

RECEIVED

Feb 01 2019

STATE HEALTH PLANNING AND  
DEVELOPMENT AGENCY

**HKH**

HARBUCK KEITH & HOLMES  
LLC

David M. Hunt  
Direct Dial: (205) 547-5552  
E-Mail: [dhunt@hkh.law](mailto:dhunt@hkh.law)

February 1, 2019

*Via Email ([shpda.online@shpda.alabama.gov](mailto:shpda.online@shpda.alabama.gov))*

Bradford L. Williams  
Executive Director  
Alabama State Health Planning &  
Development Agency  
100 North Union Street, Suite 870  
Montgomery, Alabama 35104

**Re: Notice of Change of Ownership  
Merrill Gardens at Madison, LLC**

Dear Mr. Williams:

We respectfully submit this letter to the Alabama State Health Planning and Development Agency ("SHPDA") as an attachment to the Notice of Change of Ownership form that we are filing pursuant to the Alabama Certificate of Need Program Rules and Regulations (the "CON Rules") Chapter 410-1-7-.04. The proposed change of ownership involves Merrill Gardens at Madison located in Madison, Alabama (the "Facility"). The following summarizes the transaction proposed to take place on or about May 2, 2019, and addresses SHPDA requirements under the CON Rules for change of ownership.

**1. Facts**

The Facility is a retirement community in Madison, Alabama consisting of a licensed 32-bed specialty care assisted living facility ("SCALF"), and a licensed 160-bed assisted living facility ("ALF"). Merrill Gardens at Madison, LLC ("MGM") is the current property owner of the Facility and has entered into an operating lease for the Facility with MH RDM Operating LLC ("MH Operating"), which is the licensed operator of the Facility and holds the CON for 32 SCALF beds.

On December 14, 2018, we filed a Notice of Change of Ownership for the Facility (the "2018 CHOW"). A copy of this 2018 CHOW is attached as Exhibit A. By letter dated January 3, 2019, SHPDA approved this 2018 CHOW. A copy of this SHPDA approval letter is attached as Exhibit B. On January 29, 2019, the transaction contemplated by the 2018 CHOW was completed, resulting in SHI-III Merrill JV Company III, LLLP ("New Owner") becoming the owner and sole member of MGM. MH Operating remained the licensed operator and holder of the CON for the Facility's 32 SCALF beds, and MH RDM Holdings LLC ("MH Holdings") became the sole owner of MH Operating. An organizational chart showing the current

ownership of the Facility after the completion of the January 29, 2019 transaction approved by SHPDA pursuant to its January 3, 2019 letter is attached as Exhibit C.

The subject of this new 2019 CHOW is a second transaction involving the Facility that will result in a change of the licensed operator and holder of the CON for the Facility's 32 SCALF beds. Upon obtaining the necessary regulatory approval from SHPDA and the Alabama Department of Public Health, MGM will 1) terminate its operating lease with MH Operating for the Facility, and 2) become the licensed operator of the Facility and hold the CON for the Facility's 32 SCALF beds. An organizational chart showing the ownership of the Facility after the proposed May 2019 transaction has closed is attached as Exhibit D.

## **2. SHPDA Requirements For Change of Ownership**

- a) Financial scope of the project. There will be no capital expenditures in conjunction with the proposed transaction, nor is it anticipated that there will be any new annual operating costs associated with the proposed transaction.
- b) No new services. The proposed transaction will not result in any new or additional services beyond those already provided at the Facility.
- c) No new beds. The proposed transaction will not result in the creation of new beds.
- d) No conversion of beds. The proposed transaction will not involve the conversion of beds.
- e) Acquisition of Assets/Stock. The proposed transaction does not involve the sale of stock or transfer of other assets.

Based on the above showing that there will be no change in health service, no conversion of beds or increase in bed capacity, or any capital expenditure in excess of the applicable spending thresholds set forth in *Alabama Code* § 22-21-263(a)(2), we respectfully request that you exercise your authority under Chapter 410-1-7-.04(2) of the CON Rules and determine that a new Certificate of Need is not required for the consummation of the above-described transaction. In accordance with the CON Rules, MGM has paid the filing fee of \$2,500 through SHPDA's online payment portal.

Bradford L. Williams.  
February 1, 2019  
Page 3

If you have any questions or need any additional information, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hunt", written over a horizontal line.

David M. Hunt  
Attorney for Merrill Gardens at Madison,  
LLC and MH RDM Operating LLC

DMH/aeg

Attachments

State Health Planning and Development Agency

Alabama CON Rules &amp; Regulations

**NOTICE OF CHANGE OF OWNERSHIP/CONTROL**

The following notification of intent is provided pursuant to all applicable provisions of ALA. CODE § 22-21-270 (1975 as amended) and ALA. ADMIN. CODE r. 410-1-7-.04. This notice must be filed at least twenty (20) days prior to the transaction.

Change in Direct Ownership or Control (of a vested Facility; ALA. CODE §§ 22-20-271(d), (e))

Change in Certificate of Need Holder (ALA. CODE § 22-20-271(f))

Change in Facility Management (Facility Operator)

Any transaction other than those above-described requires an application for a Certificate of Need.

**Part I: Facility Information**

SHPDA ID Number: P4514  
(This can be found at [www.shpda.alabama.gov](http://www.shpda.alabama.gov), Health Care Data, ID Codes)

Name of Facility/Provider: Merrill Gardens at Madison  
(ADPH Licensure Name)

Physical Address: 121 Brookridge Drive  
Madison, Alabama 35758

County of Location: MADISON

Number of Beds/ESRD Stations: 32

CON Authorized Service Area (Home Health and Hospice Providers Only). Attach additional pages if necessary. n/a

**Part II: Current Authority** (Note: If this transaction will result in a change in direct ownership or control, as defined under ALA. CODE § 22-20-271(e), please attach organizational charts outlining current and proposed structures.)

Owner (Entity Name) of Facility named in Part I: Merrill Gardens at Madison, LLC

Mailing Address: 121 Brookridge Drive  
Madison, Alabama 35758

Operator (Entity Name): MH RDM Operating LLC

**Part III: Acquiring Entity Information**

Name of Entity: Merrill Gardens at Madison, LLC

Mailing Address: 121 Brookridge Drive  
Madison, Alabama 35758

Operator (Entity Name): Merrill Gardens at Madison, LLC

Proposed Date of Transaction is on or after: May 2, 2019

**Part IV: Terms of Purchase**

Monetary Value of Purchase: see attached

Type of Beds: SCALF

Number of Beds/ESRD Stations: 32

**Financial Scope:** to Include Preliminary Estimate of the Cost Broken Down by Equipment, Construction, and Yearly Operating Cost:

Projected Equipment Cost: \$ 0

Projected Construction Cost: \$ 0

Projected Yearly Operating Cost: \$ 0

Projected Total Cost: \$ 0

**On an Attached Sheet Please Address the Following:**

- 1.) The services to be offered by the proposal (the applicant will state whether he has previously offered the service, whether the service is an extension of a presently offered service, or whether the service is a new service).
- 2.) Whether the proposal will include the addition of any new beds.
- 3.) Whether the proposal will involve the conversion of beds.
- 4.) Whether the assets and stock (if any) will be acquired.

**Part V: Certification of Information**

**Current Authority Signature(s):**

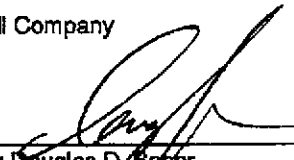
The information contained in this notification is true and correct to the best of my knowledge and belief.

Owner(s): **Merrill Gardens at Madison, LLC**

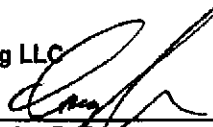
By: SHI-III Merrill JV Company III, LLLP  
Its: Sole member

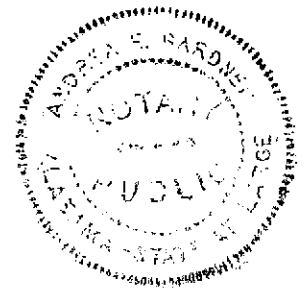
By: MG SHI-III JV Sub LLC  
Its: General Partner

By: R.D. Merrill Company  
Its: Manager

By:   
Name: Douglas D. Spear  
Title SVP and CFO


Operator(s): **MH RDM Operating LLC**

By:   
Name: Douglas D. Spear  
Title SVP and CFO



SWORN to and subscribed before me, this 1st day of February, 2019.

(Seal)

  
Notary Public

My Commission Expires: 2/20/21

**Acquiring Authority Signature(s):**

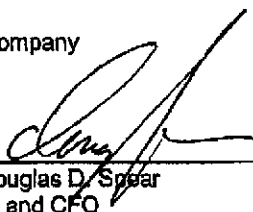
I agree to be responsible for reporting of all services provided during the current annual reporting period, as specified in ALA. ADMIN. CODE r. 410-1-3-.12. The information contained in this notification is true and correct to the best of my knowledge and belief.

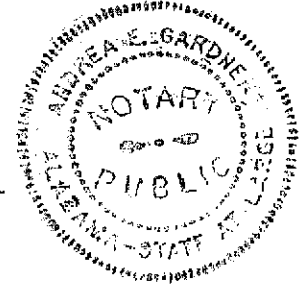
Owner(s): **Merrill Gardens at Madison, LLC**

By: SHI-III Merrill JV Company III, LLLP  
Its: Sole member

By: MG SHI-III JV Sub LLC  
Its: General Partner


By: R.D. Merrill Company  
Its: Manager

By:   
Name: Douglas D. Spear  
Title: SVP and CFO



SWORN to and subscribed before me, this 1st day of February, 2019.

(Seal)

  
Notary Public

My Commission Expires: 2/20/21

Author: Alva M. Lambert  
Statutory Authority: § 22-21-271(c), Code of Alabama, 1975  
History: New Rule

# **EXHIBIT A**



## NOTICE OF CHANGE OF OWNERSHIP/CONTROL

The following notification of intent is provided pursuant to all applicable provisions of ALA. CODE § 22-21-270 (1975 as amended) and ALA. ADMIN. CODE r. 410-1-7-.04. This notice must be filed at least twenty (20) days prior to the transaction.

- Change in Direct Ownership or Control (of a vested Facility; ALA. CODE §§ 22-20-271(d), (e))
  - Change in Certificate of Need Holder (ALA. CODE § 22-20-271(f))
  - Change in Facility Management (Facility Operator)
- Any transaction other than those above-described requires an application for a Certificate of Need.

### Part I: Facility Information

SHPDA ID Number: P4514  
(This can be found at [www.shpda.alabama.gov](http://www.shpda.alabama.gov), Health Care Data, ID Codes)

Name of Facility/Provider: Merrill Gardens at Madison  
(ADPH Licensure Name)

Physical Address: 121 Brookridge Drive  
Madison, Alabama 35758

County of Location: MADISON

Number of Beds/ESRD Stations: 32

CON Authorized Service Area (Home Health and Hospice Providers Only). Attach additional pages if necessary. n/a

**Part II: Current Authority** (Note: If this transaction will result in a change in direct ownership or control, as defined under ALA. CODE § 22-20-271(e), please attach organizational charts outlining current and proposed structures.)

Owner (Entity Name) of Facility named in Part I: Merrill Gardens at Madison, LLC

Mailing Address: 121 Brookridge Drive  
Madison, Alabama 35758

Operator (Entity Name): MH RDM Operating LLC

### Part III: Acquiring Entity Information

Name of Entity: same (see attached)

Mailing Address: \_\_\_\_\_  
 \_\_\_\_\_

Operator (Entity Name): \_\_\_\_\_

Proposed Date of Transaction is on or after: January 14, 2019

**Part IV: Terms of Purchase**

Monetary Value of Purchase: see attached

Type of Beds: SCALF

Number of Beds/ESRD Stations: 32

**Financial Scope:** to include Preliminary Estimate of the Cost Broken Down by Equipment, Construction, and Yearly Operating Cost:

Projected Equipment Cost: \$ 0

Projected Construction Cost: \$ 0

Projected Yearly Operating Cost: \$ 0

Projected Total Cost: \$ 0

**On an Attached Sheet Please Address the Following:**

- 1.) The services to be offered by the proposal (the applicant will state whether he has previously offered the service, whether the service is an extension of a presently offered service, or whether the service is a new service).
- 2.) Whether the proposal will include the addition of any new beds.
- 3.) Whether the proposal will involve the conversion of beds.
- 4.) Whether the assets and stock (if any) will be acquired.

**Part V: Certification of Information**

**Current Authority Signature(s):**

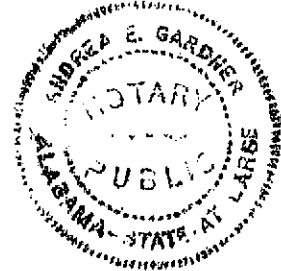
The information contained in this notification is true and correct to the best of my knowledge and belief.

Owner(s): **Merrill Gardens at Madison, LLC**

By: MH RDM Properties REIT, LLC  
Its: Sole member

By: MH RDM Holdings, LLC  
Its: Sole member

By: *Douglas D. Spear*  
Name: Douglas D. Spear  
Title SVP and CFO



Operator(s): **MH RDM Operating LLC**

By: *Douglas D. Spear*  
Name: Douglas D. Spear  
Title SVP and CFO

SWORN to and subscribed before me, this 13th day of December, 2018.

(Seal)

*Andrea E. Gardner*  
Notary Public

My Commission Expires: 2/20/21

**Acquiring Authority Signature(s):**

I agree to be responsible for reporting of all services provided during the current annual reporting period, as specified in ALA. ADMIN. CODE r. 410-1-3-.12. The information contained in this notification is true and correct to the best of my knowledge and belief.

**Owner(s): Merrill Gardens at Madison, LLC**

By: MH RDM Properties REIT, LLC  
Its: Sole member

By: MH RDM Holdings, LLC  
Its: Sole member

By: [Signature]  
Name: Douglas D. Spear  
Title SVP and CFO



**Operator(s): MH RDM Operating LLC**

By: [Signature]  
Name: Douglas D. Spear  
Title SVP and CFO

SWORN to and subscribed before me, this 13th day of December, 2018.

(Seal)

[Signature]  
Notary Public

My Commission Expires: 2/21/21

Author: Alva M. Lambert  
Statutory Authority: § 22-21-271(c), Code of Alabama, 1975  
History: New Rule

David M. Hunt  
Direct Dial: (205) 547-5552  
E-Mail: [dhunt@hkh.law](mailto:dhunt@hkh.law)



December 14, 2018

Via Email ([shpda.online@shpda.alabama.gov](mailto:shpda.online@shpda.alabama.gov)) & Overnight Delivery

Alva M. Lambert, Esq.  
Executive Director  
Alabama State Health Planning &  
Development Agency  
100 North Union Street, Suite 870  
Montgomery, Alabama 35104

**Re: Notice of Change of Ownership  
Merrill Gardens at Madison, LLC**

Dear Mr. Lambert:

We respectfully submit this letter to the Alabama State Health Planning and Development Agency ("SHPDA") as an attachment to the Notice of Change of Ownership form that we are filing pursuant to the Alabama Certificate of Need Program Rules and Regulations (the "CON Rules") Chapter 410-1-7-.04. The proposed change of ownership involves Merrill Gardens at Madison located in Madison, Alabama (the "Facility"). The following summarizes the transaction proposed to take place on or about January 14, 2019, and addresses SHPDA requirements under the CON Rules for change of ownership.

**1. Facts**

The Facility is a retirement community in Madison, Alabama consisting of a licensed 32-bed specialty care assisted living facility ("SCALF"), and a licensed 160-bed assisted living facility ("ALF"). Merrill Gardens at Madison, LLC ("MGM") is the current property owner of the Facility and has entered into an operating lease for the Facility with MH RDM Operating LLC ("MH Operating"), which is the licensed operator of the Facility and holds the CON for 32 SCALF beds. MH RDM Properties REIT LLC ("MH REIT") is currently the sole owner of both MGM and MH Operating. MH RDM Holdings LLC ("MH Holdings") is the sole owner of MH REIT. An organizational chart showing the current ownership of the Facility is attached as Exhibit A.

Upon obtaining the necessary regulatory approval from SHPDA, various parties will enter into a transaction pursuant to which (1) MH Holdings will transfer 100% of its ownership interest in MH REIT to SHI-III Merrill JV Company III, LLLP ("New Owner"), and (2) MH REIT will transfer 100% of its ownership interest in MH Operating

to MH Holdings. MH Operating will continue to operate the Facility pursuant to an operating lease with MGM, and MH Operating will remain the licensee for the Facility and continue to hold the CON for 32 SCALF beds after the proposed transaction is closed. An organizational chart showing the ownership of the Facility after the proposed transaction has closed is attached as Exhibit B.

## 2. SHPDA Requirements For Change of Ownership

- a) Financial scope of the project. There will be no capital expenditures in conjunction with the proposed transaction, nor is it anticipated that there will be any new annual operating costs associated with the proposed transaction.
- b) No new services. The proposed transaction will not result in any new or additional services beyond those already provided at the Facility.
- c) No new beds. The proposed transaction will not result in the creation of new beds.
- d) No conversion of beds. The proposed transaction will not involve the conversion of beds.
- e) Acquisition of Assets/Stock. The proposed transaction will involve the acquisition by New Owner of one hundred percent (100%) of the membership interests of MGM. The proposed transaction does not involve the sale of stock or transfer of other assets.

Based on the above showing that there will be no change in health service, no conversion of beds or increase in bed capacity, or any capital expenditure in excess of the applicable spending thresholds set forth in *Alabama Code* § 22-21-263(a)(2), we respectfully request that you exercise your authority under Chapter 410-1-7-.04(2) of the CON Rules and determine that a new Certificate of Need is not required for the consummation of the above-described transaction. In accordance with the CON Rules, MGM has paid the filing fee of \$2,500 through SHPDA's online payment portal.

Alva M. Lambert, Esq.  
December 14, 2018  
Page 3

If you have any questions or need any additional information, please let me know.

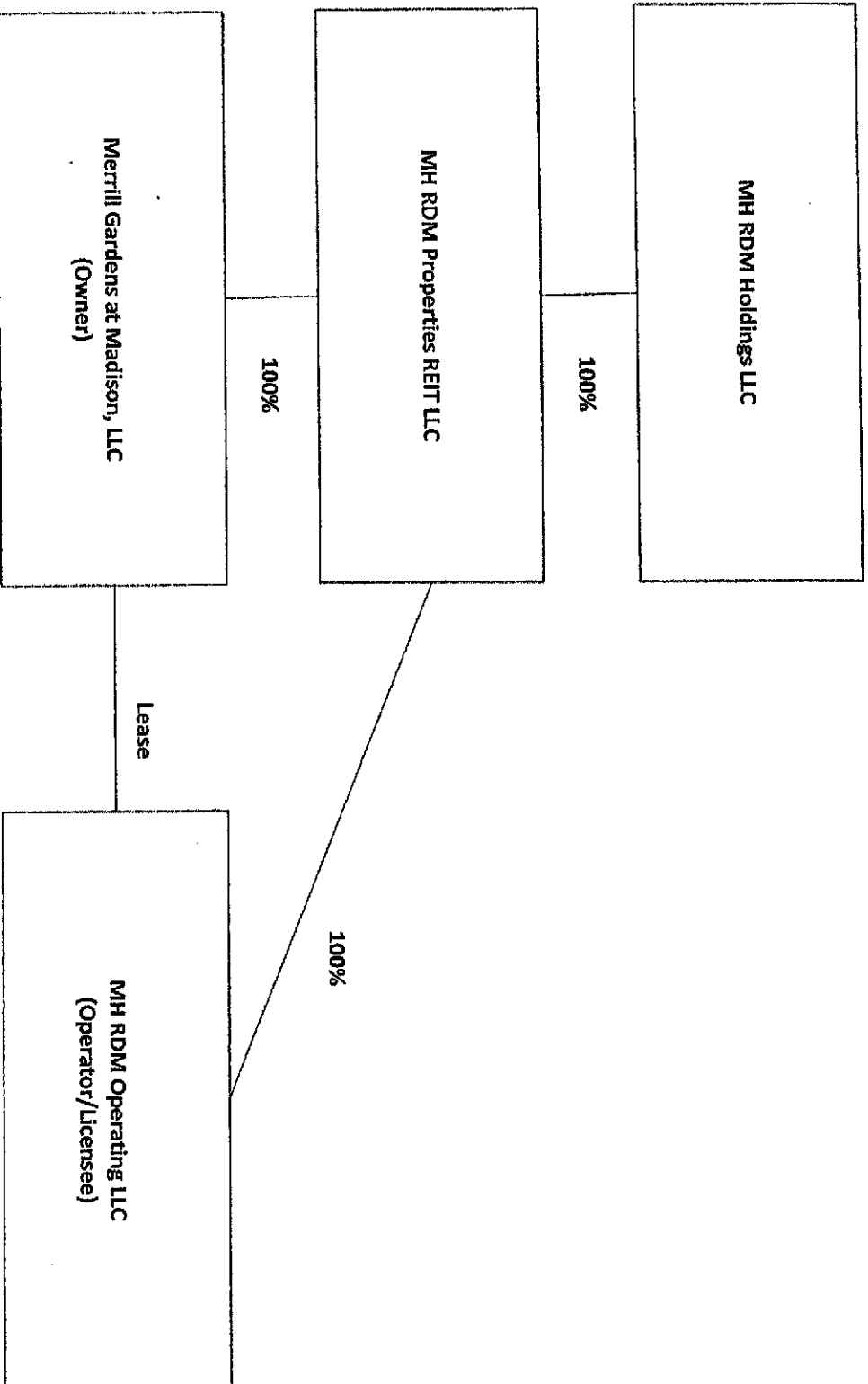
Sincerely,

A handwritten signature in black ink, appearing to read "DMH", written in a cursive style.

David M. Hunt  
Attorney for Merrill Gardens at Madison,  
LLC and MH RDM Operating LLC

**EXHIBIT A**

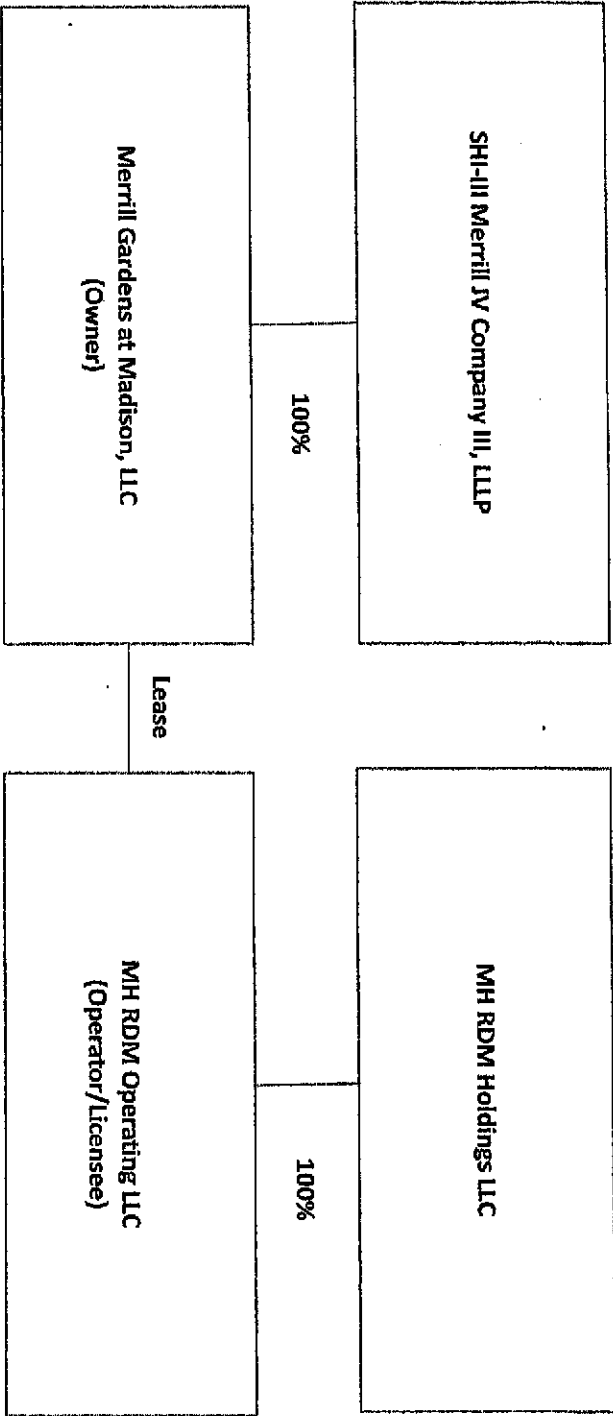
**CURRENT OWNERSHIP**





**EXHIBIT B**

**POST-CLOSING OWNERSHIP**



# **EXHIBIT B**



## STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870  
MONTGOMERY, ALABAMA 36104

January 3, 2019

David M. Hunt, Esquire  
Harbuck Keith & Holmes LLC  
3595 Grandview Parkway, Suite 400  
Birmingham, Alabama 35243

RE: CO2019-017  
Merrill Gardens at Madison  
SHPDA ID: 089-S4514

Dear Mr. Hunt:

This is written in response to the Change of Ownership filed on December 14, 2018, whereby MH RDM Holdings LLC will transfer 100% of its ownership interest in MH RDM Properties REIT LLC to SHI-III Merrill JV Company III, LLLP, and MH RDM Properties REIT LLC will transfer 100% of its ownership interest in MH RDM Operating LLC to MH RDM Holdings LLC in a proposed transaction that will take place on or after January 14, 2019. MH Operating will continue to operate the Facility pursuant to an operating lease with Merrill Gardens at Madison, LLC, and MH RDM Operating LLC will remain the licensee and holder of the CON for Merrill Gardens at Madison.

This transaction will not involve capital expenditures in excess of the spending thresholds set forth in §22-21-263(a)(2) of the Code of Alabama, 1975 (as amended), new operating costs, the offering of new services, the creation or conversion of beds, or the acquisition of stock or assets.

Agency records indicate CON 2662-SCALF was issued January 30, 2014 to relocate and operate thirty-two (32) SCALF beds from Agape Village I and Agape Village II to MH RDM Operating, LLC, dba Merrill Gardens at Madison.

Based on information provided, this Notice of Change of Ownership/Control requires no further action from this Agency. This decision is based on the information provided, and on the assumption that all pertinent information has been disclosed. This response is made with the understanding that there will be no substantial deviations from the facts and premises provided to this Agency. Should circumstances prove to be other than represented, this letter may become null and void.

Pursuant to Ala. Admin. Code r 410-1-3-.11(7), a health care reporter is required to maintain a current listing of at least two contacts of record for purposes of Mandatory Reporting. Should changes be necessary to the current designated contacts, an interactive form to update designations is available on the Agency's website at [www.shpda.alabama.gov](http://www.shpda.alabama.gov) / CON Information / Forms / Change in Designation of

MAILING ADDRESS: P.O. BOX 303025, MONTGOMERY, ALABAMA 36130-3025  
PHONE: (334) 242-4103 FAX: (334) 242-4113

CO2019-017  
January 3, 2019  
Page 2

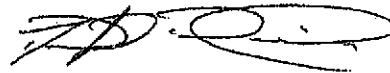
Contact of Record for Purposes of Mandatory Reporting. The facility will be responsible for filing all mandatory annual reports for the entire reporting period, to include the time frame prior to acquisition.

Effective October 1, 2018, all notifications required pursuant to the *Alabama Certificate of Need Program Rules and Regulations* are distributed in electronic format. No more than two (2) individuals designated as the recipients must provide a valid e-mail address for receipt of all such notifications. It is suggested that a corporate official or professional representative of the health care provider, i.e., attorney, consultant, CPA, etc., be included as a designated recipient. Failure to maintain accurate e-mail addresses on file with the Agency may result in the facility/provider not receiving the requested notifications, to include letters of intent, reviewability determination requests, review schedules for certificate of need applications, proposed changes to the Agency's Rules and Regulations and/or the State Health Plan, and other notifications distributed in the normal course of the Agency's business. An Interactive form to update designations is also located on the Agency's website at CON Information / Forms / Change in Electronic CON Notification Appointments.

Pursuant to ALA. ADMIN. CODE r. 410-1-3-.09, all documents to be filed with SHPDA must be submitted electronically to [shpda.online@shpda.alabama.gov](mailto:shpda.online@shpda.alabama.gov) in text searchable, PDF format.

Should you have any questions, please contact the Agency at (334) 242-4103.

Sincerely,



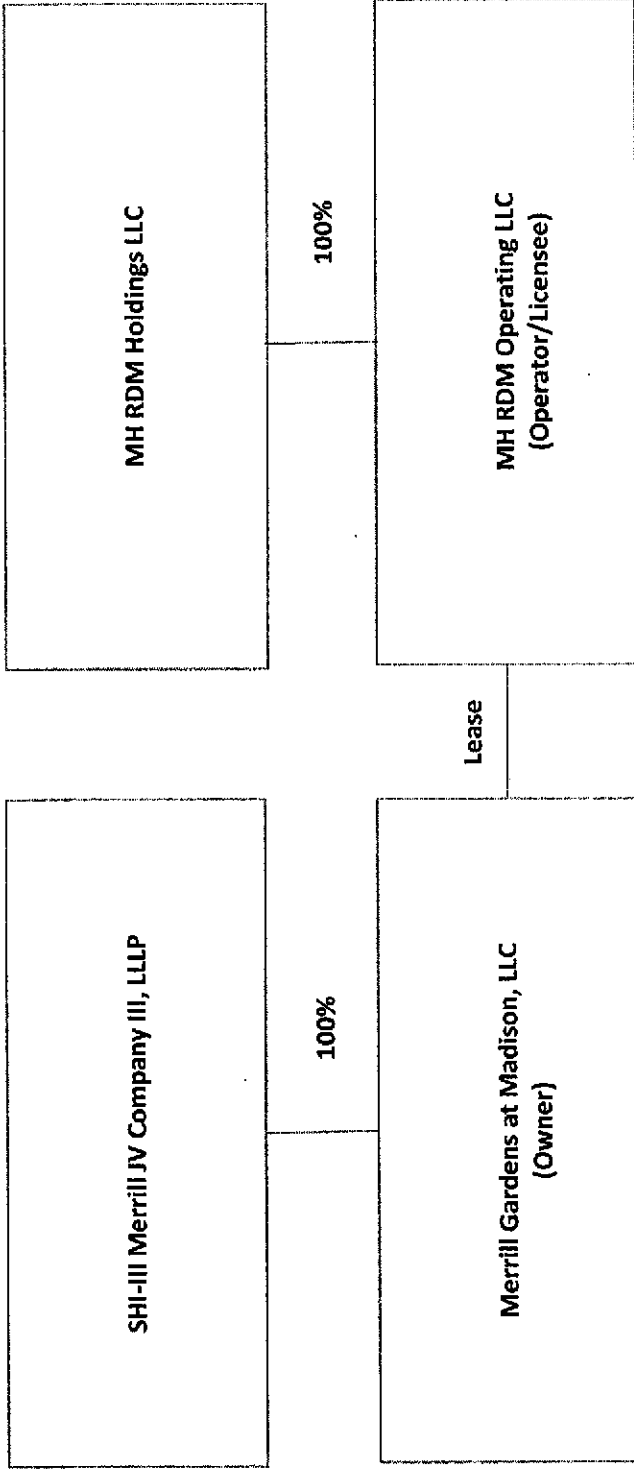
Bradford L. Williams  
Acting Executive Director

BLW: kfn

cc: Felicia Williams-Smith, ADPH

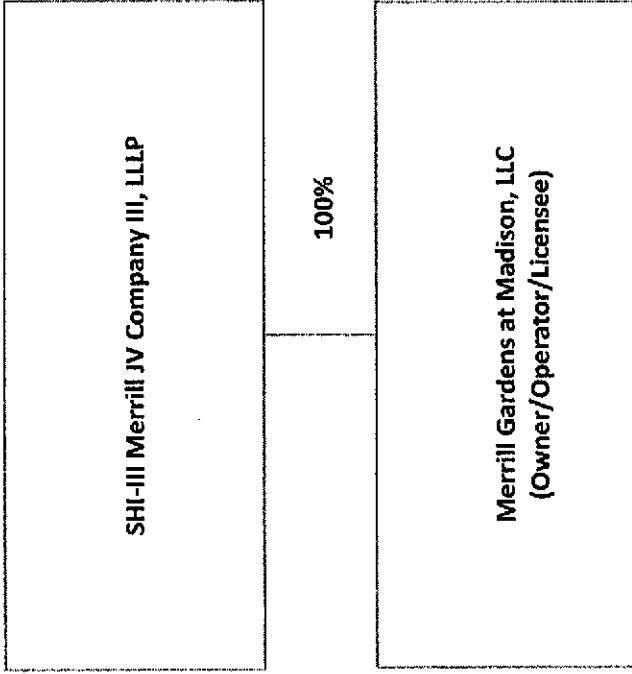
EXHIBIT C

CURRENT OWNERSHIP



**EXHIBIT D**

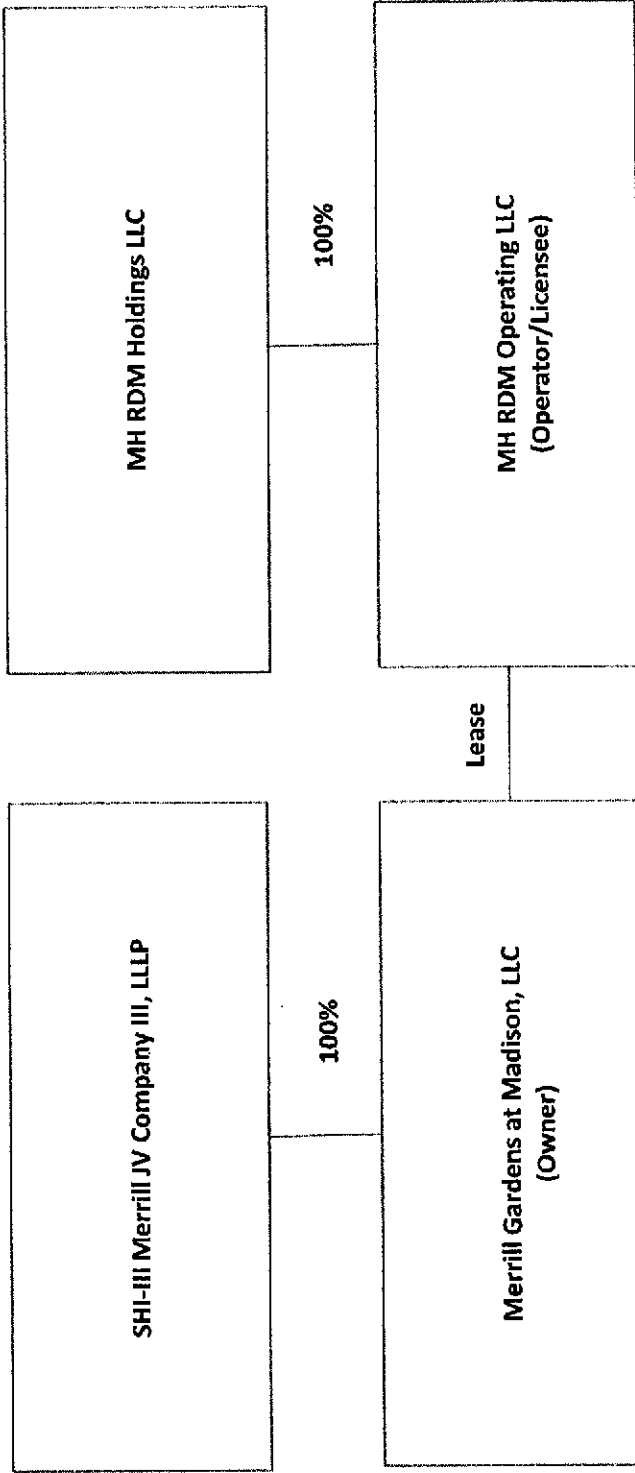
**POST-CLOSING OWNERSHIP**



# **EXHIBIT C**

EXHIBIT C

CURRENT OWNERSHIP





# **EXHIBIT D**

**EXHIBIT D**

**POST-CLOSING OWNERSHIP**

