

JohnstonBarton  
ATTORNEYS

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March 7, 2012

**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

RECEIVED

MAR 07 2012

STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY

**Re: Notice of Request for Project Modification  
Catherine Place  
Project Number: AL-98-017  
CON-1975-NH**

Dear Mr. Lambert:

Pursuant to CON Rule § 410-1-10-.03, I enclose an original and twelve (12) copies of the Notice of Request for Project Modification for CON-1975-NH, Project Number AL-98-017. A copy of this request has been served on all parties of record.

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

Sincerely,



Richard J. Brockman

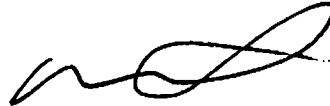
Enclosures

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have served a copy of the foregoing upon the listed parties of record by placing the same in the United States Mail, postage prepaid and properly addressed, on this the 7<sup>th</sup> day of March, 2012.

Mark D. Wilkerson  
Wilkerson & Bryan, P.C.  
P.O. Box 830  
405 South Hull Street  
Montgomery, AL 36104

James H. McLemore  
Capell & Howard, P.C.  
150 South Perry Street  
Post Office Box 2069  
Montgomery, Alabama 36104



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Of Counsel

March 7, 2012

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AND DEVELOPMENT AGENCY

**VIA HAND DELIVERY**

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

Re: **Catherine Place**  
**Project Number: AL-98-017**  
**CON-1975-NH**

Dear Mr. Lambert:

Pursuant to the Alabama Certificate of Need Program Rules and Regulations § 410-1-10-.03 (the "CON Rules"), please accept this letter as a Notice of Request for Project Modification for the above-referenced certificate of need ("CON").

**Background:**

1. On December 4, 2001, Mercy Medical, a nonprofit corporation ("Mercy"), was issued Certificate of Need number 1975-NH (the "Original CON") to construct, license and place into service 22 nursing facility beds in Baldwin County Alabama (the "Catherine Place Project"). Mercy planned to locate the nursing facility beds on the campus of Mercy's retirement community known as the Catherine Place campus. A copy of the Original Certificate of Need is attached hereto as **Exhibit A**, and made a part hereof.

2. The Catherine Place Project entailed constructing a retirement community in Baldwin County, Alabama with assisted living, independent living and skilled nursing home components. This project was constructed and opened, but the nursing home component was suspended due to an administrative challenge and ensuing litigation filed in the Circuit Court of Baldwin County, Alabama (case number CV-2000-802) concerning the issuance of the Original CON and a subsequent certificate of need application -Project Number AL-9705.

2. Based on the results of the ensuing protracted administrative challenges and litigation, on April 24, 2003, the Alabama State Health Development Planning Agency ("SHPDA") issued its modified CON number 1975-NH (the "First Modified CON") authorizing Mercy to construct and operate a 75-bed nursing home in Baldwin County, Alabama at the Catherine Place campus. These authorized 75-nursing home beds consisted of the beds awarded to Mercy in accordance with a final judgment entered in the Circuit Court for Baldwin County for Projects Number AL-97015 for 28-beds, Project Number Al-97018 for 22-beds, and an additional 25-nursing facility beds being moved from Mercy's existing nursing facility in Daphne Alabama (Baldwin County). A copy of the First Modified Certificate of Need is attached hereto as **Exhibit B**, and made a part hereof.

3. By letter dated October 26, 2005, Mercy notified SHPDA that Mercy would be able to fit only 52-beds at its Catherine Place campus and by letter dated October 27, 2005, SHPDA acknowledged that the Catherine Place Project was now to be 52-beds. On October 27, 2005, SHPDA issued a revised CON-1975-NH based on the approval of the project modification request for the construction and operation of a 52-bed nursing home in Baldwin County, Alabama (the "Second Modified CON") A copy of the Second Modified Certificate of Need is attached hereto as **Exhibit C**, and made a part hereof.

4. By letter dated October 23, 2005(6), Mercy notified SHPDA that Mercy had incurred an obligation under 410-1-10, and commenced activity necessary to place the 52-beds into service at Catherine Place. By letter dated October 26, 2006, SHPDA acknowledged receipt of Mercy's letter and the invoices etc. for the 52 bed SNF included in CON 1975-NH. In the letter, SHPDA requested that when the project was completed and licensed, Mercy submit a final accounting of expenditures for the project and the date of completion and licensure.

5. Due to logistical issues at Catherine Place, in November 2006, by mutual agreement with its contractor and suppliers, Mercy suspended its work on the Catherine Place Project. Under § 22-21-270(b), a mutual extension of the completion date tolls the running of the time to complete a CON project. By letter dated May 3, 2007, Mercy notified SHPDA that Mercy was exploring possibilities of a partnership for the finalization of the construction of the building component that will house the 52 SNF beds. By letter dated January 30, 2009, Mercy notified SHPDA that Mercy had a new consolidation plan that was expected to revamp the total operational concepts of the various Mercy Medical facilities in both Mobile and Baldwin Counties.

**Proposed Project Modification:**

1. Mercy is now executing on its new consolidated plan. Under § 22-21-270(e), Code of Alabama (1975), as amended, Mercy conveyed the CON, and all rights associated with it, to MMB Medical Corporation, an Alabama corporation, and Mercy's

wholly owned subsidiary corporation (“MMB”). Mercy and MMB comprise a parent-subsidary controlled corporate group under IRS Code § 1563(a)(1). A copy of the Bill of Sale is attached hereto as **Exhibit D**, and made a part hereof.

2. Under this project modification request, MMB is respectfully asking that SHPDA modify the Second Modified CON by:

(i) Downsizing the project to 50-nursing facility beds as the two (2) nursing facility beds that were slated to be moved from Mercy Medical’s Daphne campus are no longer to be moved; and

(ii) Approving MMB’s relocating the 50-nursing facility beds to the campus of Robertsdale Nursing Home, Inc. (“Robertsdale Campus”), located in Robertsdale Alabama (Baldwin County). The Robertsdale Campus currently has a 102-bed nursing facility (the “Robertsdale Facility”) and a 28-unit affordable senior housing apartment complex. The 50-beds will be placed in service in two phases at the Robertsdale Facility accordance with the below described plan. The Robertsdale Campus is part of a family of 10 Alabama based long term care facilities affiliated with Ball HealthCare Services, Inc. (“BHS”). A profile of BHS is attached as **Exhibit E**, and made a part hereof.

(iii) The proposed modification would result in total estimated project costs of \$2,695,774, and first year operating costs of \$1,873,496.00 for total costs of \$4,569,270.00. This is a cost decrease over the proposed project costs of \$7.5 million as contained in the Second Modified CON. A schedule comparing of the proposed costs for the requested project modification is attached as **Exhibit F**, and made a part hereof.

3. To further facilitate this project modification, Mercy has entered into an agreement to sell its stock in MMB to Robertsdale Nursing Home, Inc, (“Robertsdale”) as permitted under § 22-21-270(f), Code of Alabama (1975), as amended. Immediately upon this stock acquisition, MMB and Robertsdale would comprise a parent-subsidary controlled corporate group under IRS Code § 1563(a)(1). As further permitted under § 22-21-270(e), Code of Alabama (1975), as amended, Robertsdale would cause MMB to transfer the CON to Robertsdale.

4. Upon the acquisition of MMB’s stock, and permitted transfer of the CON, as discussed below in detail, Robertsdale will add the 50-beds and other below described elements to its Robertsdale Facility on its existing Robertsdale Campus in Baldwin County, Alabama.

**Proposed Addition to the Robertsdale Campus:**

Upon the acquisition of MMB and the permitted transfer to Robertsdale of the newly modified CON, Robertsdale and its related lessor, Ball HealthCare-Baldwin, LLC

("Ball-Baldwin") will begin a two phase project to add the 50-beds to its Robertsdale Facility. These phases are:

1. Phase One- The conversion of 31-existing private rooms to semi-private accommodations. These rooms have sufficient space to allow two residents to reside comfortably in these rooms. The conversion involves adding cubicle curtains for privacy, an over head light and furniture (hospital type adjustable bed, over-bed table, side chairs, bedside cabinet and wardrobe). The cost estimate to convert and furnish these rooms is \$76,000 for construction and \$124,000.00 for furnishings and equipment. This work will be internally generated.

2. Phase Two- Consists of constructing a wing to the Robertsdale Facility accommodate 19 additional beds, a new 1107 square foot therapy space, a new nursing station, central showers, clean and soiled utility rooms, sitting and dining space, and additional parking. A copy of the schematic design for the addition is attached hereto as **Exhibit G**, and made a part hereof. The cost for this construction is estimated to be \$2,220,774, and the cost to furnish and equip this new space is estimated to be \$100,000.

**Proposed Revised Project Costs and Logistical Items:**

1. Revised pages of the CON application reflecting the modified square footage, construction information, project cost, and pro forma projections are attached hereto as **Exhibit H**.

2. The first year new operating cost is estimated to be \$1,873,496 and will be funded out of operations. The Private Bank and Trust Company, a Chicago based bank ("Private Bank"), has issued its expression of commitment to finance the construction portion of the project. Private Bank has provided significant project loans to BHS related projects. A copy of Private Bank's letter is attached as **Exhibit I**, and made a part hereof.

3. The project modifications described herein remain consistent with the objectives as stated in the original CON application. Robertsdale is part of the family of Ball HealthCare Services, Inc. nursing facilities ("Ball HealthCare") and accepts Medicare and Medicaid. In addition it is one of two nursing facilities in the State of Alabama that provides ventilator care. The other one being Arlington Health and Rehabilitation Center, which is also a Ball HealthCare facility. Further, the project as modified will not increase the total number of approved nursing home beds in Baldwin County.

Alva M. Lambert, Esq.  
March 7, 2012  
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**Conclusion:**

Based upon the foregoing, MMB respectfully requests that the CON Review Board modify CON-2168-NH in accordance with the changes described herein. Pursuant to Ala. Admin. Code § 410-1-7-.06(b)(1), additional filing fees are not required because this project after modification will be significantly less than the project envisioned under the Second Modified CON. In addition, Robertsdale's average daily census is comprised of more than 50% Medicaid patients.

Very truly yours,



Richard J. Brockman  
One of MMB's Attorneys

cc: Mr. Jake Bell (w/enclosures)  
Mr. Clarence M. Ball, Jr. (w/enclosures)  
Susan Doughton, Esq. (w/ enclosures)  
Haskins W. Jones, Esq. (w/o enclosures)  
Monica N. Fischer, Esq. (w/o enclosures)