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January 27, 2017

Mr, David Gamzeh
Managing Member
The Gardens at Barton and Barton Holdings LLC
The Gardens at Glover and Glover Holdings LLC
The Gardens at Lyndonville and Lyndonville Holdings LLC

c/o Shireen T. Hart, Esq.
PRIMMER
PO Box 1489
Burlington, VT 05402-1489

Dear Mr. Gamzeh,

This letter is submitted in accordance with the State's Health Resource Allocation Plan Certification of Need Standards 5.2 and 5.3 which requires the Department of Disabilities, Aging and Independent Living (DAIL) to review and provide a recommendation in relation to the CON applications from nursing homes and similar entities. The Department has received the Certificate of Need application from The Gardens at Barton and Barton Holdings LLC, The Gardens at Glover and Glover Holdings LLC and The Gardens at Lyndonville and Lyndonville Holdings LLC related to the purchase of:

- Maple Lane Nursing Home located in Barton, Vermont;
- Union House Nursing Home located in Glover, Vermont; and,
- Pines Rehab and Health Care Center in Lyndonville, Vermont.

In completing our review, the Department consulted with the Agency of Human Services' Division of Rate Setting and internally with relevant divisions and staff. We considered both the Department's mission and our desire to advance excellence in quality of care and quality of life and to promote cultural change in our nursing facilities in addition to our work to rebalance options/choices for care across a spectrum of supports. Additionally, we considered the current stress within our network of skilled nursing facilities related to working with residents with more complex and challenging presentations and needs.

Project Summary: The Gardens at Barton and Barton Holdings LLC, The Gardens at Glover and Glover Holdings LLC and The Gardens at Lyndonville and Lyndonville Holdings LLC referred to hereafter collectively as "The Gardens" represents six individuals with ownership interests in 37 skilled nursing facilities throughout the country; two, Barre Gardens (aka Rowan Court) and Newport Gardens (aka Newport Health Care Center) currently in Vermont. The Gardens is interested in the purchase of Maple Lane Nursing Home, Union House Nursing Home and Pines Rehab and Health Care Center, located in Barton, Glover and

Lyndonville, Vermont respectively. DAIL's understanding is that the purchase of these three nursing homes and their affiliated residential care homes (Level III beds) will maintain the continued operation and capacity of the facilities in their current communities and with the current beds available for mixed levels of care.

The Gardens intend to utilize the Priority Healthcare Group, LLC (Priority Healthcare) as the new management provider for The Gardens at Barton, Glover and Lyndonville. Priority Healthcare was founded by two members of The Gardens group, David Gamzeh and Akiva Glatzer, both experienced, skilled nursing facility administrators. Priority Healthcare will provide services to include: accounts payable, accounts receivable, billing, payroll, compliance, day to day oversight, financial reporting, marketing, business development and purchasing and clinical and administrative support. Mr. Gamzeh and Mr. Glatzer will serve as the manager members for facility operations, working collaboratively with the TBH Nursing Home Administrators. Additionally, Mr. Shalom Lerner, LNHA of Priority Healthcare Group LLC will serve as the regional director of operations and oversee day to day operations at Maple Lane, Union House and the Pines working directly with the TBH Nursing Home Administrators in all three facilities. He will be transitioning out of his current role to focus on a smooth transition of ownership of Rowan Court and Newport Health Care Center in addition to Maple Lane, Union House and the Pines. The direct, daily involvement of Priority Healthcare Group staff will evolve over time but will remain the core of the supervision and support of the facility.

The intent of The Gardens is to maintain current services, current bed capacity and the current facilities as is and into the foreseeable future. They propose no immediate staffing changes other than the need to hire three Nursing Home Administrators, one for each facility, as all three of the current Administrators are retiring.

The Gardens has acknowledged that Vermont is struggling with a bottleneck of individuals in hospital and/or acute care settings that are unable to transition to nursing home settings. These three facilities, historically, have supported individuals with complex psychiatric and behavioral needs. All three have an ongoing, contractual relationship with Deer Oaks for geri-psychology services. There is no indication in the Certificate of Need application of an intent to alter the support from Deer Oaks nor any indication of an intent to change the current resident profile. DAIL is very supportive of maintaining the existing capacity offered by these three facilities and their willingness and ability to focus on residents with complex behavioral and psychiatric care needs.

The Gardens have indicated that they do, in fact, intend to utilize the existing current admissions criteria and to continue to support it and to accept individuals with behavioral needs— an area of significant need within Vermont's overall system and an area in which The Gardens group profess to have a proven track record of success.

1. Evaluation of HRAP CON Standard 5.2: Nursing Homes or similar entities seeking to replace or increase beds shall show the beds are needed. Such showing of need shall be confirmed by the Department of Disabilities, Aging and Independent Living:

Both Maple Lane and Union House function in Vermont's Orleans County which has a total of 6 skilled nursing facilities. There are a total of 262 licensed beds in Orleans County in Nursing Facilities that accept Medicaid. Maple Lane is licensed for 71 beds and Union House is licensed for 44 beds. Globally, the total occupancy rate among the 6 facilities runs in the mid to high 80% with two of the facilities running in the 90% or high 90% range.

Union House operated with an occupancy rate over the last 6 months in the 90% range with a high of 98.86% in November of 2016. They utilize Medicaid as a payor overall at 92.58% and in November of 2016, Medicaid paid for 94% of total bed days.

Maple Lane operated with an occupancy rate over the last 6 months in the high 80% range. They reported an occupancy rate of 91.5% in May of 2016 and steadily decreased through Sept of 2016 to 86.10%, bumping back

up to a rate of 88.45% in November of 2016. They utilize Medicaid as a payor overall at 72.68% and in November of 2016, Medicaid paid for 82% of total bed days.

Based on the occupancy rates at both Union House and Maple Lane, and the overall occupancy rates in Orleans County, it appears that the need for beds and particularly for Medicaid beds remains consistent. Of note is the stated intention of The Gardens to change the payor profile at Union House by decreasing Medicaid utilization by approximately 10%, reducing it from 90% to 80% of the total overall payment, increasing private pay and Medicare to fill that gap. Although the need to diversify funding streams is clear, any loss of the availability of Medicaid beds could be cause for concern.

Pines Health Care and Rehabilitation functions in Vermont's Caledonia County; it is the only skilled nursing facility in the county. There are a total of 60 licensed beds in Caledonia County in Nursing Facilities that accept Medicaid. The Pines is licensed for all 60 of those beds.

The Pines operated with an occupancy rate over the last 6 months in the low 90% to 80% range. They reported an occupancy rate of 92.47% in May of 2016 and decreased marginally through the next 6 months with a reported occupancy rate of 83.50% in November of 2016. They utilize Medicaid as a payor overall at 73% and in November of 2016, Medicaid paid for almost 61% of total bed days.

Again, based on the limits in Caledonia county of available beds, the need for the Medicaid beds provided by the Pines appears to remain consistent.

Although the proposal itself does not address resident profiles directly, it does map out an intention to continue to accept individuals who present with more complex needs and complex profiles. DAIL would reiterate our support for continuing this policy in an effort to meet this significant area of need within the state.

2. Evaluation of HRAP CON Standard 5.3: Nursing homes or similar entities seeking a certificate of need shall provide a written recommendation from the Department of Disabilities, Aging and Independent Living supporting the new health care project proposal:

a. Quality of Care:

Maple Lane Nursing Home: Maple Lane currently has a 4-star overall rating from CMS. They rate 3 stars in Health Inspections and Staffing and 5 stars in Quality Measures. Their last two recertification surveys (August 2016 and September 2015) resulted in just a few low-level findings. They have not had any regulatory violations that were found to have caused any actual harm to residents since 2013 and have not had any "immediate jeopardy" citations, nor substandard quality of care determinations in recent years.

Maple Lane includes a Residential Care Home (RCH) in a separate building but on the campus of the facility. It is called the Maple Lane Retirement Home. The RCH has had re-licensing surveys in 2010, 2012, 2014 and 2016. Each survey yielded a moderate number of lower level deficiencies (3-8) but none rose to the level of actual harm to residents or immediate jeopardy.

Union House Nursing Home: Union House currently has a 5-star overall rating from CMS. They rate 4 stars in Health Inspection and Staffing and 5 stars in Quality Measures. Their last two recertification surveys (September 2015 and August 2016) resulted in substantial compliance with CMS regulations. Union House has had no federal regulatory findings since 2014 and those represented only 3 lower level violations. They have not had any harm level deficiencies in recent years, nor any immediate jeopardy citations or substandard quality of care determinations.

The Pines Rehabilitation and Health Center: The Pines currently has a 2 star overall rating from CMS. They rate 2 stars in Health Inspections, 4 stars in Staffing and 1 star in Quality Measures. This facility has tended to have an active history in terms of regulatory violations. Onsite complaint and/or incident investigations were completed in March, June and September of 2016 which resulted in a number of violations from each investigation. None of the violations were at harm level or immediate jeopardy. Their last CMS recertification survey was completed in December of 2015 and it also resulted in several violations although the most recent "actual harm" violations were cited at their recertification survey in February of 2015. For all the violations mentioned, the facility consistently corrected them by the first follow up visit and did not require further action.

The Pines includes a Residential Care Home (RCH) in the same building as the nursing facility, occupying the ground floor. It is called Pine Knoll Community Care Home. During their last full re-licensing survey in 2015, they were found to be in substantial compliance with regulatory requirements with no deficiencies cited. The previous survey, conducted in 2013 had just 3 lower level findings. They have had no findings of actual harm or immediate jeopardy in the past 10 years.

The incoming owners have indicated their intent to focus particularly on The Pines to improve the individual experience reflected in the low-quality measures and to improve the quality rating. They cite a proven track record of success in doing so in other facilities they have purchased.

In reviewing the 37 facilities held by various members of The Gardens collective:

- 22 are rated *1 out of 5 stars* in their CMS overall quality rating
- 6 are rated *2 out of 5 stars* in their CMS overall quality rating
- 4 are rated *3 out of 5 stars* in their CMS overall quality rating
- 5 are rated *4 out of 5 stars* in their CMS overall quality rating
- 0 are rated *5 out of 5 stars* in their CMS overall quality rating

b. Financial Review

The incoming Gardens group will be purchasing the three facilities for a total of \$8,725,000. The Group proposes to finance the purchase with a loan in the amount of \$6,800,000. The rest of the purchase will be funded by \$1,700,000 from the owners' equity and additional organizational and financing costs of \$225,000 will be funded by the owners as equity contributions. Cash advances from the owners will be used to cover any cash shortfall in the first year. Personal financial statements from the The Gardens group were submitted to the Green Mountain Care Board Directly.

With that, and based on our observations and assessments, DAIL is conditionally supportive of the purchase proposal for The Gardens at Barton and Barton Holdings LLC, The Gardens at Glover and Glover Holdings LLC and The Gardens at Lyndonville and Lyndonville Holdings LLC, dependent on the full application and information obtained by the Green Mountain Care Board during the CON process.

Sincerely,


Monica Caserta Hutt, Commissioner

Cc: Camille George, Deputy Commissioner, DAIL
Clayton Clark, Director, Division of Licensing and Protection, DAIL
Stuart Schurr, General Counsel, DAIL
Kathleen Denette, Director, Division of Rate Setting, Agency of Human Services

Donna Jerry, Green Mountain Care Board
Ms. Shireen T. Hart, Esq., PRIMMER