

RECEIVED

FEB 13 2013

Alabama State Health Planning
And Development Agency

Monica Nelson Fischer
Direct Dial: (205) 458-9430
Email: mnf@johnstonbarton.com

February 6, 2013

Via Hand Delivery

Alva Lambert, Esq.
Executive Director
Alabama State Health Planning
And Development Agency
RSA Tower
100 North Union Street, Suite 870
Montgomery, Alabama 36104

**Re: Project Modification for Certificate of Need No. 2562-NH (AI 2012- 007)
LaRocca Nursing Home-Tuscaloosa Alabama**

Dear Mr. Lambert:

Our firm represents the Applicants, LaRocca, Inc., owner and lessor of LaRocca Nursing Home, and its lessee and operator, Hardy, LLC, in respect to the above referenced certificate of need ("CON"). Pursuant to CON Rule 410-1-10-.03, I enclose the original and twelve (12) copies of the application for project modification for certificate of need No: 2562-NH issued April 5, 2012. As you may recall, this CON was issued to replace the LaRocca Nursing Home which was destroyed during the April 29, 2011, tornado which hit Tuscaloosa.

This modification is necessary due to increased cost estimates in respect to a few minor design changes, and inflationary construction cost increases. The increased cost estimates are detailed in the Application for Project Modification for Certificate of Need No. 2562-NH. This project, unfortunately, has been delayed due to litigation with the Applicant's insurer over the scope of insurance proceeds. A copy of the Complaint filed in this litigation is included as Exhibit A to the Project Modification for Certificate of Need No. 2562-NH for your reference. We are hoping this litigation will resolve in short course so this important project may continue as planned.

In addition, I enclose a check in the amount of \$5,040 (25% of the original CON application fee of \$20,160) for the required modification filing fee. Please note that this modification request is (i) below the spending thresholds, and (ii) does not involve a physical location move, a change in bed capacity or a change in the provision of health services. Accordingly, it meets the criteria under CON Rule 410-1-10-.03 (2) permitting you as Executive Director to review the project modification without further CON review Board review. We respectfully ask you to consider this request in that light.

Please contact me if you have any questions or if I can provide you with any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Monica Nelson Fischer". The signature is written in a cursive, flowing style.

Monica Nelson Fischer

Enclosures

cc: Mr. Michael Hardy (via electronic mail, w/enclosures)
Mr. Ray Dyer (via electronic mail, w/enclosures)
Richard J. Brockman, Esq. (via electronic mail, w/enclosures)
Zack D. Trotter, Esq. (via electronic mail, w/enclosures)

RECEIVED

Application for Project Modification for Certificate of Need No. 2562-NH FEB 06 2013

AMENDED REPLACEMENT PAGE

PLANNING AND COMMUNITY DEVELOPMENT AGENCY

(LaRocca Nursing Home)
Project Cost

IV. Cost

A. Construction

	Approved CON 2562-NH	Modification	Increase (Decrease)
1. Predevelopment	\$-0-	\$-0-	\$-0-
2. Site Acquisition	-0-	0	-0-
3. Site Development	-0-	-0-	-0-
4. Construction	6,500,000	6,955,000	455,000
5. Architect and Engineering Fees	560,924	600,924	40,000
6. Renovation	0	0	0
7. Interest During time period of construction	0	-0-	-0-
8. Attorney and Consultant Fees	0	70,000	70,000
9. Bond Issue Costs	0	0	0
10. Other (Gen. Contractor General conditions)	1,246,952	1,336,952	90,000
11. Other Construction Mgt Fee	830,788	890,788	60,000
TOTAL COST OF CONSTRUCTION	\$9,138,664¹	\$9,853,664	\$715,000

B. Purchase

1. Facility	\$0	\$-0-	\$-0-
2. Major Medical Equipment	500,000	585,000	85,000
3. Other Equipment	0	0	0
TOTAL COST OF PURCHASE	\$500,000	585,000	85,000

C. Lease

1. Facility Cost Per Year ___ x ___ Years	\$ _____	\$ _____	\$ _____
2. Equipment Cost Per Month ___ x ___ Months	\$ _____	\$ _____	\$ _____
3. Land Only Lease Cost Per Year ___65,000___ x 50___ Years	\$65,000	\$65,000- ²	\$-0-
TOTAL COST OF LEASE	\$65,000	\$65,000-	\$-0-

(compute according to generally accepted accounting principles)

D. Services

- ___ New Service
- ___ Expansion ___ Reduction or Termination
- X Other (Build replacement 75-bed Nursing Facility)

FIRST YEAR ANNUAL OPERATING COST	\$425,521³	\$425,521	\$-0-
---	------------------------------	------------------	--------------

E. Total Cost of this Project (Total A through D) (should equal V-C on page A-4)	\$10,129,185	\$10,929,185	\$800,000
---	---------------------	---------------------	------------------

¹ Corrected a one dollar scrivener's error in original application. Addition is unchanged.

² 50-Year Ground Lease Present Value \$1,245,967.

³ Shows only the increase in first year's annual operating costs over the annual operating costs of existing facility.

AMENDED REPLACEMENT PAGE

(LaRocca Nursing Home)

IV. COST (continued)

	Approved CON 2562-NH	Modification	Increase (Decrease)
F. Proposed Finance Charges			
1. Total Amount to be Financed	\$2,370,158	\$3,170,158	\$800,000
2. Anticipated Interest Rates	8.5%	8.5%	0
3. Term of Loan	5 yr/25 amortization	5 yr/25 amortization	
4. Method of Calculating Interest on Principal Payment	daily		

V. ANTICIPATED SOURCE OF FUNDING

A. Federal

1. Grants
2. Loans

B. Non-Federal

1. Commercial Loan	\$2,370,158 ⁴	\$3,170,158	\$800,000
2. Tax-exempt Revenue Bonds	<u> </u>	<u> </u>	<u> </u>
3. General Obligation Bonds	<u> </u>	<u> </u>	<u> </u>
4. New Revenue and Earnings	490,521	490,521	0
5. Charitable Fund Raising	<u> </u>	<u> </u>	<u> </u>
6. Cash on Hand	<u> </u>	<u> </u>	<u> </u>
Other (insurance proceeds)	7,268,506 ⁵	7,268,506	1,290,000

C. TOTAL (should equal IV-E on page A-3) \$10,129,185 \$10,929,185⁶ \$800,000

VI. TIMETABLE

- | | |
|--|---|
| A. Modified Projected Start/Purchase Date | As soon as practicable, but within time permitted |
| B. Modified Projected Completion Date | As soon as practicable, but within time permitted |

⁴ Corrected a one dollar scrivener's error in original application. Addition is unchanged.

⁵ LaRocca's physical plant was destroyed by the April 29, 2011 Tuscaloosa tornado. The vast majority of the costs to rebuild LaRocca will be paid from casualty insurance proceeds. A small percentage of these costs will be funded by a bank loan under a Small Business Administration loan platform. The first year's operating costs will be funded by operations

⁶ Cost of ground lease and first year annual operating costs are not financed.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

LAROCCA, INC., d/b/a LAROCCA NURSING HOME,

Plaintiff,

VERSUS

ONEBEACON AMERICA INSURANCE COMPANY,

Defendant.

*
*
*
*
*
*
*
*
*
*
*

JURY TRIAL DEMANDED

CIVIL NO. _____

COMPLAINT

NOW INTO COURT, through undersigned counsel, comes plaintiff, LaRocca, Inc., d/b/a LaRocca Nursing Home, who respectfully represents, as follows:

PARTIES

Made plaintiff herein is:

1. LAROCCA, INC., d/b/a LaRocca Nursing Home, a corporation organized under the laws of Alabama and with its principal place of business in Alabama.

Made defendant herein is:

2. ONEBEACON AMERICA INSURANCE COMPANY, a foreign insurance company authorized to do and doing business within Alabama and within the jurisdiction of this Honorable Court.

JURISDICTION AND VENUE

3. Jurisdiction herein is invoked pursuant to 28 U.S.C. §1332 as the parties' citizenships are completely diverse and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

4. Venue is proper under 28 U.S.C. §1391(a)(2) because a substantial part of the events giving rise to this claim occurred in Tuscaloosa, Alabama within the Northern District of Alabama, Western Division.

FACTS

5. Defendant is justly and truly indebted to Plaintiff herein for damages, together with legal interest thereon from the date of judicial demand until paid, and for costs in these proceedings, for the following, to-wit:
 6. Plaintiff, LaRocca, Inc., d/b/a LaRocca Nursing Home (hereinafter "LaRocca Nursing Home") owns and operates a nursing home in the Tuscaloosa, Alabama area.
 7. Plaintiff contracted with OneBeacon America Insurance Company (hereinafter "OneBeacon"), to insure its commercial property located at 403 34th Ave., Tuscaloosa, Alabama 35404. The OneBeacon policy bears policy number 710-02-22-99-0002.
 8. On or about April 27, 2011, an F-5 tornado moved through the West Alabama area. LaRocca Nursing Home sustained catastrophic property damage to its facilities as a result of the F-5 tornado.
 9. Plaintiff mitigated its damages at all relevant times, performing necessary and temporary repairs in an effort to protect the property.
 10. Plaintiff timely notified OneBeacon of its loss after the tornado caused damage to Plaintiff's property.
 11. As of the date of the filing of this Complaint, OneBeacon has not tendered LaRocca Nursing Home a sufficient amount to adequately compensate Plaintiff for its losses from the tornado.

12. At all times pertinent hereto, OneBeacon provided insurance coverage for the matters, risks, and things involved herein.
13. Plaintiff's commercial insurance policy issued by OneBeacon provided coverage for loss or damage caused by the peril of wind/tornado.
14. Despite having been provided with "satisfactory proof of loss," and despite conducting its own thorough investigation of the damages Plaintiff incurred from the tornado, OneBeacon has not adequately paid for any or all of the damage sustained to Plaintiff's property caused by this covered loss.

COUNT I

(BREACH OF CONTRACT)

15. Plaintiff adopts by reference paragraphs 1-14 as if fully setout herein.
16. OneBeacon provided insurance coverage for the matters, risks, and things involved herein under policy number 710-02-22-99-0002 and breached the contract by failing to pay monies rightfully owed to the Plaintiff.
17. Plaintiff avers that it has been damaged as a result of Defendant ONEBEACON'S breach of the contractual obligations owed to the Plaintiff.
18. As a result of Defendant ONEBEACON'S actions, Plaintiff has suffered the following nonexclusive list of damages:
 - a. Loss of insured property;
 - b. Loss of use of insured property;
 - c. Loss of business income;
 - d. Loss of contents/moveable goods;
 - e. Diminution in value of the property/business;

WHEREFORE, plaintiff herein, **LAROCCA, INC. d/b/a LAROCCA NURSING HOME**, prays that the defendant, **ONEBEACON AMERICA INSURANCE COMPANY**, be served with a copy of this Complaint and be duly cited to appear and answer the same, and that after expiration of all legal delays and due proceedings, there be judgment rendered in favor of Plaintiff and against Defendant, in an amount that will fully compensate Plaintiff for its damages pursuant to the evidence and in accordance with the law; all sums with legal interest thereon from the date of judicial demand until fully paid, for all costs of these proceedings, and for all general and equitable relief.

Respectfully submitted,

Huber, Slack, Houghtaling,
Pandit & Thomas, LLP

/s/ C. Bennett Long
C. Bennett Long (ASB-1914-S67L)
2919 8th Street
Tuscaloosa, AL 35401
Telephone: (205) 750-4999
Facsimile: (205) 449-6502
Email: bennett@hshptlaw.com
ATTORNEY FOR PLAINTIFF