Person  
Opposition Letter: NHC HealthCare/Charleston, LLC d/b/a NHC HealthCare,  
Charleston

Dear Ms. Murdock,

I am writing on behalf of NHC HealthCare/Charleston, LLC ("NHC") to notify the Department that NHC is an Affected Person, as defined in S.C. Code Ann. § 44-7-130(1) and S.C. Regs. 61-15, § 103.1, with respect to the above-referenced Certificate of Need Application.

NHC opposes this application on grounds that it does not comply with the purposes of the CON Act, applicable regulatory criteria, and standards in the State Health Plan. NHC reserves the right to raise any other grounds in its opposition to this application. NHC respectfully requests that DHEC conduct a project review meeting regarding this application.

Please contact me if you have any questions at 615-890-2020.

Sincerely,

**National HealthCare Corporation**

A handwritten signature in blue ink that reads "Dere R. Brown". The signature is written in a cursive style.

Dere R. Brown  
Director of Health Planning and Licensure/Certification  
Authorized Representative



# LIBERTY Senior Living

2334 S. 41<sup>st</sup> Street • Wilmington, NC 28403  
(910) 815-3122 • FAX: (910) 815-3111

February 11, 2021

Louis Eubank, MSW, MPH  
Director, Certificate of Need Program  
Jennifer Hyman  
Project Coordinator, Certificate of Need Program  
S.C. Department of Health and Environmental Control  
Mailing address:  
2600 Bull Street  
Columbia, SC 29201

**SUBJECT:** Response to Affected Persons/Opposition Letters received by the Certificate of Need Program concerning CON #2827, Spring Street Health Center Application (the "Application")

Dear Mr. Eubank and Ms. Hyman:

On behalf of Spring Street Senior Housing OPCO, LLC (the "the Applicant"), I am writing to respond to the three affected person/opposition letters received by the Certificate of Need ("CON") Program. The CON Program received opposition from the following organizations:

1. Lutheran Homes of South Carolina
2. National Healthcare Corporation - Charleston
3. Bishop Gadsden Episcopal Retirement Center

### **Lutheran Homes of South Carolina**

Lutheran Homes of South Carolina has opposed our Spring Street Health Center CON for the following (summarized) reasons:

- a. Duplication of effort in market
- b. Unrealistic projections relative to availability of the labor force
- c. Lack of local support including lack of support letters or agreement from referral communities
- d. Lack of quality indicator and survey history data
- e. Listing of Franke at Seaside as a referral source

The Applicant's responses to these comments follow the same correspondence as above (a-e).

- a. Lutheran Homes states on page 4 in Appendix A of its opposition letter that "The formula currently used by the State to determine bed need (is) (population of 65+/1000 \* 39)". This is not the current and accurate methodology according to the 2020 South Carolina Health Plan. The 2020 South Carolina Health Plans current methodology is as follows: A

ratio of 10 beds per 1,000 people in the population from age 65-74 and a ratio of 58 beds per 1,000 people in the population from age 75 and over.

Additionally, on pages 4 and 5 of Appendix A to its letter, Lutheran Homes provides its hypothetical disparity in the total bed needs. However, the numbers it provide in the table on page 5 do not accurately depict the current bed need from the 2020 SC Health Plan nor the correct current number of existing beds from the 2020 SC Health Plan. The Applicant is unaware where these numbers were taken from.

Nonetheless, taking into account the inaccurately used methodology, improper posting of bed needs, and incorrect listing of the number of existing beds recorded by Lutheran Homes on page 5 of their opposition letter, they still calculate a need in Charleston County of 449 nursing home beds. Lutheran Homes additionally states on page 5 “The State Health plan is not disputed here.” According to the 2020 SC Health Plan, Charleston County has a need for 836 long-term care (nursing) beds.

The Applicant displayed in the CON application, and the 2020 SC Health Plan currently shows, the severe need for additional nursing home beds and that our project would not duplicate existing entities.

- b. As the Applicant displayed on page 19 of the CON application, the Liberty organization (affiliated entities of the Applicant) includes thirty-five nursing homes, eight assisted living facilities, two independent living communities, five Continuing Care Retirement Communities, and a home health and hospice company with twenty-nine locations serving various urban and rural counties in North Carolina, South Carolina, and Virginia and employing in excess of 5,000 people. The corporate office includes an in-house recruiting department that will assure Spring Street is properly staffed.

Spring Street will offer competitive pay and attractive benefits to recruit qualified staff including health insurance, life insurance, short and long-term disability insurance, 401(k) plan, and paid time off. Our in-house Human Resources staff periodically conducts salary surveys and adjusts to market demands as necessary. The facility will be active in the local community and interact consistently with area clinical training programs.

In addition, the Liberty organization has developed a number of strategies to enhance recruitment and retention of personnel, including:

- Flexible work schedules.
- Opportunities for advancement.
- Catch-a-Liberty Star recognition program
- Employee mentoring program
- Employee Years of Service recognition program
- Education / Tuition Assistance Program



- Annual staff satisfaction surveys
- Seminars, workshops, and other educational programs and encourage staff to stay abreast of the latest in geriatric nursing
- Recognition pins, employee bonuses, employee cookouts and parties, raffles, CNA Day and Nurses' Week
- Involvement of direct care staff in the quality assurance process
- Regular staff meetings to encourage employees to suggest improvements in all aspects of facility operations.

The Applicant does not anticipate any difficulties in recruiting the staff required for this proposed project. Liberty is also well versed in the Charleston market, having operated Shem Creek Health Center at South Bay at Mt. Pleasant (a 40-bed nursing home facility).

- c. Lutheran Homes states on page 1 of their opposition "local support is one of the most critical elements...and it should be questioned why no support letters have been included". Exhibit 8 of the Application presents a letter from Medical University of South Carolina (MUSC), which has expressed a willingness to enter into a Transfer Agreement with Spring Street Health Center should the project be issued a CON. Letters from physicians who support this project are presented in Exhibit 14 of the Application. Exhibit 24 includes community letters of support, which includes a letter from the Mayor of the City of Charleston. The Applicant believes they have presented ample support for this project in the Application and Exhibits.
- d. Lutheran Homes states on the cover page of its letter that the Applicant's "lack of quality indicator." The Applicant, however, provided extensive information in response to the Application requirements regarding the quality of healthcare services that will be provided. These answers can be found in the CON Application on pages 19-21. The Applicant additionally provided the Quality Assurance and Performance Improvement Plan for Spring Street Health Center, which can be found in Exhibit 15.

Lutheran Homes additionally stated on the cover page that the Applicant did not display "survey history data" in the Application. This proposal is for a new facility and therefore there is not any survey history data in the Application.

- e. Lutheran Homes is correct that the Applicant notes Franke at Seaside as a referral source in the Application. The Applicant listed all Assisted Living centers in the area, which includes Franke at Seaside. We respect Franke at Seaside's rejection as using Spring Street Health Center to refer any residents for nursing care. As they stated on page 1, they are currently sized to meet the needs of Franke residents. If that were to change and their nursing facility were to fill up, we would hope Franke at Seaside would seek the services of a brand new, state-of-the-art facility such as Spring Street Health Center that will be able to provide top-class care for the resident's needs. As stated in the Application, Spring Street Health Center will accept referrals of patients needing nursing home services without regard to race, sex, creed, color or national origin.

**NHC Healthcare Charleston**

NHC Healthcare Charleston has opposed the Spring Street Health Center CON on grounds that it does not comply with the CON Act, applicable regulatory criteria, and standards in the State Health Plan. However, NHC Healthcare Charleston provides no evidence or reasons as to why they believe the Application does not comply.

The Spring Street CON submission complies with the South Carolina Department of Health and Environmental Control Regulation No. 61-15, "Certificate of Need for Health Facilities and Services" effective May 25, 2012. This application fully satisfies the stipulated criteria for this type of project and is fully consistent with the 2020 South Carolina Health Plan (enacted March 13, 2020 for all by Chapter 3, which was enacted June 12, 2020) which includes specific standards relative to home health care services. The application fully describes the proposed project, documents the need, and demonstrates the financial viability of the project.

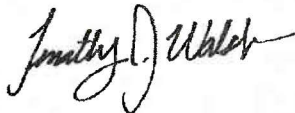
**Bishop Gadsden Episcopal Retirement Center**

Bishop Gadsden Episcopal Retirement Center has opposed our Spring Street Health Center CON on grounds that the Application does not comply with the 2020 South Carolina Health Plan, the project review criteria, and the applicable regulations in Reg. 61-15. However, Bishop Gadsden provides no evidence or reasons on why they believe the Application does not comply.

The Spring Street CON submission complies with the South Carolina Department of Health and Environmental Control Regulation No. 61-15, "Certificate of Need for Health Facilities and Services" effective May 25, 2012. This application fully satisfies the stipulated criteria for this type of project and is fully consistent with the 2020 South Carolina Health Plan (enacted March 13, 2020 for all by Chapter 3, which was enacted June 12, 2020) which includes specific standards relative to home health care services. The application fully describes the proposed project, documents the need, and demonstrates the financial viability of the project.

Thank you for your attention to this matter.

Best Regards,



Timothy Walsh  
Senior Financial Analyst  
Liberty Senior Living  
[TWalsh@libertyseniorliving.com](mailto:TWalsh@libertyseniorliving.com)  
(910) 332-1982

**Spring Street Senior Housing OPCO, LLC d/b/a Spring Street Health Center - CON #2827  
- Response to Affected Person Opposition Letters**

Timothy J. Walsh <TWalsh@libertyseniorliving.com>

Thu 2/11/2021 4:22 PM

To: Coninfo, Coninfo <Coninfo@dhec.sc.gov>; Hyman, Jennifer J. <HYMANJJ@dhec.sc.gov>

📎 1 attachments (139 KB)

Spring Street\_Health Center\_Response to Affected Person Opposition Letters - 2-11-21 (FINAL).pdf;

**\*\*\* Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\***

Good afternoon Ms. Hyman:

On behalf of Spring Street Senior Housing OPCO, LLC (the “the Applicant”), please find attached a response to the three affected person/opposition letters received by the Certificate of Need (“CON”) Program.

If I can provide any further details, please let me know. Thank you!

Regards,

**Timothy J. Walsh**

Senior Financial Analyst

*Liberty Senior Living*

Office: 910-332-1982

Mobile: 910-512-9191

[TWalsh@libertyseniorliving.com](mailto:TWalsh@libertyseniorliving.com)

2334 S. 41<sup>st</sup> Street, Wilmington, NC 28403

Visit our website at [www.LibertySeniorLiving.com](http://www.LibertySeniorLiving.com)



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**Fw: CON Spring Street Senior Housing #2827**

Murdock, Margaret P. <murdocmp@dhec.sc.gov>

Wed 3/17/2021 6:49 PM

To: Goins, Arnisha D. <goinsad@dhec.sc.gov>

**Maggie Parham Murdock**

**Director**

Certificate of Need Program

Healthcare Quality, Bureau of Planning and Construction

**S.C. Dept. of Health & Environmental Control**

Office: (803) 545-4492

Mobile: (803) 360-5770

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**From:** Lynne Kerrison, CFO <Lynne.Kerrison@bishopgadsden.org>

**Sent:** Wednesday, March 17, 2021 2:58 PM

**To:** Murdock, Margaret P. <murdocmp@dhec.sc.gov>; Eubank, Louis W. <EUBANKLW@dhec.sc.gov>

**Cc:** lcrum@burr.com <lcrum@burr.com>; Sarah Tipton <Sarah.Tipton@bishopgadsden.org>; Aaron Roop, Vice President of Operations <Aaron.Roop@bishopgadsden.org>

**Subject:** CON Spring Street Senior Housing #2827

**\*\*\* Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. \*\*\***

I am letting this group know that Bishop Gadsden filed paperwork for our opposition to this CON application via email and hard copy Wednesday March 17, 2021. If for some reason the email or hard copy does not arrive, please contact me as soon as possible.

Lynne Kerrison

*Lynne Loring Kerrison CPA, CFO*

*Bishop Gadsden Episcopal Retirement Community  
1 Bishop Gadsden Way  
Charleston, SC 29412*

*843-406-6298 (0)*

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# BISHOP GADSDEN



March 17, 2021

Ms. Margaret P. Murdock  
Director, Certificate of Need Program  
Mr. Louis Eubank  
Chief, Health Quality, Bureau of Planning and Construction  
Bureau of Health Facilities and Services Development  
S.C. Department of Health and Environmental Control  
301 Gervais Street  
Columbia, South Carolina 29201

Re: Charleston Co. Nursing Home certificate of Need Application #2827, Spring Street Senior Housing OPCO, LLC d/b/a Spring Street Health Center—Matter 2827:

Dear Ms. Murdock and Mr. Eubank:

Bishop Gadsden Episcopal Retirement Community is submitting this letter of opposition as an affected person to the above Certificate of Need Application for a new 23-bed non-institutional nursing home (application) to be located at 194 Spring Street, Charleston, South Carolina 29403. We received the “deemed complete” letter yesterday (March 16) and reserve the right to make additional comments.

The verbatim stated goal of the Certificate of Need Act reads as follows: “*The purpose of the Act is to promote cost containment, prevent unnecessary duplication of health care facilities and services, guide the establishment of health facilities and services which will best serve public need and ensure high quality services are provided in health facilities in this State.*”

The Spring Street Health Center application does not advance any of the stated objectives in the purpose of the CON Act. Its proposed nursing home would be a duplication of readily available services requiring unnecessary healthcare expenditures without compelling evidence of the ability to serve the public need and the community around it. With the owner’s affiliates’ average star quality rating of less than 3 stars, their record in other states does not support the goal of ensuring high quality services are provided in this state.

Furthermore, the application is deficient in the following regulatory requirements, including the four project review criteria identified in the “deemed complete” letter, as evidenced in the attached supporting documentation. Substantively, the application does not:

- Properly document and demonstrate the need
- Meet the required staffing and financial criteria
- Develop support and relationships throughout the community
- Meet numerous regulations and review requirements

1 Bishop Gadsden Way | Charleston, SC 29412  
843.762.3300 phone  
843.762.6119 fax  
www.BishopGadsden.org  
A Life Care Retirement Community

Ms. Margaret P. Murdock

Page 2

March 17, 2021

Bishop Gadsden, established in the city of Charleston in 1850 and on our present site on James Island since 1987, is a well-respected long-term care provider in the Charleston area with a long history of excellent quality and commitment to service in the community. Our facility is located within 5 miles of the proposed site of this applicant.

We are available at your request to answer any questions you may have about our opposition. You can contact us at (843-762-3300) or our attorney, Liz Crum (803-753-3240). We respectfully request this application be denied.

Sincerely,



Sarah E. H. Tipton  
President/CEO

Enclosures

cc: Liz Crum, Esq., Burr & Forman, LLP

BISHOP GADSDEN

---

Opposition to Liberty  
Health – Spring Street  
*Charleston, SC*

# Opposition Overview

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- Bishop Gadsden opposes Spring Street Senior Housing OP/CO, LLC's (Spring Street) (A/K/A Liberty Health) Certificate of Need (CON) application to construct a nursing facility in Charleston
- DHEC should deny the CON application because Spring Street failed to completely and sufficiently address the Project Review Criteria (PRC) of **Reg. 61-15 Certification of Need for Health Facilities:**
  - Spring Street did not:
    - Properly document and demonstrate need
    - Meet required financial and staff related criteria
    - Develop relationships and support throughout the community
    - Meet numerous regulations and review criteria



# Failure to Document Community Need

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SECTION 802. CRITERIA FOR PROJECT REVIEW (2.)

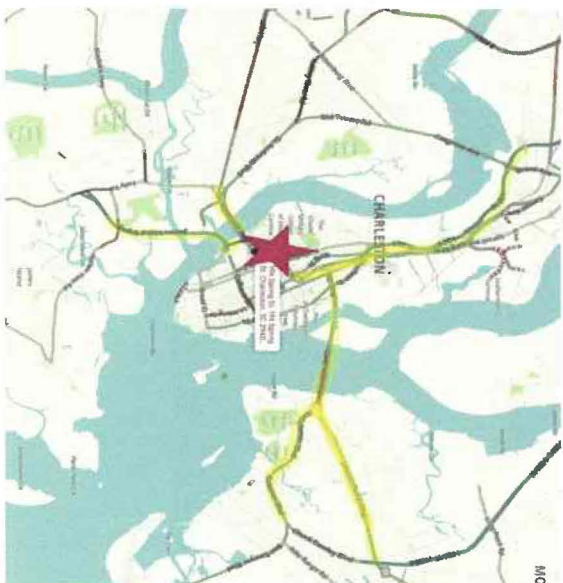
## Failure to Document Need

---

- Spring Street failed to address points required *within Part B – Question 11*, relying only on the State Health Plan’s need and failing to include:
  - Documentation to support need within the target population, the county per the Plan.
  - Discussion of existing facilities and services within the service area.
  - The projects will **unnecessarily duplicate** existing entities and services.
  - Need methodologies and projected utilization are flawed.
- It appears that Spring Street has not used data to develop a credible need, and has not properly assessed nor does not fully understand the local nursing home market.

# Failure to Document Need

- The target population per Spring Street CON is the County Of Charleston
- Charleston County is 1358 square miles-(916 square miles of land and 442 square miles of water
- The largest county in South Carolina
- Spring Street is located on the peninsula on an extremely busy thoroughfare
  - The only access to the thoroughfare is via the interstate or bridges
  - The area is highly congested
  - The area is prone to extensive flooding
- This location is not easily accessible by the vast majority of the residents of Charleston County
- Spring Street does not address parking for staff, residents, families, visitors or vendors, etc. (this area of Charleston has an inadequate supply of parking) and zoning requirements in Charleston mandate parking by use. While Spring Street is properly zoned for use, there is no mention of its meeting the parking requirements or having an exemption.
- The target population is not clearly identified as to size, location, distribution and socioeconomic status and does not provide evidence that services support this target population**



## Failure to Document Need

---

- Spring Street will not be serving the residents of Charleston County living the closest to the facility. The population in the zip code (29403) of the proposed Spring Street skilled facility represents 58% of the residents over the age of 65 with an annual income below \$50,000 (Exhibit 13 attached)*
- Can someone with an income of \$50K actually afford to be at facility?**

# Distribution (Accessibility)

---

SECTION 802. CRITERIA FOR PROJECT REVIEW (3.)

# Community Need—Duplication of Services

---

- Decline in Nursing Facility occupancy is an industry wide problem.
  - Life expectancy in the United States dropped during the first half of 2020 and as data is compiled for remaining months of 2020 it has the potential drop further. This is the largest drop since the 1940's (Exhibit 6 attached)
- According to the NIC Skilled Nursing Monthly Report data through November 2020 states that total occupancy fell to a new low of 74.2% (Exhibit 7 attached)
  - South Carolina fell to an average of 74.9% in 2020 (Exhibit 8 attached)
  - Charleston County fell to an average of 76.4% in Q4 2020
- Industry trends for average length of stay is steadily decreasing. The National SNF average length of stay (ALOS) is trending down as evidenced by Medicare cost reports.



# Community Need-Duplication of Services

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- Managed Medicare plans utilization is increasing while private pay and traditional Medicare is decreasing. Revenue per patient day (RPPD) under Managed Medicare Plans is significantly less than private pay and traditional Medicare
- NIC Skilled Nursing Monthly Report includes graphs to support these trends (Exhibit 11 attached).
- Demand for Nursing Facilities is now shifting to Home Health and Home Care services as demonstrated in Exhibit 9 and Exhibit 10 (attached).
- During 2020 Home Health Agencies has significant growth in census
- Home Care Services have been developed to offer similar services as Nursing Facilities in a home setting
- Developing technologies are supporting ability for patients to recover and live in the home setting without the need for an intervening stay at a nursing home.

# Community Need-Duplication of Services

This chart (Exhibit 12 attached) uses current data and demonstrates sufficient beds to cover needs in Charleston County for Medicare and Private Pay

The conservative estimate (Column A) puts current excess capacity at 1,120 beds and scenarios based on current trends project excess capacity to be as great as 4,569 beds (Column E)

Data compiled utilizing Medicare cost reports

	A	B	C	D	E
<b>Occupancy</b>	0%	90%	80%	75%	ALOS
Total Medicare licensed beds	1483				1483
Calendar days total patient days	365				365
Medicare payer mix Medicare days	541,295				541,295
Medicare Average length of stay	19.80%				19.80%
	107,176				107,176
<b>Annual Medicare Capacity</b>	<b>29</b>				<b>15</b>
Average beds in use	3,696	1,335	1,186	1,112	7,145
Beds available	-	148	297	371	-
Total 2019 Charleston County discharges to SNF	2,576				2,576
Excess bed capacity	1,120				4,569

\*\*\*\*\*Spring Street will only serve Medicare residents and Private Pay  
 \*\*\*\*\* Spring Street will not serve Medicaid patients  
 \*\*\*\*\* National trend for Occupancy to decrease---Home Health to increase  
 \*\*\*\*\* Industry trend is for average length of stay to decrease



# Community Need-Duplication of Services

□ There are an additional six facilities and one additional facility in advanced planning stages that represent an additional 792 beds within a 20 Mile Radius of the Spring Street project



Represents current nursing facilities in a 20-mile radius of proposed site

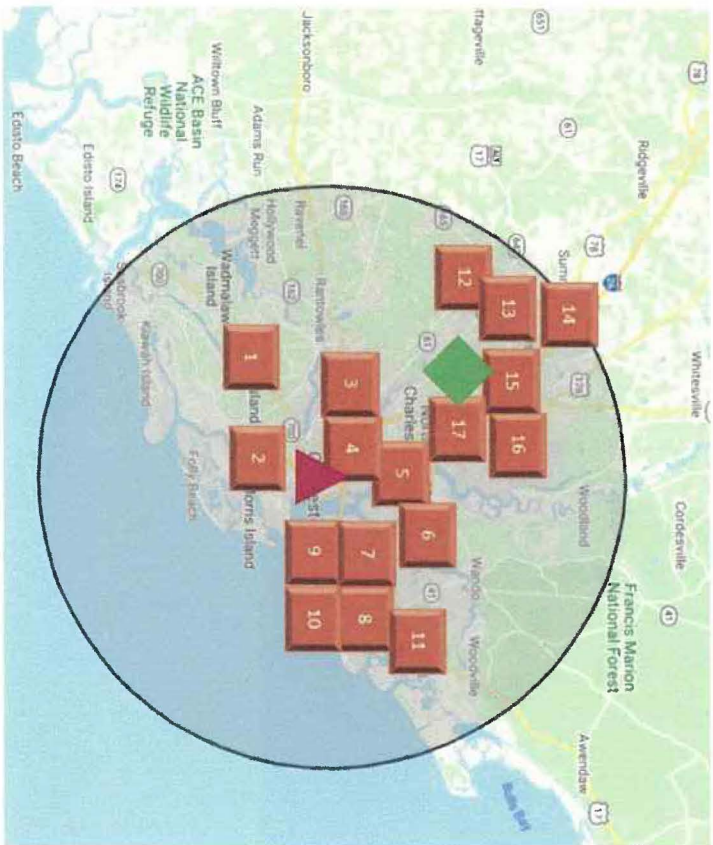


Represents proposed site at 194 Spring Street



Represents nursing facility currently in planning (North Charleston Post-Acute)

**This Clearly demonstrates duplication of Services**



# Community Need

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## *Adverse Effects on other Facilities*

Section 802 (23) (a) The impact on the current and projected occupancy rates or use rates of existing facilities and services should be weighed against the increased accessibility offered by the proposed services

**The Spring Street project would adversely effect the existing facilities in Charleston and as discussed further below and offers NO increased accessibility**



# Failure to Demonstrate Provisions for Access/Indigent Care

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SECTION 802 CRITERIA FOR PROJECT REVIEW 31



# Indigent Care Support

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Spring Street failed to provide historical performance from other facilities in Spring Street's consolidated group for evidence of adequate provisions for access/indigent care.

The indigent care plan outlined in the application would most likely provide care for less than 5 residents a year:

- Budgeted charity care of \$11,756 year 1, \$20,064 year 2 and \$20,775 year 3 is depicted in the CON application. The net revenue per patient day is \$348 year 1, \$351 year 2, and \$358 year 3. This equates to a total of 33 indigent care days year 1, 57 days year 2 and 56 days year 3.
- The estimated population of Charleston County age 65 and with an income level below \$50,000 is **20,610** in 2020.
- With the forecasted population growth depicted in Spring Street's application of 17.89% by the year 2025, it should be assumed that the population of the income level \$50,000 and below in Charleston County will increase to **24,300** residents..

**Spring Street does not demonstrate commitment to support indigent and low-income residents of the Charleston community as required. (802- 3 (f/g)) (31)**

# Lack of Evidence of Community Support Acceptability

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SECTION 802. CRITERIA FOR PROJECT REVIEW 4.

# Community Support

- Corporate headquarters of Spring Street Health Center are located in Florida and it is a Delaware LLC.
- The majority of their other facilities are outside the state of SC.
- 40% of the facilities Spring Street states (pg. 12 of the CON application) will transfer patients to the Spring Street location have a skilled nursing facility attached to their Assisted Living and Memory Care facilities and most likely will not discharge to Spring Street.
- The Medical University of South Carolina transfer agreement support letter states “we will consider entering into a transfer agreement...”
- The two letters from local physicians and the mayor state a 25 bed facility---this is a 21 room facility with two double occupancy rooms, totaling 23 beds-NOT 25



# Community Support

The organizational chart provided in the Spring Street Senior Housing OPCO, LLC CON application is labeled

- POINSETTE – CHARLOTTE SC

Spring Street did not include an appropriate organizational chart

The regulations' require a list of names, addresses, % of ownership, person responsible and attorneys' representing the proposal---this information is not depicted clearly on the organizational chart PART A, ¶ 7.



# Staffing Resources

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- Liberty will need experienced, qualified staff for care of the targeted population
  - Potential to adversely impacting existing care providers as Spring Street's recruitment will draw highly qualified staff from existing care providers
- Charleston Regional Business Journal* (June 26<sup>th</sup>) details significant challenges currently facing the region for recruitment of cooks, wait staff, and utility/dishwashers and qualified medical staff (Exhibit 1 attached)
- Charleston Region historical and forecasted occupational cluster employment trends depicts medical (nurses and nurse aides) as the third highest growth in job needs by 2023. (Exhibit 2 attached)
- South Carolina is experiencing a critical shortage of nurses and it ranked fourth in the United States with greatest forecasted deficit (Exhibit 3 attached)

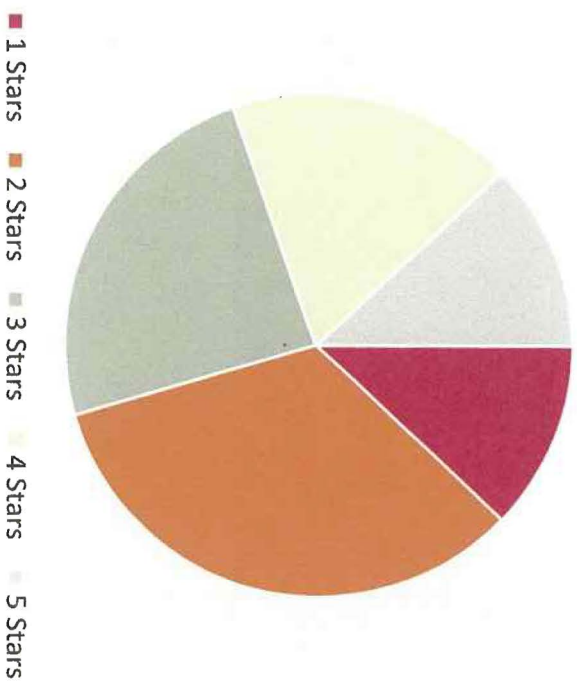


# Staffing Resources

- It is possible that Liberty's reputation will result in Challenges recruiting the experienced, qualified staffing needed
- Currently Liberty operates 15 facilities that are 1 or 2 Stars as rated by CMS

Average Rating	2.85
1 Stars	4
2 Stars	11
3 Stars	8
4 Stars	6
5 Stars	4

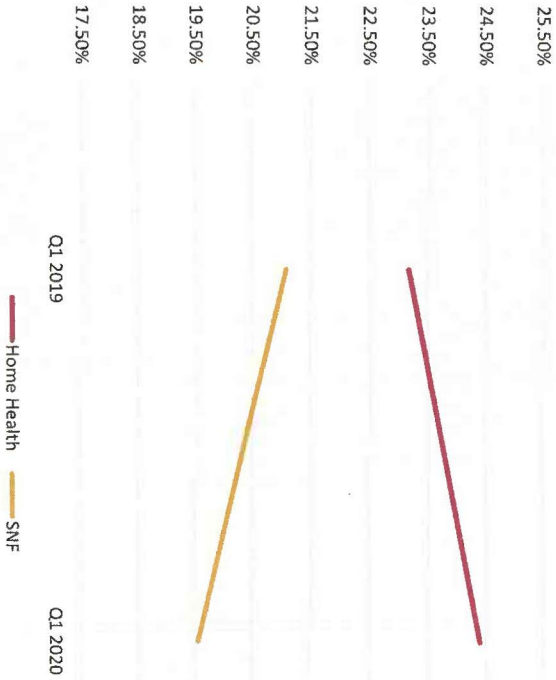
Liberty Star Rating Distribution



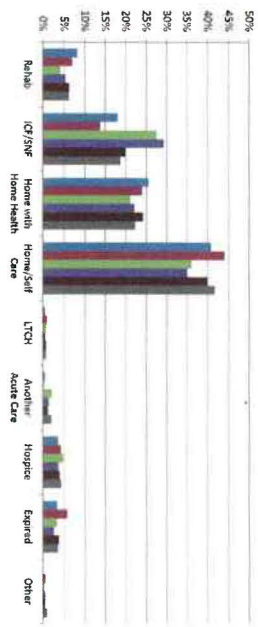


# Exhibit 9

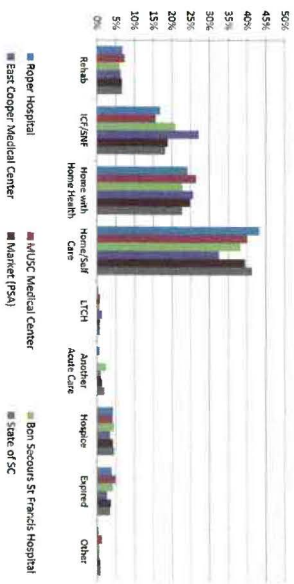
## Discharge Disposition Q1 '19 vs Q1 '20



PSA Bishop Gadsden: YE 2019Q1 Discharge Status Conversion Rate Compared to Market and State, Ages 65+



PSA Bishop Gadsden: YE 2020Q1 Discharge Status Conversion Rate Compared to Market and State, Ages 65+



# Exhibit 10

[www.ziegler.com](http://www.ziegler.com)

## ZIEGLER INVESTMENT BANKING SENIOR LIVING FINANCE Z-NEWS

Page 1 | Week of January 11, 2021

**Technology:** Technology has quickly become our saving grace across many levels. Providers have learned that stakeholders are willing to adopt technologies and that there are successful, innovative solutions to some of our most pressing issues. In 2021, rather than focusing on the speed of deployment as was seen in 2020, we will see greater focus on refinement and meaningful integration of technology solutions. Technology is here to stay.

**Skilled Nursing:** It is likely that this will be the one area continuing to experience instability in the year ahead. With dramatic drops in occupancy and shifts to intensive home health and home care services, occupancy will not likely rebound quickly. Providers will be assessing their unit

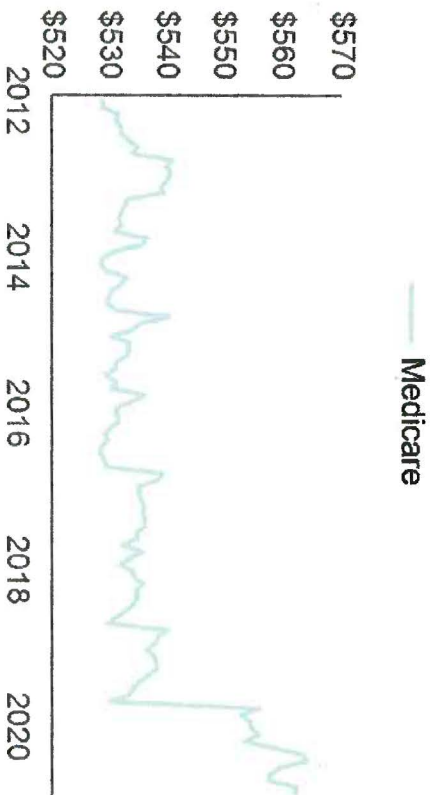
# Exhibit 11

## Skilled Nursing Monthly Report

Data through November 2020

<http://www.nic.org/nic-map> | 410-267-0504  
National Investment Center for Seniors Housing & Care (NIC)

### Revenue Per Patient Day



# Exhibit 12

	A	B	C	D	E
<b>Occupancy</b>	<b>0%</b>	<b>90%</b>	<b>80%</b>	<b>75%</b>	<b>ALOS</b>
Total Medicare licensed beds	1483				1483
Calendar days	365				365
total patient days	541,295				541,295
Medicare payer mix	19.80%				19.80%
Medicare days	107,176				107,176
<b>Medicare Average length of stay</b>	<b>29</b>				<b>15</b>
Annual Medicare Capacity	3,696				7,145
Average beds in use	-	1,335	1,186	1,112	-
Beds available		148	297	371	
Total 2019 Charleston County discharges to SNF	2,576				2,576
Excess bed capacity	1,120				4,569

\*\*\*\*\*Spring Street will only serve Medicare residents and Private Pay  
 \*\*\*\*\* Spring Street will not serve Medicaid patients  
 \*\*\*\*\* National trend for Occupancy to decrease-----Home Health to Increase  
 \*\*\*\*\*Industry trend is for average length of stay to decrease

# Exhibit 13

## Charleston County, SC AIQ Households

	Age				Total
	Under 64 <sup>(1)</sup>	65-74	75-84	85 and Over	
<u>29403</u>					
Less than \$50,000	1,231	754	503	221	2,709
\$50,000 - \$100,000	513	396	165	50	1,124
\$100,000 - \$200,000	306	215	71	15	607
Greater than \$200,000	383	116	20	6	525



# Staffing Resources

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- The 2021 Skilled Nursing Outlook Report (Exhibit 4 attached) states staffing challenges as the top non-Covid challenge to nursing facilities in 2021. A direct quote from this reports states “Pre-pandemic, post-pandemic, it makes no difference; Staffing remains a top challenge for the skilled nursing industry heading into 2021.”
- The Spring Street Project forecasts annual salary increases of just 2% per year. According to the living wage MIT study (exhibit 5) the living wage for Charleston County increased to \$16.23 as of February 2021. This is approximately a 30% increase since the 2020 study. This living wage far outpaces projected staffing costs/salaries for this project.
- Staffing compensation does not appear to be in a competitive range in the service area.



# Manpower Budget

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- Upon review of the manpower budget, the administrator is not clearly identified.
- Staffing plan-the manpower budget appears to be for all of the business operations included in the building and does not break out the staffing for the skilled beds from the other licensed beds in the facility
  - Staff working in a SNF should have a different clinical skill set and most likely will cost more.
- The CON does not clearly demonstrate proper staffing for 23 skilled nursing beds

# Manpower Budget

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- Spring Street does not provide evidence of on-going clinical training
- Spring Street does not provide support for working with the local high school, tech schools or colleges to attract and provide on-going training

**Due to the nursing shortage in Charleston County—how does Spring Street plan to comply with Section 802 (23) Adverse Effects on Other Facilities**

*“the staffing of the proposed service should be provided without unnecessarily depleting the staff of existing facilities or services creating an excessive rise in staffing costs due to increased competition”*

# Financial

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SECTION 802. CRITERIA FOR PROJECT REVIEW 5,6,7,8,9,15,20,23

# Financial

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- Spring Street is using a rate of \$542.00/day for rehab and a blended rate of \$420.00/day for private pay. **These appear to be unrealistic projections**
- According to the NIC Map data through November 2020, (Exhibit 11 attached) Medicare (rate per patient day) RPPD spiked in 2020 to a high of approximately \$560.
- Many industry experts believe this rate will decrease in the near future as CMS studies the impact of the new PDPM rates on the overall reimbursement.
- The Medicare RPPD fluctuated between \$530 and \$540 between years 2012 and 2019.
- The Spring Street project indicates 70% of annual revenue from Medicare which is contrary to trends of increasing Medicare Replacement plans. This is an aggressive patient mix and is not comparable to other facilities in the surrounding area

# Financial

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- Spring Street is projecting a stabilized occupancy of 91%--(55% in year 1)
  - This is contrary to occupancy trends within Charleston County and within the greater industry
- Page 138 of the Certificate of Need application confirms that "**Charleston County is a highly competitive Senior Living market**" (This also applies to staffing)
  - This statement is confirmed by current occupancy trends in Charleston County and current excess bed capacity for surrounding nursing facilities
- Overstated revenue and higher than market occupancy rates support that the actual revenue may be less than the forecasted revenues. Spring Street does not indicate any other sources of revenues except Medicare and private pay.
- As required (6) Spring Street does not provide a contingency plan if revenue or occupancy does not meet forecasted targets.

# Financial

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- The following expenses are omitted in the operating costs:
    - FMV Rent—
  - A related entity owns the Land, Building and Furniture, Equipment (FFE) which is rented to Spring Street
  - The lease is \$28.23 per square foot for skilled nursing space—the average doctor office space in Charleston is greater without FFE included
  - The lease with extensions is for only 15 years—Is this operation expected to only operate 15 years?
  - The lease is a net lease (lessee pays a portion of taxes, insurance fees, maintenance)
- The CON states a FMV rent will be paid in years 6-15 (pg 53/5.7)—does this imply the rent paid in years 1-5 are not a FMV rent?**



# Financial

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- Salaries and benefits represent the majority of operating costs. An inflationary increase (page 150 of the application) of 2% will likely not be enough to retain a workforce and provide quality care to the residents of the facility in the Charleston County market.
- Low wages promote high employee turnover. High turnover in a medical setting does not promote quality healthcare
- Higher turnover rates increase operational costs for training and recruiting that may not be reflected in projected costs
- Overstated revenue and understated expenses result in a forecast depicting a greater net income each year of the forecast. Corrections to revenue mix, occupancy declines and increases in wages, benefits and employee turnover would likely result in a decrease to net income and possibly create a net loss.
- The certificate of need application (page 144) states a management fee of 6% of total revenue will be paid. The owners of Spring Street are not located in Charleston County or South Carolina, thus this fee will not boost the local or state economy

# Other Financial Questions

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- Spring Street allocates the Project Budget based on the square footage of each level of care—
  - A SNF requires higher building codes/cost than AL beds. A higher cost per square foot should be allocated to the SNF
- Spring Street states a larger facility provides construction costs that are more economical—
  - Our past building experience does not support this theory
- Insurance Costs (liability, property and casualty, automobile, wind and hail, and flood) are not included in the operating costs
- Spring Street does not identify what expenses the Management fee covers (if any)---
  - Without this knowledge, it cannot be determined if it is priced as an arm's length transaction
- IF THE ABOVE EXPENSES ARE OMITTED OR ARE LESS THAN FMV-the operating costs are understated**

## Other Financial Questions

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- It is difficult to obtain a complete schedule of operating costs because of the lease agreement between the owner of the building, Spring Street Senior Housing PROPCO, LLC, a Delaware limited liability company and Spring Street Senior Housing OPCO, LLC, a Delaware limited liability company and determine if costs are understated.
- A consolidated schedule of operating costs would properly show operating costs in accordance with section 802 (7)
- Spring Street has not demonstrated that related party transactions are recorded at (FMV) arms' length-GAAP requires FMV of related party transactions or disclosure

# Other Financial Questions

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- The following normal operating expenses are not clearly identified:
  - Malpractice Insurance
  - Cable/Internet
  - Technology Expense
  - Security
  - Advertising
  - Clinical Training/Education
  - Marketing
  - Licensure Fees
  - Electric
  - Appropriate Depreciation
  - Water/Sewer
- Spring Street states it will provide transportation services, but it does not address purchasing of vehicles, lease payments of vehicles, maintenance, insurance, property taxes, depreciation, or any transportation expenses.

## Other Comments

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- The lease states that Assisted Living and Memory Care are the only business operations that can be conducted in the Spring Street facility without the express written consent of the landlord (which can be withheld for any reason, in its sole discretion) –how can the tenant operate the skilled beds without violating the lease?
  
- The Landlord of the facility has the right to review ALL records. There is no exception for medical records---what about HIPAA violations?

# Conclusion

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- In summary, DHEC should deny the CON application because Liberty failed to do the following:
  - Properly document and demonstrate need
  - Meet required financial and staff related criteria
  - Develop relationships and support throughout the community
  - Meet numerous regulations and review criteria
- The application does not comply with the State Health Plan, including the project review criteria identified in the Plan and the deemed complete letter



# Exhibits

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# Exhibit 1

## Health care industry warns of labor crisis

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Patrick Hoff

[@PathoffCRBJ](#)

[phoff@schiznews.com](mailto:phoff@schiznews.com)

"The workforce shortage ... is mostly focused on front-line clinicians like nurses and physicians," said Schipp Ames, executive director of communications and marketing for the S.C. Hospital Association. "So it's really these front-line, bedside clinicians where you're seeing projected workforce shortages."

"You can make a much better living in a clinical setting than you can as faculty," he said. "So there's not as much available medical faculty to keep up with the amount of physicians and nurses we need."

"You're going to see a large number of clinicians retiring over the next several years," he said. "A huge portion of the physician and nurse population is age 55 to 75."

Franklin said just not enough people are gravitating to health care jobs.

"The crisis is already there, and it just seems like it's going to accelerate," she said.

[HTTPS://CHARLESTONBUSINESS.COM/NEWS/HEALTH/73093](https://charlestonbusiness.com/news/health/73093)



# Exhibit 3

## Registered Nurse Shortages by State, Projected

Difference between supply and demand expected by 2030

Most

Least

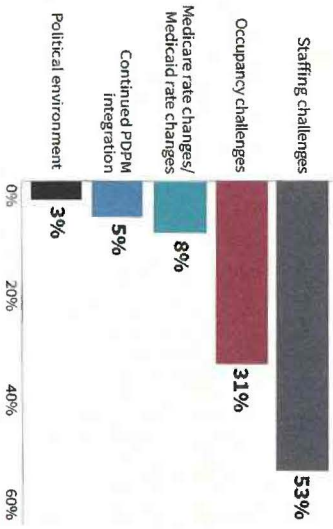
Rank	State	Demand (2030)	Supply (2030)	Difference	Rank	State	Demand (2030)	Supply (2030)	Difference
1	California	387,900	343,400	-44,500	1	Florida	240,000	293,700	53,700
2	Texas	269,300	253,400	-15,900	2	Ohio	132,800	181,900	49,100
3	New Jersey	102,200	90,800	-11,400	3	Virginia	86,500	109,200	22,700
4	South Carolina	62,500	52,100	-10,400	4	New York	195,200	213,400	18,200
5	Alaska	23,800	18,400	-5,400	5	Missouri	73,200	89,900	16,700
6	Georgia	101,000	98,800	-2,200	6	North Carolina	118,600	135,100	16,500
7	South Dakota	13,600	11,700	-1,900	7	Indiana	75,300	89,300	14,000
8	Montana	12,100	12,300	200	8	Kansas	34,900	47,500	12,600
9	North Dakota	9,200	9,900	700	9	Maryland	73,900	86,000	12,100
10	New Hampshire	20,200	21,300	1,100	10	Kentucky	53,700	64,200	10,500
11	Delaware	12,800	14,000	1,200	11	Iowa	35,300	45,400	10,100
12	Arizona	98,700	99,900	1,200	12	Arkansas	32,300	42,100	9,800
13	Massachusetts	89,300	91,300	2,000	13	New Mexico	21,600	31,300	9,700
14	Louisiana	49,700	52,000	2,300	14	Colorado	63,200	72,500	9,300
15	Vermont	6,800	9,300	2,500	15	Tennessee	82,200	90,600	8,400

Bureau of Health Workforce



# Exhibit 4

Which of the following is the greatest non-COVID challenge to skilled nursing in 2021?



**Staffing challenges dominant**  
Pre-pandemic, post-pandemic, it makes no difference: Staffing remains a top challenge for the skilled nursing industry heading into 2021. Last year, 54% of respondents selected staffing as the industry's top challenge, while this year, 53% of respondents selected it as the industry's top non-COVID-19-related challenge.

## 2021 Skilled Nursing Outlook Report



Info@skillednursingnews.com | 312.809.5755

# Exhibit 5

## Living Wage Calculation for Charleston County, South Carolina

	1 ADULT			
	0 Children	1 Child	2 Children	3 Children
Living Wage	\$16.43	\$32.29	\$38.25	\$47.96
Poverty Wage	\$6.13	\$8.29	\$10.44	\$12.60
Minimum Wage	\$7.25	\$7.25	\$7.25	\$7.25

<https://livingwage.mit.edu/counties/45019>

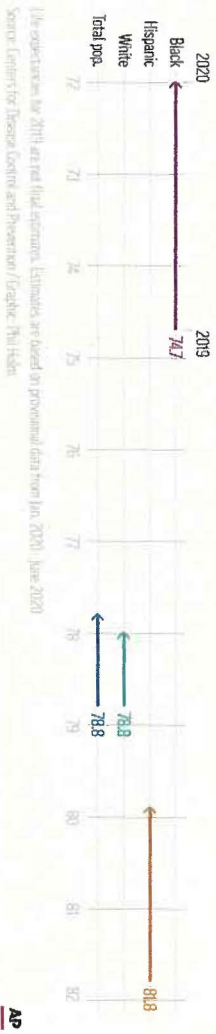


# Exhibit 6

## US life expectancy drops a year in pandemic, most since WWII

By MARILYNN MARCHIONE February 17, 2021

### Life expectancy at birth drops in US



“What is really quite striking in these numbers is that they only reflect the first half of the year ... I would expect that these numbers would only get worse,” said Dr. Kirsten Bibbins-Domingo, a health equity researcher and dean at the University of California, San Francisco.

[HTTPS://APNEWS.COM/ARTICLE/US-LIFE-EXPECTANCY-HUGE-DECLINE-F4CAAF4555563D09E927F1798136A869#:~:TEXT=LIFE%20EXPECTANCY%20IN%20THE%20UNITED,DEATHS%2C%20HEALTH%20OFFICIALS%20ARE%20REPORTING.](https://apnews.com/article/us-life-expectancy-huge-decline-f4caaf4555563d09e927f1798136a869#:~:text=life%20expectancy%20in%20the%20united,death%2c%20health%20officials%20are%20reporting.)

# Exhibit 7



Data Through November 2020

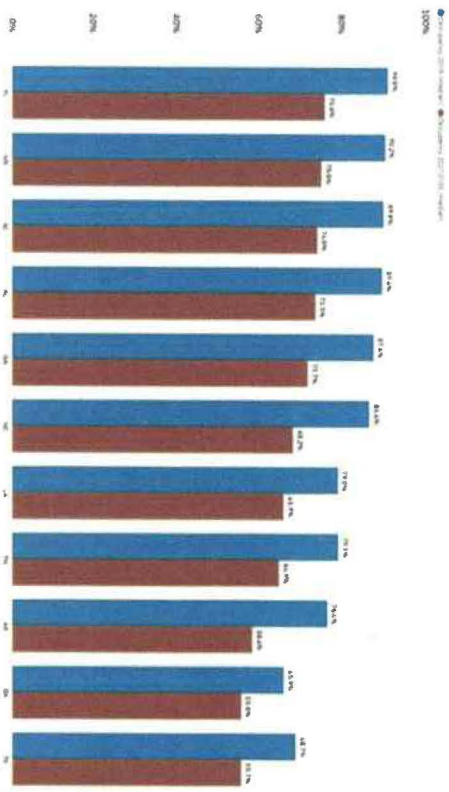
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## Key Takeaways

Occupancy continues to be challenged for skilled nursing properties, with the November 2020 occupancy rate falling to a new low of 74.2%. It was down 69 basis points from October (74.9%) and 11.2 percentage points from pre-pandemic levels in February 2020 (85.4%) and 10.7 percentage points from year-earlier levels. Since February, COVID-19 has significantly impacted skilled nursing operations across the country due to high acuity levels of residents, pandemic-related deaths as well as fewer elective surgeries at hospitals which have resulted in less need for rehab services often provided by nursing care properties. As the country and the skilled nursing sector navigate through the Winter months and vaccine distributions, it is likely that occupancy will continue to face pressure.

# Exhibit 8

Southern States Occupancy  
(Pre-COVID to January 3, 2021)



Source: CIA

The states covered in the chart, from left to right, are Florida, Mississippi, South Carolina, Alabama, Georgia, North Carolina, Louisiana, Tennessee, Arkansas, Oklahoma, and Texas.

[https://skillednursingnews.com/2021/01/48-states-saw-nursing-home-occupancy-of-80-or-worse-as-2021-dawned-with-census-as-low-as-56/?utm\\_source=Skilled+Nursing+News&utm\\_campaign=1643ea1bf4-EMAIL\\_CAMPAIGN\\_2021\\_01\\_25\\_10\\_28&utm\\_medium=email&utm\\_term=0\\_0eef5a402c-1643ea1bf4-227189](https://skillednursingnews.com/2021/01/48-states-saw-nursing-home-occupancy-of-80-or-worse-as-2021-dawned-with-census-as-low-as-56/?utm_source=Skilled+Nursing+News&utm_campaign=1643ea1bf4-EMAIL_CAMPAIGN_2021_01_25_10_28&utm_medium=email&utm_term=0_0eef5a402c-1643ea1bf4-227189)



# BISHOP GADSDEN

March 17, 2021

Ms. Margaret P. Murdock  
Director, Certificate of Need Program  
Mr. Louis Eubank  
Chief, Health Quality, Bureau of Planning and Construction  
Bureau of Health Facilities and Services Development  
S.C. Department of Health and Environmental Control  
301 Gervais Street  
Columbia, South Carolina 29201

Re: Charleston Co. Nursing Home certificate of Need Application #2827, Spring Street Senior Housing OPCO, LLC d/b/a Spring Street Health Center—Matter 2827:

Dear Ms. Murdock and Mr. Eubank:

Bishop Gadsden Episcopal Retirement Community is submitting this letter of opposition as an affected person to the above Certificate of Need Application for a new 23-bed non-institutional nursing home (application) to be located at 194 Spring Street, Charleston, South Carolina 29403. We received the “deemed complete” letter yesterday (March 16) and reserve the right to make additional comments.

The verbatim stated goal of the Certificate of Need Act reads as follows: *“The purpose of the Act is to promote cost containment, prevent unnecessary duplication of health care facilities and services, guide the establishment of health facilities and services which will best serve public need and ensure high quality services are provided in health facilities in this State.”*

The Spring Street Health Center application does not advance any of the stated objectives in the purpose of the CON Act. Its proposed nursing home would be a duplication of readily available services requiring unnecessary healthcare expenditures without compelling evidence of the ability to serve the public need and the community around it. With the owner’s affiliates’ average star quality rating of less than 3 stars, their record in other states does not support the goal of ensuring high quality services are provided in this state.

Furthermore, the application is deficient in the following regulatory requirements, including the four project review criteria identified in the “deemed complete” letter, as evidenced in the attached supporting documentation. Substantively, the application does not:

- Properly document and demonstrate the need
- Meet the required staffing and financial criteria
- Develop support and relationships throughout the community
- Meet numerous regulations and review requirements

1 Bishop Gadsden Way | Charleston, SC 29412  
843.762.3300 phone  
843.762.6119 fax  
www.BishopGadsden.org

*A Life Care Retirement Community*



Ms. Margaret P. Murdock  
Page 2  
March 17, 2021

Bishop Gadsden, established in the city of Charleston in 1850 and on our present site on James Island since 1987, is a well-respected long-term care provider in the Charleston area with a long history of excellent quality and commitment to service in the community. Our facility is located within 5 miles of the proposed site of this applicant.

We are available at your request to answer any questions you may have about our opposition. You can contact us at (843-762-3300) or our attorney, Liz Crum (803-753-3240). We respectfully request this application be denied.

Sincerely,



Sarah E. H. Tipton  
President/CEO

Enclosures

cc: Liz Crum, Esq., Burr & Forman, LLP

BISHOP GADSDEN

SCDHEC  
Received.

MAR 23 2021

Certificate of Need Program

Opposition to Liberty  
Health – Spring Street  
Charleston, SC



# Opposition Overview

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- Bishop Gadsden opposes Spring Street Senior Housing OPSCO, LLC's (Spring Street) (A/K/A Liberty Health) Certificate of Need (CON) application to construct a nursing facility in Charleston
- DHEC should deny the CON application because Spring Street failed to completely and sufficiently address the Project Review Criteria (PRC) of Reg. 61-15 **Certification of Need for Health Facilities:**
  - Spring Street did not:
    - Properly document and demonstrate need
    - Meet required financial and staff related criteria
    - Develop relationships and support throughout the community
    - Meet numerous regulations and review criteria

# Failure to Document Community Need

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SECTION 802. CRITERIA FOR PROJECT REVIEW (2.)

## Failure to Document Need

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- Spring Street failed to address points required *within Part B – Question 11*, relying only on the State Health Plan’s need and failing to include:
  - Documentation to support need within the target population, the county per the Plan.
  - Discussion of existing facilities and services within the service area.
  - The projects will **unnecessarily duplicate** existing entities and services.
  - Need methodologies and projected utilization are flawed.
- It appears that Spring Street has not used data to develop a credible need, and has not properly assessed nor does not fully understand the local nursing home market.