



**Resolution of
Resolution No. 2018-07-Res**

WHEREAS, the Town Board of Highlands, North Carolina (the “Board”) is interested in the health and wellbeing of the citizens of Highlands and the members have thus attended one or more of the briefings by representatives of Mission Health System, Inc. and its affiliates (“Mission”) on the proposed transaction between Mission and affiliates of Hospital Corporation of America (together “HCA”); and

WHEREAS, the Board does not to object to the concept of a possible sale of Mission’s assets to HCA, and understands that there are likely to be advantages to the patient population in Mission’s service area through the efficiencies and expertise HCA will bring to the operations of Mission’s medical facilities, and that the sale will also infuse over \$1 billion which will be contributed to the Dogwood Health Trust (“Dogwood”) and apparently be devoted to promoting the health of the patient population served by Mission. In addition, Mission has conditionally proposed to give \$15 million to the Highlands-Cashiers Hospital Foundation. The Board welcomes the concept, subject to the provisions set forth below.

WHEREAS, to be more fully informed about the terms of the transaction, the Board has reviewed certain provisions of the Asset Purchase Agreement (“APA”) dated August 30, 2018 between Mission and HCA; and

WHEREAS, the language of the APA reflects significant differences from what was communicated by Mission at the briefings, including a difference in the provisions of the APA regarding reduction of services at Highlands-Cashiers Hospital and other similar hospitals which are to be transferred to HCA and the potential closing of any of these facilities and a difference as to the composition of the Dogwood board; and

WHEREAS, a provision of particular concern to the Board is Section 7.13(b), which reads:

“Unless otherwise consented to in writing by the applicable Local Advisory Board, for period of five (5) years immediately following the Closing Date, Buyer shall not discontinue the provision of the services set forth on Schedule 7.13(b) (the ‘Member Hospital Facility Services’) at any Member Hospital Facility, subject to Force Majeure making the provision of such services impossible or commercially unreasonable (but only for the period of Force Majeure and the applicable Remediation Period). From and after such five (5)-year period, Buyer shall have the right to discontinue any Member Hospital Facility Service at any of the Member Hospital Facilities; provided that Buyer shall maintain emergency services at each of the Member Hospital Facilities for a period of at least ten (10) years immediately following the Closing Date, subject to Force Majeure making the provision of such services impossible or commercially unreasonable (but only for the period of Force Majeure and the applicable Remediation Period). For the avoidance of doubt, this Section 7.13(b) shall not apply to the

Mission Health Campus Facility or the Community CarePartners Facilities that are addressed in Section 7.13(a);"and

WHEREAS, Section 7.13(b) makes it possible even if there is no event making the provision of services impossible or commercially unreasonable to reduce services or close the hospital with only consent of the Local Advisory Board; and

WHEREAS, under the provisions of Section 7.12(b), the Local Advisory Board will consist of eight persons, four appointed by the existing Highlands-Cashiers Hospital Board at the closing of the transaction and four appointed by HCA, but there is no requirement that any of the four appointed by the existing board shall be independent of Mission or HCA and this provision of the APA states that the four appointed by HCA may be employees of HCA; and

WHEREAS, the provision of the APA (Section 7.20, "Right to Bid") which governs disposition of properties provides that only Mission or Dogwood have the right to receive notice of a proposed sale of any of the properties and to submit a bid to be considered; and

WHEREAS, the provision of APA, Section 13.13, ("No Third Party Beneficiaries"), expressly provides that no person that is not a party to the APA shall have any rights to enforce the provisions of the APA, with the result that neither The Highlands-Cashiers Hospital Foundation nor any person or group in the Highlands community has any right to receive notice of a proposed sale or to bid or to be considered in any way in connection with the disposition of all or any part of the Highlands-Cashiers Hospital properties; and

WHEREAS, the provisions regarding sale of the Highlands-Cashiers Hospital provide that it may be sold to the highest bidder; and

WHEREAS, the Highlands-Cashiers Hospital has been constructed solely from contributions of donors from the Highlands-Cashiers area given to The Highlands-Cashiers Hospital Foundation; and

WHEREAS, neither Mission nor HCA has invested funds or will as result of the transaction invest funds in the Highlands-Cashiers Hospital or provide funds to the Highlands-Cashiers Foundation other than those which amount to a modest fraction of the amounts provided by the charitable contributions of donors to the Highlands-Cashiers Hospital Foundation, with the result that HCA is getting under the APA a bargain purchase of the Highlands-Cashiers Hospital; and

WHEREAS, HCA is promising little in return which is not highly conditional or illusory; and

WHEREAS, there are no provisions in the APA or otherwise to ensure that any of members of the Dogwood board, much less a majority of them, will be independent of Mission or HCA; and

WHEREAS, the Town Board is concerned that, without independent representation on the Dogwood board which representation reflects the service area of Mission, the rural hospitals may not receive a fair share of the funds to be disbursed by Dogwood;

NOW, THEREFORE, BE IT RESOLVED, the Town of Highlands Board of Commissioners passed the following resolution at a special meeting on the 27th day of September, 2018:

1. That the Mayor is authorized to submit a letter to the Attorney General of North Carolina requesting:

a. That the Attorney General make public all information submitted to him by Mission or HCA, subject only to such redactions as he may approve, and rule that the review period cannot begin until such information is publicly available; and

b. With respect to the sale of any or all of the Highlands-Cashiers Hospital properties, that the APA be revised to provide that an entity which is representative of the patient population of the Highlands-Cashiers Hospital (i) be given notice of HCA'S intention to sell or solicit bids under Section 7.20 of the APA or otherwise to sell or dispose or transfer of all or any part of the Highlands-Cashiers Hospital properties, whether to an affiliate or to a third party, and (ii) an option affording the entity a reasonable time to purchase the property or properties proposed to be sold, disposed of or transferred at the lesser of the fair market value or HCA's depreciated cost of such properties; and

c. With respect to the Dogwood Trust that the Attorney General impose conditions on his approval (i) that would ensure that a substantial majority of the members of Dogwood are independent of Mission or HCA and (ii) that Dogwood has a board of directors which is broadly representative of the population of the eighteen-county area Dogwood is designed to serve and (iii) that any form of remuneration for their services that such directors shall receive shall be reasonable in accordance with terms established by the Attorney General; and

d. With respect to the proposal of Mission to transfer \$15 million to the Highlands-Cashiers Hospital Foundation that the Attorney General impose guidelines on the terms set out by Mission to ensure that they are reasonable and will be fairly interpreted and enforced; and

e. That the Attorney General retain continued oversight of the activities of Dogwood and the proposed conditional transfer of \$15 million in three increments of \$5 million each from **Mission** to the Highlands-Cashier's Hospital Foundation; and

f. The Mayor is authorized to include in such letter such other provisions in support of these requests as in his judgment are necessary or appropriate so long as they are consistent with the intent of the foregoing terms of this resolution.

Upon motion duly made and seconded, the resolution was unanimously adopted by the Board of Commissioners at a special meeting held on the 27th day of September, 2018, in the Highlands Recreation Park, 600 North 4th Street, Highlands, North Carolina.

This the 27th day of September, 2018.

Patrick L. Taylor, Mayor

ATTEST:

Gilberta B. Shaheen, Town Clerk