

Town of

Bakersville

Incorporated 1870



"Gateway to Roan Mountain"

Mayor:
Charles E. Vines

Town Council:
Charles Nash
Jordon Baker
Beau Thomas

**RESOLUTION OF THE TOWN OF
BAKERSVILLE OF MITCHELL COUNTY,
NORTH CAROLINA**

WHEREAS, the members of the Town Council of Bakersville (the Council) are interested in the health and well-being of the citizens of Mitchell County 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 Council does not 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 are 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 Foundation ("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 Blue Ridge Regional Hospital Foundation. The Council 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 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 Blue Ridge Regional 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 Council 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) then (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 Blue Ridge Regional 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 Blue Ridge Regional Hospital Foundation 11: or any person or group in Mitchell County 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 Blue Ridge Regional Hospital properties; and

WHEREAS, the provisions regarding the sale of Blue Ridge Regional Hospital provide that it may be sold to the highest bidder; and

WHEREAS, Blue Ridge Regional Hospital has been constructed from contributions of donors from the Mitchell County area; and

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

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

WHEREAS, the The Town Council of Bakersville 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, in order to express the concerns which it has regarding the terms of the APA presently proposed between Mission and HCA, the Town Council of the Bakersville, N.C., do hereby RESOLVE as follows:

- 1) That the Board respectfully requests the Attorney General to obtain clarification of the term "Emergency Services" as it relates to the services which are to be provided by HCA at the regional hospitals in the Mission system so that there is as clear an understanding as to what services HCA will commit to continue to provide at those rural hospitals as there is a definition of what those services are to be at the main campus of Mission Hospital.
- 2) That HCA make the protected period for rural hospitals 10 years, equal to that for Mission Hospital, and that during the protected period no individual or body should have power to abrogate the protection (a power conferred by the agreement on "Local Advisory Boards" created for that sole purpose). Finally, the definition of Force Majeure should conform to North Carolina law.

- 3) That with respect to the Foundation that the Attorney General impose conditions on his approval that would ensure that a substantial majority of the members of the governing board of the Foundation are independent of any association with Mission or HCA and that the Foundation's governing board be established such that it is composed of members who are fairly representative of the eighteen-county area that the foundation is designed to serve.
- 4) That with respect to the proposal of Mission to transfer the sum of \$15 million to the Blue Ridge Hospital Foundation that the Attorney General imposes guidelines on the terms set out by Mission to ensure that they are reasonable and will be fairly interpreted and enforced.
- 5) That the Attorney General retain continued oversight of the activities of the Foundation and the proposed transfer of the sum of \$15 million to the Blue Ridge Hospital Foundation.
- 6) That the Attorney General make public all information submitted to him by Mission or HCA, subject only to such redactions as he shall deem appropriate and necessary.
- 7) That HCA clarify at the earliest opportunity whether or not it intends to continue the operation of ambulance service in Mitchell County under the present Mission arrangement or some similar arrangement with local government or whether it intends to withdraw from such an arrangement, giving time to contract for alternative arrangements for the provision of ambulance service in Mitchell County.


Charles E Vines
Mayor