

GALLAGHER

GALLAGHER EVELIUS & JONES
ATTORNEYS AT LAW

January 24, 2020

VIA EMAIL & HAND DELIVERY

Mr. Ben Steffen
Health Facilities Coordination Officer
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215

Re: Request for Determination of Non-Coverage for Peninsula Regional Health System's Acquisition of: Edward McCready Memorial Hospital and Alice Byrd Tawes Nursing and Rehabilitation Center

Dear Mr. Steffen:

On behalf of Peninsula Regional Health System, Inc. ("PRHS"), we are hereby providing the required thirty (30) days' notice and requesting a determination of non-coverage from certificate of need ("CON") requirements regarding the acquisition and affiliation (the "Affiliation Transaction") of CON-regulated health care facilities¹ of the McCready Foundation, Inc. (the "McCready Foundation"). The Affiliation Transaction will be accomplished by PRHS becoming the sole member of the McCready Foundation. The following McCready Foundation facilities are subject to the CON laws under the Maryland Health Care Commission's ("MHCC") jurisdiction:

- (1) **Edward McCready Memorial Hospital** ("McCready Hospital"), a general acute care hospital, which includes a swing-bed unit, located at 201 Hall Highway, Crisfield, MD 21817. As part of the Affiliation Transaction, this facility is planned to convert to a freestanding medical facility ("FMF"), which upon conversion will be renamed the "McCready Health Pavilion;" and
- (2) **Alice Byrd Tawes Nursing and Rehabilitation Center**, a skilled nursing facility (the "Nursing Home"), located at 201 Hall Highway, Crisfield, MD 21817.

PRHS and the McCready Foundation entered into an Affiliation Agreement (the "Affiliation Agreement") on June 26, 2019, under which the parties set forth the details regarding the proposed Affiliation Transaction. The Affiliation Transaction will be a membership substitution pursuant to which PRHS will become the new sole member of the McCready Foundation, resulting in the McCready Foundation becoming a wholly-owned and controlled subsidiary of PRHS, effective as of the closing date. Attached as **Exhibit 1** is a Pre-Closure

¹ The term health care facilities refers to those defined under COMAR 10.24.01.01B(12).

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Organizational Chart for McCready Foundation and **Exhibit 2** is a Post-Closure Organizational Chart for PRHS, showing that McCready Foundation will be a subsidiary of PRHS following the closure. It is expected that the Affiliation Transaction will close on or about March 1, 2020.

A condition precedent to closure of the Affiliation Transaction is that Peninsula Regional Medical Center (“PRMC”) and McCready Hospital receive all regulatory approvals necessary to convert McCready Hospital to a freestanding medical facility (“FMF”) and approval of adequate rate support from the Health Services Cost Review Commission. As you know, on November 12, 2019, the Maryland State Emergency Medical Services Board determined that the conversion of McCready Hospital to a freestanding medical facility (“FMF”) will maintain adequate and appropriate delivery of emergency care within the statewide emergency medical services system, and on January 16, 2020, the MHCC approved PRMC and McCready Hospital’s exemption request to convert McCready Hospital to an FMF.

The following paragraphs provide additional details regarding the Affiliation Transaction:

1. The McCready Foundation is a Maryland not-for-profit Section 501(c)(3) corporation with its primary offices located at 201 Hall Highway, Crisfield, MD 21817. The Foundation currently operates several health care facilities (including some non-CON regulated facilities), including McCready Hospital, a general acute care hospital; the Nursing Home; Chesapeake Cove Assisted Living, an assisted living facility (the “Assisted Living Facility”); and other clinics, physician groups, and services, all of which are part of the same legal entity and have the same federal tax identification number (“TIN”).
2. PRHS is the leading health care delivery system on the Delmarva peninsula and PRMC, is a 266-bed licensed acute care hospital. PRHS and PRMC are Maryland not-for-profit Section 501(c)(3) corporations with their primary offices located at 100 E. Carroll Street, Salisbury, MD 21801. PRHS is governed by its Board of Directors and is the sole member of PRMC. PRMC is governed by its Board of Directors, subject to certain reserved powers of PRHS as its sole member.
3. As part of the proposed Affiliation Transaction, McCready Hospital (including its swing-beds) will cease to operate as a hospital or to offer any inpatient services or surgery, after the closing date. Instead, McCready Hospital will be converted to an FMF under Maryland Code Ann., Health—General § 19-3A-01, et seq. as of March 1, 2020, and will be renamed “McCready Health Pavilion.” At the same

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time, the FMF will become a provider-based outpatient department of PRMC, governed by PRMC's Board of Directors. Upon the initial conversion, the FMF will be located at the same physical location as the current hospital and leased to PRMC by McCready Foundation. The FMF will furnish the following outpatient services previously offered by McCready Hospital: emergency services, observation services, infusion, lab, imaging, behavioral health, PT/OT (physical therapy/occupational therapy), and physician services, including primary care.

4. McCready Foundation will continue to exist as a legal entity following the closing, and will continue to operate the Nursing Home and Assisted Living Facility, subject to certain reserved powers and initiation rights of PRHS as its sole member. McCready Foundation will retain most of its current corporate characteristics with respect to these facilities, including its TIN, various Medicare and other provider agreements, and licenses. Following the Affiliation Transaction, the existing McCready Foundation Board of Directors will be replaced by appointees from PRHS to form a new McCready Foundation Management Board. PRHS will have the sole authority to appoint and remove members of the McCready Foundation Management Board as well as authority to appoint and remove the Chief Executive Officer of McCready Foundation and the Administrator of the Nursing Home.
5. There is no purchase price. The Affiliation Agreement includes commitments by PRHS related to capital planning for all facilities currently operated by McCready Foundation, preservation of the mission of the McCready Foundation, and continuing to serve the people and communities currently served by the McCready Foundation.

The following information is provided with respect to McCready Hospital in response to specific regulatory requirements governing acquisitions of health care facilities as identified in COMAR 10.24.01.03(A)(1) (the "General CON Regulations"), and in applicable chapters of the State Health Plan:

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McCready Hospital

- (a) The health care services provided by the facility.** McCready Hospital currently provides inpatient medical/surgical services, emergency services, observation services, infusion, lab, imaging, outpatient behavioral health services, outpatient physical therapy and occupational therapy services, and outpatient physician services, including primary care. Upon conversion to an FMF, the facility will no longer offer inpatient medical/surgical services and will close its swing-bed unit, but all other services currently offered by McCready Hospital will continue to be offered on the McCready Health Pavilion campus. In addition, the FMF will contain two observation rooms.
- (b) Bed Capacity.** McCready Hospital has three (3) licensed medical/surgical beds. Upon conversion to an FMF, the facility will no longer have any inpatient bed capacity.
- (c) Complete data on facility admissions or visits for the prior calendar year.** McCready Hospital had 149 inpatient admissions during the 2019 calendar year.
- (d) Gross operating revenue generated during the last fiscal year.** During the 2019 fiscal year, the gross operating revenue for McCready Hospital was \$20,539,958.

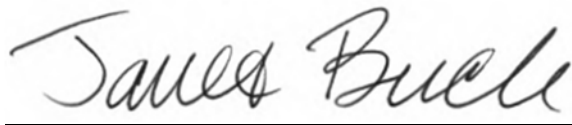
Nursing Home

Attached as **Exhibit 3** is the MHCC's Notice of Acquisition / Transfer of Ownership Interest of a Comprehensive Care Facility Form, which provides all information required for a determination of non-coverage under COMAR 10.24.01.03A and 10.24.20.04D with respect to the Nursing Home. The health care services, bed capacity, or jurisdictions served will not change following the Affiliation.

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Please let us know if you need any additional information regarding the Affiliation Transaction.

Sincerely,



James Buck



Mallory Regenbogen

Cc: Paul Parker, Director, Center for Health Care Facilities Planning & Development
Kevin McDonald, Chief, Certificate of Need
Suellen Wideman, Esq., Assistant Attorney General
Lori Brewster, MS, APRN/LCADC, Health Officer, Somerset County
Camesha Spence, Chief Financial Officer, McCready Foundation, Inc.
Emily H. Wein, Esq., Foley & Lardner LLP
Steve Leonard, President/Chief Executive Officer, PRHS
Bruce Ritchie, Vice President, Finance/Chief Financial Officer, PRHS
Carl Jean-Baptiste, Esq., Gallagher, Evelius & Jones LLP
Linda Jones, Esq., Gallagher, Evelius & Jones LLP

EXHIBIT 1

PRE-CLOSING ORGANIZATIONAL CHART

**MCCREADY FOUNDATION, INC.
(NOT FOR PROFIT)**

- *Edward W. McCready Memorial Hospital*
- *Alice Byrd Tawes Nursing and
Rehabilitation Center*
- *McCready Outpatient Services Center*
- *Chesapeake Cove Assisted Living Facility*
- *The McCready Foundation, Inc. Endowment
Fund*

EXHIBIT 2

POST-CLOSING ORGANIZATIONAL CHART

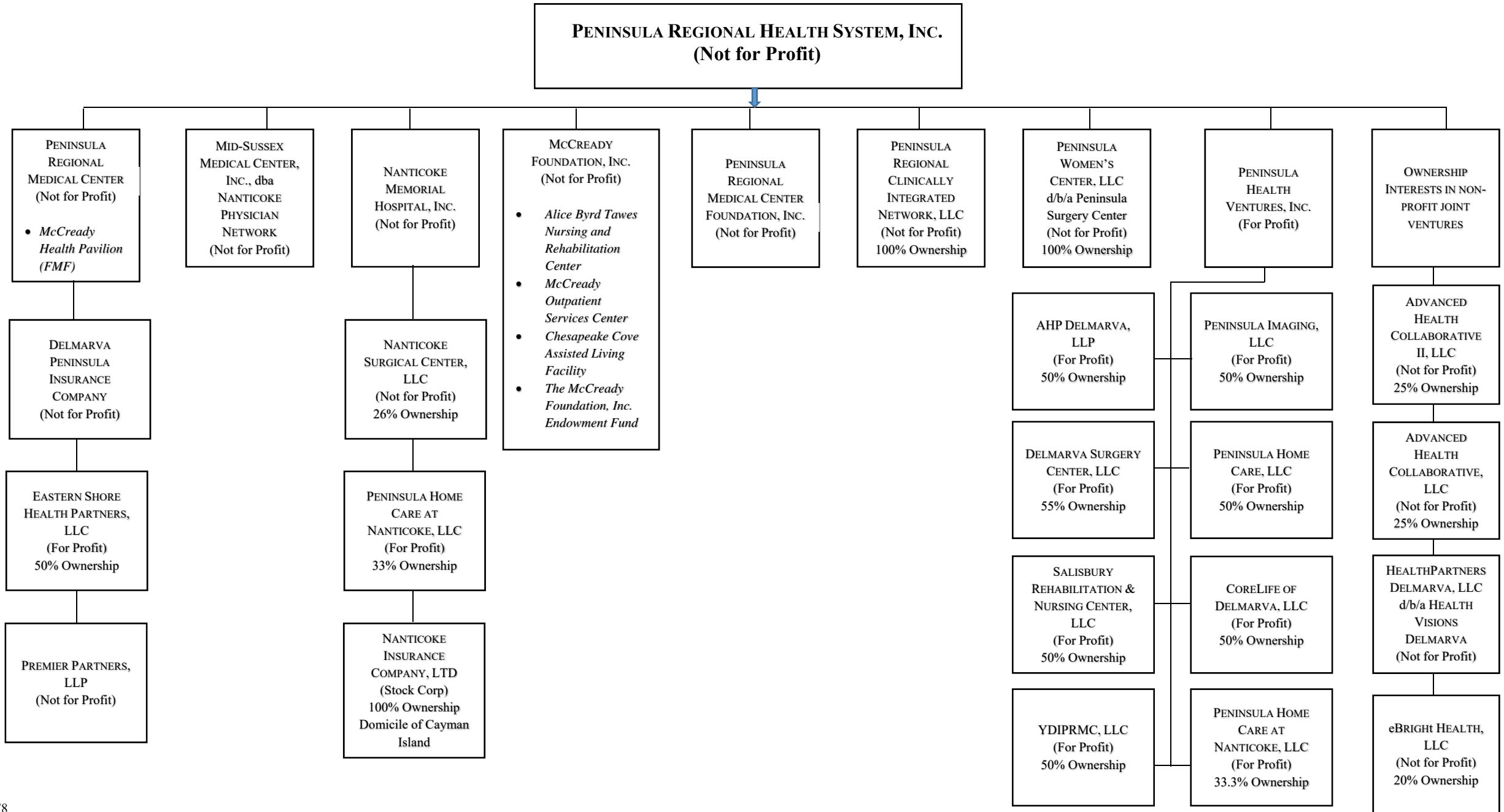


EXHIBIT 3

MARYLAND HEALTH CARE COMMISSION

Notice of Acquisition / Transfer of Ownership Interest of a Comprehensive Care Facility (i.e., nursing home).

Please submit this form to MHCC at least thirty (30) days prior to desired closing date in order to assure that you provide all of the information MHCC needs in order to issue a determination of CON coverage under **COMAR 10.24.01.03A** and **10.24.20.04D** when a person intends to acquire a comprehensive care facility (CCF), or when there is a 25% or greater change in ownership of a CCF. **Note that an affirmation regarding the accuracy of the information provided must be signed by an authorized individual. Supplying MHCC with a Word version of your letter and this form, if utilized, would help assure a timely response.**

Facility Name (i.e., trade name under which the facility currently operates):

Alice B. Tawes Nursing and Rehabilitation Center _____

Address: 203 Hall Highway, Crisfield, Maryland 21817 _____

Please provide a separate narrative summarizing the proposed acquisition / transfer of ownership interest.

Information that the prospective purchaser/ acquiring entity must file with MHCC when seeking to acquire a CCF or when there is a 25% or greater change in ownership of a CCF.		
1.	<p>a) Describe the health care services provided by the facility.</p> <p>b) Will the services change as a result of the acquisition? If so, how?</p>	<p>The Alice B. Tawes Nursing and Rehabilitation Center offers comprehensive care services, including medical, nursing, convalescent, restorative, and rehabilitation services rendered by or under the supervision of a licensed nurse.</p> <p>The services offered at the Alice B. Tawes Nursing and Rehabilitation Center will not change as a result of the affiliation with Peninsula Regional Health System, Inc.</p>
2.	<p>Describe the corporate structure and affiliations of the purchaser. Attach a chart that completely delineates the ownership structure. Include: the identity of each person with an ownership interest in the acquiring entity or a related or affiliated entity; the percent ownership interest of each person; and the history of each person's experience in ownership or operation of health care facilities.</p>	<p>See attached organization chart, and narrative description in letter.</p>
3.	<p>Purchase price</p>	<p>None.</p>
4.	<p>Source of funds</p>	<p>N/A</p>

5.	Bed capacity	76 comprehensive care beds	
6.	Number of admissions for the prior calendar year.	88 (January 1, 2019 – December 31, 2019)	
7.	Gross operating revenue generated during the last fiscal year.	\$7,820,070 (July 1, 2018 – June 30, 2019)	
8.	Number and percentage of nursing home beds in the jurisdiction and planning region controlled by the purchaser (or by an entity in which a person in the ownership structure of the purchaser has an interest, specifying each person, facility, and interest) before and after the proposed purchase.	Before 0	After 76 beds = 36% of beds in Somerset County (76 / 211), and 2.9% of beds in the Eastern Shore Planning Region (76 / 2,544)
9.	The name and address of the owner of the real property and improvements.	Current	After transaction
		McCready Foundation, Inc., 201 Hall Highway, Crisfield, MD 21817.	Peninsula Regional Health System, Inc., 100 East Carroll Street, Salisbury, MD 21801
10.	The owner of the bed rights (i.e., the person/entity that could sell the beds to a third party).	Current	After transaction
		McCready Foundation, Inc.	Peninsula Regional Health System, Inc. ("PRHS")
11.	The operator of the facility (and the relationship of the operator to the owner). Attach a chart that completely delineates the ownership structure.	Current	After transaction
		McCready Foundation, Inc.	McCready Foundation, Inc. See Exhibits 1 and 2, submitted with the enclosed letter which provide the PRHS and McCready Foundation organization charts.
12.	a) Does the existing CCF currently have a Medicaid MOU? If so, what is the required Medicaid percentage? b) Will the purchaser/acquiring entity agree to continue to be bound by the MOU?	To the best of the existing facility's knowledge, it entered into an MOU with Maryland Medical Care Programs dated April 10, 1989, pursuant to which the facility agreed to serve a proportion of Medicaid patients that at a minimum is equal to the proportion of Medicaid patients in all other comprehensive care beds in the jurisdiction or the region, whichever is lower. PRHS agrees to be bound by the terms of this MOU.	

13.	Disclose: whether any of the purchaser's principals — i.e., any owner or former owner, member of senior management or management organization, or current of former owner or senior manager of any related or affiliated entity during the past ten years has been convicted of felony or crime, or pleaded guilty, nolo contendere, entered a best interest plea of guilty, received a diversionary disposition regarding a felony or crime that relates to the ownership or management of a health care facility; and whether the applicant has paid a civil penalty in excess of \$10 million dollars .	No.
14..	Disclose whether the acquiring entity will be taking automatic assignment of the existing Medicare provider number.	There will be no change in provider entity or the Medicare provider number.
15.	Anticipated date of closing or transfer.	March 1, 2019


The Notice of Acquisition must be accompanied by an affirmation attesting to the truthfulness of the information provided by the purchaser. The form for the affirmation is below.

Affirmation of Purchaser/Acquiring Entity/Transferee

I solemnly affirm under penalties of perjury that within the last ten years no owner or former owner, or member of senior management or management organization, or a current or former owner, senior manager of any related or affiliated entity has been convicted of felony or crime, or pleaded guilty, nolo contendere, entered a best interest plea of guilty, received a diversionary disposition regarding a felony or crime, and that the applicant or a related or affiliated entity has not paid a civil penalty in excess of \$10 million dollars that relates to the ownership or management of a health care facility.

I solemnly affirm under penalties of perjury that the information provided to the Maryland Health Care Commission regarding the proposed acquisition or transfer of ownership interests of the above-named facility is true and correct to the best of my knowledge, information, and belief, and that I have been duly authorized by the purchaser/ acquiring entity/ transferee to provide this information on its behalf.

Date signed: 1/23/2020


 Steven E. Leonard
 President and Chief Executive Officer
 Peninsula Regional Health System, Inc.
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cc: Lori Brewster, Somerset County Health Officer
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