

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED  
AHCA  
AGENCY CLERK

2016 FEB -5 P 12: 22

COLONY SNF OPERATIONS, LLC,

Petitioner,

v.

MILLENNIUM II, LLC, AND  
STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Respondents.

DOAH NO. 15-1927CON

AHCA NO. 2015002606

CON NO. 10261

RENDITION NO.: AHCA-16-0094-S-OLC

MILLENNIUM II, LLC,

Petitioner,

v.

COLONY SNF OPERATIONS, LLC,

Respondent.

DOAH NO. 15-1932CON

AHCA NO. 2015003342

CON NO. 10262

**FINAL ORDER**

THIS CAUSE is before the State of Florida, Agency for Health Care Administration ("the Agency") concerning the preliminary denial of Certificate of Need ("CON") 10261 filed by Colony SNF Operations, LLC ("Colony"), to establish a new 60-bed community nursing home and the preliminary approval of CON 10262 filed by Millennium II, LLC ("Millennium"), to establish a new 50-bed community nursing home, with respect to the fixed need pool for Sub-District 3-6.

1. The Agency comparatively reviewed CON applications for other beds and programs batching cycle with an application due date of November 19, 2014, for the fixed need pool for Sub-District 3-6. For the case at hand, the reviews included in relevant part:

10261	Colony SNF Operations, LLC	60 Beds	Denied
10262	Millennium II, LLC	50 Beds	Approved

2. On February 23, 2015, the Agency published notice in the Florida Administrative Register of its decisions regarding the preliminary denial of CON 10261 and the preliminary approval of CON 10262.

3. On March 16, 2015, Colony SNF, filed a Petition for Formal Hearing challenging the denial of its CON 10261 as well as the approval of CON 10262 to Millennium.

4. On March 26, 2015, Millennium filed a Petition Challenging Co-Batched Applicant supporting the Agency's decision denying Colony's application.

5. The Agency referred the Petitions to the Division of Administrative Hearings and an Administrative Law Judge ("ALJ") was assigned.

6. The parties subsequently entered into the attached settlement agreement agreeing to the approval of CON 10262 for 50 beds and the approval of CON 10261 for only 59 beds.


It is therefore **ORDERED**:

1. The parties shall comply with the terms of the settlement agreement which are incorporated by reference into this Final Order.

2. Millennium's CON 10262 is approved to establish a 50-bed community nursing home in Sub district 3-6 to be located adjacent to The Residence at Timber Pines located at 3140 Forest Road, Spring Hill, Florida 34606.

3. Colony's CON 10261 is approved for only 59 beds.

**ORDERED** in Tallahassee, Florida, on this 5 day of February, 2016.

  
 Elizabeth Dudek, Secretary  
 Agency For Health Care Administration

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A party who is adversely affected by this Final Order is entitled to judicial review, which shall be instituted by filing the original Notice of Appeal with the Agency Clerk of AHCA, and a copy along with the filing fee prescribed by law with the District Court of Appeal in the appellate district where the Agency maintains its headquarters or where a party resides. Review of proceedings shall be conducted in accordance with the Florida appellate rules. The Notice of Appeal must be filed within 30 days of the rendition of the order to be reviewed.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order has been furnished by the method designated to the persons named below on this 5<sup>th</sup> day of February, 2016.



Richard J. Shoop, Agency Clerk  
Agency for Health Care Administration  
2727 Mahan Drive, Mail Stop #3  
Tallahassee, Florida 32308  
Telephone: (850) 412-3630

James H. Peterson, III  
Administrative Law Judge  
Division of Administrative Hearings  
(Electronic Filing)

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Marisol M. Fitch, Unit Manager  
Certificate of Need Unit  
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Bernard Hudson, Unit Manager  
Long Term Care Unit  
Agency for Health Care Administration  
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**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

COLONY SNF OPERATIONS, LLC,

Petitioner,

vs.

MILLENNIUM II, LLC AND AGENCY  
FOR HEALTH CARE ADMINISTRATION,

Respondents.

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DOAH Case No. 15-1927  
AHCA Case No. 2015002606  
CON Application No. 10261

MILLENNIUM II, LLC,

Petitioner,

vs.

COLONY SNF OPERATIONS, LLC,

Respondent.

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DOAH Case No. 15-1932  
AHCA Case No. 2015003342  
CON Application No. 10262

**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Settlement Agreement") by and between the State of Florida, Agency for Health Care Administration ("AHCA"), Colony SNF Operations, LLC ("Colony"), and Millennium II, LLC ("Millennium").

WHEREAS, in Volume 40, No. 193 of the Florida Administrative Register dated October 3, 2014, a fixed need pool of 66 beds was published for Subdistrict 3-6 for the July 2017 planning horizon; and

WHEREAS, in Volume 20, No. 193 of the Florida Administrative Registry dated October 3, 2014, a fixed need pool of 65 beds was published for Subdistrict 3-5 for the July 2017 planning horizon; and

WHEREAS, Millennium filed CON application No. 10262 for a 50-bed skilled nursing home to be located in Subdistrict 3-6 to be located adjacent to The Residence at Timber Pines located at 3140 Forest Road, Spring Hill, Florida 34606; and

WHEREAS, Colony filed CON application No. 10261 for a 60-bed skilled nursing facility to also be located in Subdistrict 3-6, near the entrance of Wesleyan Village, a deed-restricted senior community located in Brooksville, Florida 34601; and

WHEREAS, Colony's application proposed that some of the bed need in Subdistrict 3-5 be aggregated with the bed need in Subdistrict 3-6 pursuant to section 408.034(6), Florida Statutes; and

WHEREAS, AHCA published notice in Volume 41, No. 26 of the Florida Administrative Register of its decisions to preliminarily approve Millennium's application and to preliminarily deny Colony's application; and

WHEREAS, Colony timely filed a Petition for Formal Administrative Hearing challenging the Agency's preliminary denial of Colony's application and the preliminary approval of Millennium's application; and

WHEREAS, Millennium filed a Cross Petition in support of AHCA's preliminary denial of Colony's application; and

WHEREAS, AHCA received only one CON application for Subdistrict 3-5, to wit an application by Surrey Place of Lecanto, LLC for 22 beds which has received final approval, leaving 43 beds available for award; and

WHEREAS, AHCA has further reviewed Colony's application and has determined that it satisfies the applicable statutory and rule criteria and should be approved; and

WHEREAS, the parties to this Settlement Agreement seek to resolve the pending cases without the need for further litigation, and have determined that it is in the best interests of sound health planning and health care delivery to resolve their differences in a manner consistent with the goals and objectives of the Florida CON law.

WHEREAS, the parties have agreed that a fair, efficient, and cost effective resolution of this dispute would avoid the uncertainty of litigation as well as the expenditure of substantial sums of funds on behalf of all parties in order to fully litigate the dispute; and

WHEREAS, the parties stipulate to the adequacy of considerations exchanged; and

WHEREAS, the parties have negotiated and agreed that the best interest of all the parties will be served by a settlement of this proceeding; and

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, each party individually stipulates and agrees as follows:

1. The above recitals are true and correct and are incorporated into this Agreement.
2. The "whereas" clauses set forth above are binding findings of the parties.
3. Colony and Millennium each agree to withdraw their opposition to the other party's CON application.
4. AHCA agrees to approve Millenium's CON application No. 10262 for 50 beds.
5. AHCA agrees to approve Colony's CON application No. 10261 for 59 beds.
6. Upon full execution of this Agreement, the Agency will enter a final order approving Millennium's CON application no. 10262 to establish a 50 bed community nursing home and Colony's CON application no. 10261 to establish a 59 bed community nursing home.
7. Upon full execution of this Settlement Agreement and entry of a final order wholly consistent with this agreement, each party: (a) agrees to waive any and all appeals and

proceedings; and (b) agrees to waive compliance with the form of the Final Order (findings of fact and conclusions of law) to which it may be entitled including, but not limited to, an informal proceedings under Subsection 120.57(2), Florida Statutes, a formal proceeding under Subsection 120.57(1), Florida Statutes, appeals under Section 120.68, Florida Statutes, and declaratory and all writs of relief in any court or quasi-court (e.g. Division of Administrative Hearings) of competent jurisdiction.

8. Each party for itself and for its related or resulting organizations, its successors or transferees, attorneys, and executors or administrators, does hereby discharge the other parties and their respective employees, agents, representatives, and attorneys of and from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, arising out of or in any way related to this matter and the Agency's actions, including, but not limited to, any claims that were or may be asserted in any federal or state court or administrative forum by or on behalf of such party or any of its related facilities.

9. Within ten (10) days of execution of this Settlement Agreement by all parties, Colony will pay Millennium \$15,000.00 for its attorney's fees incurred in this proceeding.

10. Except as provided in paragraph 9 above, each party shall bear its own costs and attorneys' fees.

11. If anyone breaches this Settlement Agreement, the prevailing party in any action brought to enforce its terms will be entitled to recover reasonable attorney's fees and costs from the non-prevailing party. The parties agree that any action to enforce the terms of this Settlement Agreement will be brought in the Circuit Court for the Second Judicial Circuit in Leon County, Florida.



12. This Settlement Agreement shall become effective on the date upon which it is fully executed by all parties hereto.

13. This Settlement Agreement is binding upon all parties and those identified in the above paragraph of this Agreement.

14. The undersigned have read and understand this Settlement Agreement and have the authority to bind their respective principals to it.

15. This Settlement Agreement contains and incorporates the entire understandings and agreements of the parties.


16. This Settlement Agreement supersedes any prior oral or written agreements between the parties.

17. This Settlement Agreement may not be amended except in writing. Any attempted assignment of this Agreement shall be void.

18. All parties agree that a facsimile signature suffices for an original signature

19. The parties each hereby represent and warrant that their undersigned representative is authorized to execute this Settlement Agreement on behalf of the party, and to bind the party to the terms and conditions herein.

MILLENNIUM II, LLC

  
\_\_\_\_\_  
Randall Benson, Treasurer  
Millennium II, LLC

\_\_\_\_\_  
Seann M. Frazier  
Florida Bar No. 971200  
Parker Hudson Rainer & Dobbs, LLP  
215 S. Monroe St., Suite 750  
Tallahassee, FL 32301

DATED: JANUARY 25, 2016

DATED: \_\_\_\_\_

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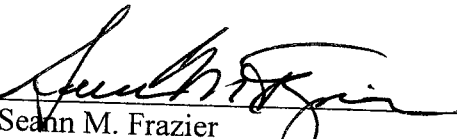
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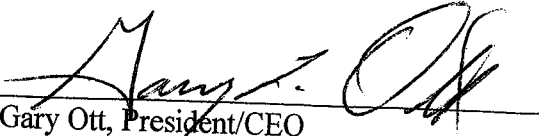
**MILLENNIUM II, LLC**


  
\_\_\_\_\_  
Randall Benson, Treasurer  
Millennium II, LLC

  
\_\_\_\_\_  
Sean M. Frazier  
Florida Bar No. 971200  
Parker Hudson Rainer & Dobbs, LLP  
215 S. Monroe St., Suite 750  
Tallahassee, FL 32301

DATED: JANUARY 25, 2016

DATED: FEB. 27, 2016

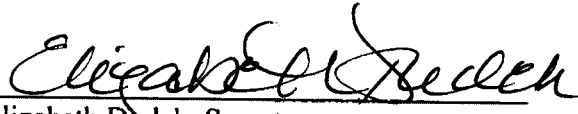
  
Gary Ott, President/CEO  
TLC Management


  
Stephen C. Emmanuel  
Florida Bar No. 0379646  
Ausley McMullen  
Post Office Box 391  
Tallahassee, FL 32301

DATED: 1-22-16

DATED: 1-26-16


**AGENCY FOR HEALTH CARE ADMINISTRATION**  
2727 Mahan Drive, MS #3, Tallahassee, FL 32308

  
Elizabeth Dudek, Secretary  
Division of Health Quality Assurance

  
Stuart F. Williams, Esquire  
General Counsel  
Florida Bar No. 670731

DATED: 2/5/16

DATED: 2/2/16

  
Richard Joseph Saliba, Esquire  
Assistant General Counsel  
Florida Bar No. 240389

DATED: 1/19/16

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