

## AGENDA

Catawba County Board of Commissioners Meeting  
Monday, February 1, 2016, 9:30 a.m.  
Robert E. Hibbitts Meeting Room, 1924 Courthouse  
30 North College Avenue, Newton, NC

1. Call to Order.
2. Pledge of Allegiance to the Flag.
3. Invocation.
4. [Approval of the Minutes from the Board's Regular Meeting of January 19, 2016.](#)
5. Recognition of Special Guests.
6. Public Comments.
7. Presentations:
  - a. [Two North Carolina Public Library Directors Association Awards:](#)  
(1) Outstanding New Library Facility for the Sherrills Ford-Terrell Branch, and  
(2) Public Relations Award for Medium Sized Libraries. *Presented to Library Director Suzanne White and Assistant Library Director Siobhan Loendorf.*
  - b. [Catawba County BIG READ Proclamation.](#) *Presented to Library Director Suzanne White and Assistant Library Director Siobhan Loendorf.*
  - c. [Government Finance Officers Association Distinguished Budget Presentation Award.](#) *Presented to Budget Manager Jennifer Mace and Budget & Management Analysts Paarth Mehta and Barron Monroe.*
8. [Appointments.](#)
9. Departmental Reports.
  - A. Finance.  
[Increase in County Employee Meal Reimbursement.](#) *Presented by Interim Finance Officer Jeanne Jarrett.*
  - B. Planning and Parks.  
[2014 Urgent Repair Program Project Budget Ordinance Amendment for Interest Earned.](#) *Presented by Planning and Parks Director Jacky Eubanks.*
  - C. Public Health/Legal.  
[Resolution and Asset Purchase Agreement for Home Health.](#) *Presented by County Attorney Debra Bechtel and Public Health Director Doug Urland.*
10. Other Items of Business.
11. Attorneys' Report.
12. Manager's Report.
13. Adjournment.

**PERSONS WITH DISABILITIES:** Individuals needing assistance should contact the County Clerk at 828-465-8990 within a reasonable time prior to the meeting. Access to the 1924 Courthouse for individuals with

disabilities is at the south side ("A" Street). The elevator is located at the north end of the building. Participation in public meetings is without regard to race, creed, religion, national origin, sex, age, color, or disability.

**INFOTALK/INTERNET:** The Catawba County Telephone Information System will allow you to use your touch tone telephone to obtain current information on Catawba County 24 hours a day. Information is updated on a regular basis. Dial 465-8468 and INFOTALK will direct your questions with easy to understand instructions. Reach Catawba County on the Internet at <http://www.catawbacountync.gov>.

**CALENDAR:** The next Board of Commissioners Meeting will take place on Monday, February 15, 2016, at 7:00 p.m. in the Robert E. Hibbitts Meeting Room, 1924 Courthouse, 30 North College Avenue, Newton.



**PREVIEW OF COUNTY COMMISSION AGENDA  
MONDAY, FEBRUARY 1, 2016, 9:30 A.M.  
ROBERT E. HIBBITTS MEETING ROOM  
1924 COURTHOUSE, NEWTON, N.C.**



The Catawba County Board of Commissioners will consider a resolution and purchase agreement regarding the sale of Catawba County Home Health to Kindred Inc., when the Board meets at 9:30 a.m. on Monday, February 1, 2016, at the 1924 Courthouse at 30 North College Avenue in Newton. The Board will also consider an increase in the reimbursement for costs incurred by County employees for meals while traveling on County business, which has not been increased since 2008, by \$2 per meal due to rising costs.

The Board will consider an amendment to a 2014 Urgent Repair Program Project Budget Ordinance to appropriate interest earned on funds originally appropriated for the project. The Board will issue a proclamation for the community-wide Big Read event occurring from February 23rd through April 2016, to encourage reading by all citizens through the reading, discussing and celebrating of this year’s chosen book, Harper Lee’s To Kill a Mockingbird. And the Board will present two awards from the North Carolina Public Library Director’s Association received by the County Library system and the 2015 Distinguished Budget Presentation Award to the County Budget staff, which has won the award for 27 straight years for producing a budget document judged easy to read and understand.

**PRESENTATIONS**

**A.** The Board will present two awards from the North Carolina Public Library Directors Association to Library Director Suzanne White and Assistant Library Director Siobhan Loendorf. The first award recognizes the Sherrills Ford-Terrell Branch of the Catawba County Library as a 2014-2015 Outstanding New Library Facility and the second award recognizes Catawba County Library for the 2014-2015 Public Relations Award for medium sized libraries in the State of North Carolina.

**B.** The Board will issue a proclamation for the community-wide Big Read event occurring from February 23rd through April 2016, to encourage reading by all citizens through the reading, discussing and celebrating of this year’s chosen book, Harper Lee’s To Kill a Mockingbird.

**C.** The Board will present the 2015 Distinguished Budget Presentation Award from the Government Finance Officers Association to Budget Manager Jennifer Mace and Budget & Management Analysts Paarth Mehta and Barron Monroe. The award is given to local governments that prepare and publish a budget document judged to be both informative and understandable. Catawba County has won this award for 27 consecutive years.

**DEPARTMENTAL REPORTS**

**A. FINANCE**

The Board will consider approval of an increase in per meal reimbursement for County employees and an update to the County Code for Chapter 28 - Travel Policy. According to current County policy, meals incurred by employees while traveling on County business are reimbursed at the actual amounts per receipts. Guidelines for reimbursement rates for a 24-hour period for travel are: Breakfast \$7.00; Lunch \$10.00 and Dinner \$18.00. These rates, which include tips and taxes, have not been adjusted since 2008 and due to rising costs, staff is requesting that meal reimbursement be increased by \$2 for each meal. This increase in meal reimbursement will be effective on March 1, 2016.

For comparison purposes, travel subsistence rates for Federal employees under the General Services Administration (GSA) and State employees from the NC Office of State Budget and Management (OSBM) in effect for 2015-16 are as follows:

Federal (GSA) for NC  
Breakfast      \$11.00

NC (OSBM)  
Breakfast      \$8.30

Lunch	\$12.00	Lunch	\$10.90
Dinner	\$23.00	Dinner	\$18.70

A January 2015 survey from the School of Government at the University of North Carolina-Chapel Hill showed 31 counties in North Carolina with higher daily rates than the current Catawba rate, including 7 counties that follow the federal GSA rate, 19 counties with lower rates, and 1 county with the same rate. In this survey, 13 counties indicated that they reimburse at actual rates, although a meal limit was not indicated, and 35 counties did not respond to the survey.

**B. PLANNING AND PARKS**

The Board will consider amending the 2014 Urgent Repair Project Budget Ordinance to appropriate the interest earned on the grant funds. A total of \$446 has been earned to date. Catawba County received a \$75,000 Urgent Repair Grant in June 2014 to rehabilitate 16 houses at \$7,200 or less a house. The County is allowed to earn interest on the funds that were received from the North Carolina Housing Finance Agency. During the last 18 months, interest has been earned on this project. A total of \$446 has been earned to date and these funds will need to be expended through the rehabilitation line item by February 15, 2016. Fourteen homeowners scattered throughout Catawba County have benefited from this grant. Repairs on the houses have consisted of installation of new roofs, plumbing repairs, installation of heating systems and floor repairs.

**C. PUBLIC HEALTH/LEGAL**

The Board will consider adopting a resolution to approve the sale of Catawba County Home Health and the Asset Purchase Agreement with Kindred, Inc., as well as authorizing the Chair to execute any documents needed to complete the sale.

The sale of Catawba County Home Health is being considered because Catawba County Public Health is one of the last local health departments in North Carolina to provide home health services. The Unifour is an increasingly competitive home health marketplace and Catawba County Home Health’s remaining competitive and financially viable in this dynamic environment has been a continual challenge. As the home health marketplace has expanded, residents now have access to numerous home health service providers and that access continues to grow. Catawba County Public Health's role is not to compete with services that are now readily available from other providers.

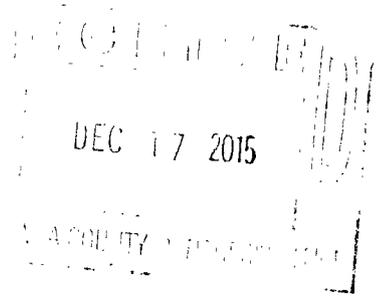
Before selling a home health agency an entity must comply with North Carolina General Statutes. The initial step is to adopt a resolution declaring intent to sell, which the Board of Commissioners did at its October 5, 2015, meeting. The next step is to conduct a public hearing on the resolution, which the Board did on November 2, 2015. No one spoke at that public hearing. The required public hearing on Proposals to Purchase was held on December 7, 2015 and no one spoke at the public hearing.

The Board directed that a contract be negotiated with Kindred, Inc. The proposed contract of sale has been available in the Clerk’s office since January 22, 2016. Notice of the Board’s regular meeting on February 1, 2016, and the availability of the proposed contract were advertised in the Hickory Daily Record on January 22, 2016. Pursuant to statute, the Board must adopt a Resolution, “upon a finding that the lease, sale or conveyance is in the public interest after considering whether the proposed lease, sale or conveyance will meet the health related needs of medically underserved groups, such as low income persons, racial and ethnic minorities, and handicapped persons.”

CONTACT: DAVE HARDIN, PUBLIC INFORMATION OFFICER 465-8464

# NCPLDA

North Carolina  
Public Library Directors Association



December 3, 2015

Tom Lundy, County Manager  
PO Box 389  
100-A South West Blvd  
Newton, NC 28658-0389

Dear Mr. Lundy,

The North Carolina Public Library Directors Association is proud to announce that the Sherrills Ford-Terrell Branch of the Catawba County Library has been recognized as a 2014-2015 **Outstanding New Library Facility**. Please join us in congratulating the library system and its director, Suzanne White, for providing outstanding service to your community.

We know that you are thrilled to have a vibrant and service-oriented library system in your county. The many library users who have used and will use your new branch should applaud your commitment to their quality of life through easy access to information and technology.

On behalf of the North Carolina Public Library Directors Association, thank you for supporting the Catawba County Library and its new Sherrills Ford-Terrell Branch, fine examples of one of our state's most beloved, freely accessible, and valuable institutions: the public library.

Sincerely,

Ross Holt, President  
North Carolina Public Library Directors Association

#### Award Committee Members

Tammy Baggett, Chair	Jane Blackburn
Estelle Carter	Donna Phillips
Catie Roche	MJ Wilkerson

# NCPLDA

North Carolina  
Public Library Directors Association

DEC 17 2015

December 3, 2015

Tom Lundy, County Manager  
Catawba County  
PO Box 389  
100-A South West Blvd  
Newton, NC 28658-0389

Dear Mr. Lundy,

The North Carolina Public Library Directors Association is proud to announce that the Catawba County Library has received the 14-15 **Public Relations Award** for medium sized libraries in our state. Please join us in congratulating the library and its director, Suzanne White, for providing outstanding service to your community.

Catawba County Library created a simplified identity system, unifying its internal and public facing printed literature. Brochure, Poster, and newsletter templates were specifically designed to create a simple, clean presentation that internal contributors could easily follow and update. Soothing coordinated colors are a mainstay of the system, as well as specific type styles and a new library graphic. The essential idea was to create a system we could maintain internally at substantial cost savings over commercial printing except for a few pieces such as our primary brochure, stationery, and the like. Importantly, the new customer emails and our news site create a fun new library presence, vitality, and voice to the communities we serve. An overall engaging and consistent presentation helps solidify the library's image as a unified, vital learning and information source county-wide.

Public relations campaigns or products from public libraries around the state were judged on their Originality, Ability to be Replicated, Involvement with Other Community Organizations; Relationship to the Library's Mission, Effectiveness of Publicity, and Results to Cost Ratio. Your library's program was considered the best in its class!

On behalf of the North Carolina Public Library Directors Association, thank you for supporting the Catawba County Library, a fine example of one of our state's most beloved, freely accessible, and valuable institutions: the public library.

Sincerely,

  
Ross Holt, President

North Carolina Public Library Directors Association

# ***Government of Catawba County, North Carolina***

*“Keeping the Spirit Alive Since 1842!”*

## **PROCLAMATION** ***Catawba County BIG READ***

**WHEREAS**, The **BIG READ** is a program of the National Endowment of the Arts, designed to revitalize and restore reading to the center of our culture; and

**WHEREAS**, reading is fundamental to individual and community literacy and vital to life and livelihood; and the habit of regular reading raises the likelihood of academic and economic success and stirs people’s social and civic senses; and

**WHEREAS**, improved literacy raises educational attainment, stimulates economic development, civic engagement, and community cohesiveness; and

**WHEREAS**, the citizens of a community that all experience the same book have the unique opportunity to share their ideas and forge new understandings; and

**WHEREAS**, that Catawba County Library and partners across the county officially recognize and together facilitate the Catawba **BIG READ** program and encourage all citizens to read, discuss and celebrate the chosen book, Harper Lee’s “To Kill a Mockingbird.”

**NOW, THEREFORE, THE CATAWBA COUNTY BOARD OF COMMISSIONERS**, does hereby proclaim the community wide **BIG READ** program to take place from February through April 2016 and calls upon all citizens of the County to read “To Kill a Mockingbird” and take part in the wide range of events offered throughout the county.

This 1<sup>st</sup> day of February, 2016.

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**C. Randall Isenhower, Chair**  
**Catawba County Board of Commissioners**



GOVERNMENT FINANCE OFFICERS ASSOCIATION

*Distinguished  
Budget Presentation  
Award*

PRESENTED TO

**Catawba County**

**North Carolina**

For the Fiscal Year Beginning

**July 1, 2015**

*Jeffrey R. Egan*

Executive Director

**THERE ARE NO  
APPOINTMENT RECOMMENDATIONS**

## MEMORANDUM

**TO:** Catawba County Board of Commissioners  
**FROM:** Jeanne C. Jarrett, Interim Finance Officer  
**DATE:** February 1, 2016  
**SUBJECT:** Increase in County Employee Meal Reimbursement

**Request:**

Staff recommends the Board of Commissioners approve an increase in per meal reimbursement for County employees and approve the attached County Code updates for Chapter 28 - Travel Policy.

**Background:**

According to current County policy, meals incurred by employees while traveling on county business are reimbursed at the actual amounts per receipts. Guidelines for reimbursement rates for a 24-hour period for travel are as follows:

Breakfast	\$7.00
Lunch	\$10.00
Dinner	\$18.00

These rates, which include tips and taxes, have not been adjusted since 2008 and due to rising costs, staff is requesting that meal reimbursement be increased by **\$2** for each meal. This increase in meal reimbursement will be effective March 1, 2016.

For comparison purposes, travel subsistence rates for federal employees under General Services Administration (GSA) and state employees from the NC Office of State Budget and Management (OSBM) in effect for 2015-16 are as follows:

<u>Federal (GSA) for NC</u>		<u>NC (OSBM)</u>	
Breakfast	\$11.00	Breakfast	\$8.30
Lunch	\$12.00	Lunch	\$10.90
Dinner	\$23.00	Dinner	\$18.70

A January 2015 survey from the School of Government showed 31 counties in North Carolina with higher daily rates than the current Catawba rate, including 7 counties that follow the federal GSA rate, 19 counties with lower rates, and 1 county with the same rate. In this survey, 13 counties indicated that they reimburse at actual rates, although a meal limit was not indicated, and 35 counties did not respond to the survey.

Below is the proposed language (changes in italics) for Chapter 28 of the County Code:

**Section 28-370 Subsistence**

**(c) Lodging and meals. Lodging and meals shall be reimbursed as follows:**

**(1) Guidelines for reimbursement rates for a 24-hour period for travel within this state are as follows:**

- a. Breakfast *\$9.00*
- b. Lunch *\$12.00*
- c. Dinner *\$20.00*
- d. Suggested maximum total for daily meals *\$41.00*
- e. Lodging: Conference rates

(2) Tips and taxes are considered to be included in the meal rates in subsection (c)(1) of this section.

**Recommendation:**

Staff recommends the Board of Commissioners approve the changes to the meal reimbursement rates and County Code, Chapter 28, Section 370 effective March 1, 2016.

# Memo

**To:** Catawba County Board of Commissioners  
**From:** Jacky Eubanks, Director of Planning and Parks  
**Date:** February 1, 2016  
**Re:** 2014 Urgent Repair Program Project Budget Ordinance Amendment - Interest Earned

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## **Request**

Staff requests the Board of Commissioners amend the 2014 Urgent Repair Project Budget Ordinance to appropriate the interest earned. A total of \$446 has been earned to date.

## **Background**

Catawba County received a \$75,000 Urgent Repair Grant in June 2014 to rehabilitate sixteen (16) houses at \$7,200 or less a house. The County is allowed to earn interest on the funds that were received from the North Carolina Housing Finance Agency. During the last eighteen (18) months, interest has been earned on this project. A total of \$446 has been earned to date and these funds will need to be expended through the rehabilitation line item by February 15, 2016.

Fourteen (14) homeowners scattered throughout Catawba County have benefited from this grant. The repairs on the houses have consisted of installation of new roofs; plumbing repairs; installation of heating systems and floor repairs.

## **Recommendation**

The Planning staff recommends the Board of Commissioners approve this Project Budget Ordinance Amendment to the 2014 Urgent Repair Project Rehabilitation Line Item.

## **Revenue:**

280-420114-627000	Interest Earned on Revenue	\$446
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## **Expenditures:**

280-420114-849120	Rehabilitation (URP)	\$44,383
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## MEMORANDUM

TO: Catawba County Board of Commissioners

FROM: Debra Bechtel, County Attorney

DATE: February 1, 2016

SUBJECT: Resolution and Asset Purchase Agreement for Home Health

### Request

Pursuant to NCGS 131E-13, Staff recommends the Board of Commissioners adopts the attached resolution approving the sale of Catawba County Home Health and the Asset Purchase Agreement with Kindred, Inc. and authorizes the Chair to execute any documents needed to complete the sale.

### Background

Before selling a home health agency an entity must comply with NCGS 131E-13. The initial step was adopting a resolution declaring intent to sell, which the Board of Commissioners did at its October 5, 2015 meeting. The next step was to conduct a public hearing on the resolution, which the Board did on November 2, 2015. No one spoke at the public hearing.

The required public hearing on Proposals to Purchase was held on December 7, 2015. No one spoke at the public hearing. The Board directed a contract be negotiated with Kindred, Inc.

The proposed contract of sale has been available in the Clerk's office since January 22, 2016. Notice of the Board's regular meeting on February 1, 2016, and the availability of the proposed contract were advertised in the Hickory Daily Record on January 22, 2016.

Pursuant to statute, the Board must adopt a Resolution, "upon a finding that the lease, sale or conveyance is in the public interest after considering whether the proposed lease, sale or conveyance will meet the health related needs of medically underserved groups, such as low income persons, racial and ethnic minorities, and handicapped persons."

### Recommendation

Pursuant to NCGS 131E-13, Staff recommends the Board of Commissioners adopts the attached resolution approving the sale of Catawba County Home Health and the Asset Purchase Agreement with Kindred, Inc. and authorizes the Chair to execute any documents needed to complete the sale.

**PUBLIC NOTICE**

**CATAWBA COUNTY  
BOARD OF COMMISSIONERS**

Public notice is hereby given that the Catawba County Board of Commissioners will consider adopting a resolution approving the sale of Catawba County Home Health on Monday, February 1, 2016, beginning at 9:30 a.m. in the **1924 Courthouse, Robert E. Hibbitts Meeting Room**, located at 30 North College Ave., Newton, North Carolina. Copies of the proposed contract are available through the Clerk's Office by calling 465-8990.

**PERSONS WITH DISABILITIES**

Individuals needing special assistance should contact the Board Clerk at 465-8990 within a reasonable time prior to a meeting. Access to the 1924 Courthouse for individuals with disabilities is at the south side (A Street). The elevator is located at the north end of the building. Participation in public meetings is without regard to race, color, national origin, sex, religion, age or disability.

**PUBLISH: Friday January 22, 2016.**

**Resolution 2016-\_\_\_\_\_**  
**Resolution of Approval to Sell Catawba County Home Health**  
**Pursuant to NCGS § 131E-13**

WHEREAS, Catawba County has decided to sell Catawba County Home Health to Kindred, Inc., and

WHEREAS, a copy of the proposed contract has been available to the public in the Clerk's Office since January 22, 2016.

NOW, THEREFORE, BE IT RESOLVED by the Catawba County Board of Commissioners, as follows:

1. The sale will meet the health-related needs of medically underserved groups, such as low income persons, racial and ethnic minorities, and handicapped persons.
2. The sale is in the public interest.

This the 1st day of February, 2016.

\_\_\_\_\_  
C. Randall Isenhower, Chair  
Catawba County Board of Commissioners

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** (this “Agreement”) is entered into as of the \_\_\_ day of February, 2016 by and between **THE COUNTY OF CATAWBA**, a body corporate and politic authorized by the laws of North Carolina (“Seller”), and Capital Care Resources, LLC, a Georgia limited liability company (“Purchaser”).

### **BACKGROUND AND PURPOSE**

Seller provides Medicare home health and related services in Catawba County, North Carolina. Purchaser is duly authorized to do business in the State of North Carolina, and Seller desires to sell certain assets to Purchaser relating to the provision of home health agency services, and Purchaser has agreed to purchase the same on and subject to the terms and conditions of this Agreement.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth below, Seller and Purchaser agree as follows:

1. **Sale and Transfer of Assets.** In compliance with the terms of N.C. Gen. Stat. §131E-13, and subject to the terms and conditions of this Agreement, Seller shall sell, and Purchaser shall purchase for the consideration set forth herein, substantially all of the assets related to Seller’s home health agency business (the “Business”), other than the Excluded Assets (defined below), but including, all of the property described as follows (collectively, the “Assets”):

(a) Upon receipt of required consents or approvals, and to the extent assignable, the certificate of need rights (or equivalent), all governmental and non-governmental provider numbers and agreements, including, but not limited to, Seller’s Medicare provider number and provider agreement with the Centers for Medicare & Medicaid Services (“CMS”), all non-governmental payor agreements and certain other intangible rights of Seller necessary to operate the Business;

(b) All inventory and supplies related solely to the Business;

(c) All mailing lists, subscriber and advertiser lists, subscriptions or processes of Seller used in or relating to the Business; and

(d) All advertising, editorial, marketing, promotional and ancillary materials used in or related to the Business.

Notwithstanding the foregoing, the transfer of the Assets pursuant to this Agreement will not include the assumption of any liability or obligation in respect thereof. The Assets shall not include any right, title or interest of Seller in, to or under those items set forth on Schedule 1A (collectively, the “Excluded Assets”).

2. **Requirements of Sale.** To the extent required by N.C. Gen. Stat. §131E-13(a), following the Effective Time (as defined below), and for so long as Purchaser operates the Business, and N.C. Gen. Stat. §131E-13 is not amended or deleted to permit the termination of the obligations set forth below as to this transaction, Purchaser shall:

(a) Continue to provide the same or similar home health services which Seller is licensed to provide prior to the Closing Date (collectively, “Services”) to individuals in need of such Services;

(b) Ensure that the Services are available to the population of the area served by the Business (including without limitation, indigent care) at levels related to need, as previously demonstrated and determined mutually by Seller and Purchaser;

(c) Not enact financial admission policies that have the effect of denying Services solely because of a patient’s immediate inability to pay for the services or treatment;

(d) Ensure that admission to the Business and access to Services are available to beneficiaries of governmental reimbursement programs (Medicaid/Medicare) without discrimination or preference because they are beneficiaries of those programs; and

(e) Prepare an annual report that shows compliance with the requirements of this Section 2, which report shall be sent in accordance with Section 30 of this Agreement. The report shall provide a brief summary description of the type of home health services provided in such fiscal year and, subject to patient confidentiality requirements, such other information reasonably requested by Seller to assess compliance with this Section 2. Subject to patient confidentiality requirements, the report shall indicate the total number of patients served by the Business in such fiscal year, and the level of indigent care provided.

In the event Purchaser fails to substantially comply with these conditions, or if it fails to operate the Business free of discrimination based on race, creed, color, sex, age or national origin unless relieved of this responsibility by operation of law, or if Purchaser dissolves without a successor corporation to carry out the terms and conditions of this Agreement, then all ownership and other rights in the Business, including the Assets associated with the Business, shall revert to Seller, subject to the provisions of Section 3; provided that any building, land, or equipment associated with the Business that Purchaser has constructed or acquired after the Effective Time may revert only upon payment to Purchaser of a sum equal to the cost less depreciation of such building, land, or equipment.

### 3. **Reversion Procedures.**

(a) If Seller believes that Purchaser has failed to substantially comply with the conditions listed in Section 2 above, Seller shall provide Purchaser written notice outlining the nature of such failure. Purchaser shall have ninety (90) days to cure such non-compliance and/or to develop a plan to remediate any such non-compliance prospectively.

(b) The parties to this Agreement shall attempt in good faith to promptly resolve any dispute or disagreement regarding the existence of substantial non-compliance, the adequacy of a cure of such non-compliance, or the adequacy of the remediation plan. Notwithstanding the preceding sentence, the parties may seek to resolve the dispute through litigation in accordance with Section 30(d). Each party shall be responsible for its own attorneys’ fees and such other costs and expenses incurred related to any proceedings, except to the extent the applicable laws, statutes, the state constitution, ordinances, rules and regulations (collectively, “Law” or “Laws”) specifically provides otherwise.

4. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PURCHASER ACKNOWLEDGES THAT SELLER HAS MADE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE ASSETS (INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR REGARDING THE INCOME TO BE DERIVED THEREFROM OR EXPENSES TO BE INCURRED WITH RESPECT THERETO). SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE BUSINESS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT.

5. **Accounts Receivable.** Seller shall own all right, title and interest in and to all accounts receivable which relate to services provided by the Business during the period prior to the Effective Time (defined below). Purchaser shall own all right, title and interest in and to all accounts receivable arising from services provided by the Business at or after the Effective Time. Inasmuch as the Business provides certain services that are reimbursed based upon Episodes of Care (defined below), the parties acknowledge that the Business has received, and will receive after the Closing, aggregated payments with respect to open Episodes of Care, a portion of which payments will belong to Seller and a portion of which payments will belong to Purchaser. Such payments will be allocated to Seller and Purchaser in accordance with Section 13.

6. **Purchase Price.** In consideration of the sale and transfer of the Assets, Purchaser shall pay, as provided in Section 9 below, the sum of Three Million Five Hundred Thousand Dollars (\$3,500,000) (the "**Purchase Price**"). On or about January 7, 2016, Purchaser delivered to Seller, as earnest money, One Hundred Seventy-Five Thousand Dollars (\$175,000) the ("**Earnest Money**"), which shall be credited against the Purchase Price. At Closing, Purchaser shall deliver to Seller the balance of the Purchase Price, after crediting the Earnest Money.

7. **Closing.** The closing of the transactions contemplated under this Agreement (the "**Closing**") shall be consummated through the electronic exchange of documents and signature pages on February 29, 2016, following the satisfaction or waiver of all closing conditions set forth in Sections 19 and 20 below, or at such later date as the parties may mutually agree (the "**Closing Date**"). The Closing shall be effective for economic and accounting purposes as of 12:00:01 a.m. (EST time) on the day following the Closing Date (the "**Effective Time**").

8. **Seller's Closing Obligations.** In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing, Seller shall deliver to Purchaser:

(a) an executed Bill of Sale and Assignment (the "**Bill of Sale**"), in substantially the form attached as part of Exhibit A hereto, conveying, as of the Closing Date, the Assets to Purchaser, free and clear of all claims, liabilities, obligations, liens, charges, security interests, and encumbrances;

(b) a certificate executed by an official of Seller certifying as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 19(a) and as to Seller's compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing; and

(c) copies of all consents required to be obtained by Seller in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby as required to be disclosed in Schedule 17(c).

9. **Purchaser's Closing Obligations.** In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing, Purchaser shall deliver to Seller:

(a) the balance of the Purchase Price by wire transfer to Seller of immediately available funds; and

(b) a certificate executed by an officer of Purchaser certifying as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 20(a) and as to Purchaser's compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing.

10. **Additional Documents.** From time to time, whether at or after the Closing and without further consideration, the parties shall execute and deliver such further instruments of conveyance and transfer and take such further action as they may reasonably request in order to convey and transfer the Assets. Purchaser and Seller each shall reasonably cooperate with the other in the timely completion of the documentation contemplated by this Agreement, as well as the other requirements of this Agreement, including such matters that may arise following the Closing.

11. **Liabilities.** All liabilities or obligations of Seller, known and unknown, and all liabilities or obligations relating to or arising out of the operation of the Business prior to the Effective Time, including, but not limited to, (i) any liabilities or obligations associated with amounts payable to or by Seller, (ii) any liabilities or obligations of Seller incurred or accrued with respect to periods, or relating to events occurring prior to the Effective Time arising under the terms of the Medicare, Medicaid, VA, or any other third-party payor programs, or (iii) any liabilities or obligations of Seller incurred or accrued, or relating to Seller's operation of the Business prior to the Effective Time are referred to as the "Retained Liabilities." All of the Retained Liabilities will remain the sole responsibility of and will be retained, paid, performed and discharged solely by Seller, and, to the extent permitted by applicable Law, Seller shall indemnify and hold Purchaser harmless from all Retained Liabilities. Seller shall retain and discharge in the ordinary course all obligations of Seller, regardless of whether Purchaser provides Seller with any assistance in Seller's discharge of those liabilities and obligations.

12. **Certain Covenants Regarding Medicare, Medicaid and Licensure Matters.**

(a) As soon as reasonably practical following the Closing (but not later than ten (10) business days following the Closing Date), Purchaser shall submit to CMS Form 855A for the assignment of Seller's Medicare provider number to Purchaser. Following the Closing, Purchaser shall exercise all commercially reasonable efforts to diligently pursue the issuance of a tie-in notice by CMS assigning Seller's existing Medicare provider agreement and Medicare provider number with respect to the Business to Purchaser (the "Tie-In Notice"). Seller shall provide Purchaser with such assistance as Purchaser may reasonably request in connection with

the approval of the CMS 855A and issuance of the Tie-In Notice. Except as set forth in Schedule 1A, effective as of the Effective Time, Seller sells, assigns, and transfers to Purchaser, to the fullest extent permitted by Law, all right, title, benefit, privileges, and interest in, to, and under Seller's Medicare provider agreement with CMS, to the extent transferable, to Purchaser. Except as set forth in Schedule 1A, by virtue of the assignment and assumption of Seller's Medicare provider agreement and Medicare provider number, following the Effective Time, Purchaser is entitled to full and exclusive use of Seller's Medicare provider agreement.

(b) Purchaser will file appropriate Medicaid enrollment forms with CSC Provider EVC Unit, NC Tracks Operations Center, to obtain the required approvals to participate as a Medicaid-approved home health provider in the North Carolina Medical Assistance Program. Following submission of such application, Purchaser shall exercise all commercially reasonable efforts to diligently pursue Medicaid approval status as a home health services provider in the North Carolina Medical Assistance program. Seller shall provide Purchaser with such assistance as Purchaser may reasonably request in connection with the approval of such assignment.

(c) Purchaser has submitted to DHHS, Division of Health Service Regulation, Health Planning and Certificate of Need Section ("CON Section") a request for a determination that the transaction contemplated by this Agreement is exempt from certificate of need review. Purchaser shall provide Seller with copies of all correspondence to and from the CON Section related to such request (including a copy of such determination) promptly upon issuance or receipt.

(d) Purchaser has submitted to DHHS, Division of Health Service Regulation, Acute and Home Care Licensure and Certification Section ("Acute and Home Care Section") an application for operation of the Business. Following submission of such application, Purchaser shall exercise all commercially reasonable efforts to diligently pursue the issuance of an approval of such application. Seller shall provide Purchaser with such assistance as Purchaser may reasonably request in connection with such application.

13. **Bank Account; Flow of Funds; Allocation of Episodic Payments.**

(a) All deposit payments by Medicare, Medicaid, and other state and federal healthcare programs for services relating to the operation of the Business are deposited into Seller's main operating account (the "Account"). As of the Effective Time and continuing until the issuance of the Tie-In Notice (the "Transition Period"), Seller and Purchaser shall work together to ensure Purchaser receives all amounts deposited into the Account that relate to post-Effective Time services.

(b) Inasmuch as the Business provides certain services that are reimbursed based upon "episodes of care" which generally span sixty (60) days (each, an "Episode of Care"), the parties acknowledge that the Business has received prior to Closing, and will receive after the Closing, aggregated payments (as aggregated, an "Episodic Payment") with respect to Episodes of Care that are open as of the Effective Time (that is, the Episode of Care will have commenced but will not have been completed as of the Effective Time). With respect to each such Episodic Payment, the parties acknowledge that (i) the portion of such Episodic Payment that is attributable to services rendered prior to the Effective Time will belong to Seller and (ii)

the portion of such Episodic Payment that is attributable to services rendered after the Effective Time will belong to Purchaser, calculated as set forth below.

(c) On a monthly basis after the Closing Date, Seller shall conduct a reconciliation with respect to all Episodes of Care that concluded during the preceding month and for which all aggregate Episodic Payments (including up-front RAP payments and any end-of-episode or other reconciliation payments) have been received. In conducting such reconciliation, Seller shall utilize the final remittance advice and other documentation provided by the applicable payor. The portion of each Episodic Payment attributable to services provided by Purchaser after the Effective Time will be calculated by (i) determining the per day reimbursement for the Episode of Care by dividing the aggregate Episodic Payment for such Episode of Care by the number of days (normally sixty (60) days) in such Episode of Care (such rate, the “Per Diem Rate”) and (ii) multiplying the Per Diem Rate by the number of days between the Closing Date and the last day in such Episode of Care (counting the day upon which the Effective Time falls as the first day and the last day of the Episode of Care as the last day).

(d) Within five (5) business days following completion of the reconciliation described in Section 13(c), Seller shall remit to Purchaser, by wire transfer, those portions of the applicable Episodic Payments that are attributable to post-Effective Time services. Seller shall also provide Purchaser with supporting documentation of such amounts remitted with respect to post-Effective Time services. In the event that Purchaser has reasonable evidence to support its belief that any amount remitted is incorrect, Purchaser shall contact Seller’s designated representative as soon as reasonably practicable, and Seller and Purchaser shall conduct a meeting (via telephone) to discuss the discrepancy. Upon reaching mutual agreement regarding the amount owed, within five (5) business days Seller shall wire the funds to Purchaser in the agreed upon amount.

(e) On a monthly basis following issuance of the Tie-In Notice, in the event that Purchaser receives any Episodic Payment a portion of which is attributable to pre-Effective Time services, Purchaser shall conduct a reconciliation. In conducting such reconciliation, Purchaser shall utilize the final remittance advice and other documentation provided by the applicable payor. The portion of each Episodic Payment attributable to services provided by Seller prior to the Effective Time will be calculated by (i) determining the per day reimbursement for the Episode of Care by dividing the aggregate Episodic Payment for such Episode of Care by the number of days (normally sixty (60) days) in such Episode of Care (the “Seller Per Diem Rate”) and (ii) multiplying the Seller Per Diem Rate by the number of days between the first day of the Episode of Care and the Closing Date (counting the first day of the Episode of Care as the first day and the Closing Date as the last day).

(f) Within five (5) business days following completion of the reconciliation described in Section 13(e), Purchaser shall remit to Seller, by wire transfer, those portions of the applicable Episodic Payments that are attributable to pre-Effective Time services. Purchaser shall also provide Seller with supporting documentation of such amounts remitted with respect to pre-Effective Time services. In the event that Seller has reasonable evidence to support its belief that any amount remitted is incorrect, Seller shall contact Purchaser’s designated representative as soon as reasonably practicable, and Seller and Purchaser shall conduct a meeting (via telephone) to discuss the discrepancy. Upon reaching mutual agreement regarding the amount

owed, within five (5) business days Purchaser shall wire the funds to Seller in the agreed to amount.

(g) Within a reasonable time following the other party's request, each party shall make available to the other party all bank records related to such party's bank account into which Episodic Payments and other payments for services are deposited in order to permit each party to confirm the other party's compliance with the foregoing obligations.

14. **Employees.**

(a) Purchaser shall, subject to criminal background checks and drug screenings conducted pursuant to its personnel policies, offer employment to the employees of Seller currently involved in the operation of the Business (sometimes referred to herein collectively as the "Employees"). Such offers of employment made by Purchaser shall contain terms (including salary and bonus opportunities) substantially similar to those currently provided by Seller. Those Employees who are offered and accept employment with Purchaser effective as of the Effective Time shall be referred to as the "Transferred Employees" and, upon becoming Transferred Employees and termination of their employment with Seller, shall cease to be employees of Seller. Subject to the Transferred Employees' right to terminate employment with Purchaser at any time, Purchaser shall exercise commercially reasonable efforts to ensure that all Transferred Employees remain employed with Purchaser for at least six (6) months following the Closing Date.

(b) Seller agrees to remain solely liable for all accrued wages, salaries, retirement benefits, health benefits, paid time off, and other employee benefits or liabilities attributable to the service of such employee while he/she is an employee of Seller in accordance with applicable Law. As of the Effective Time, Transferred Employees shall accrue paid time off under Purchaser's paid time off policies, as then in effect.

(c) Except as expressly set forth herein, neither Purchaser nor any of its affiliates shall assume or otherwise be responsible for any liabilities attributable to the service of any Employee while he/she is an employee of Seller with respect to any employee benefit plan or any claim thereof or related thereto, including any right to severance benefits resulting from the consummation of the sale contemplated by this Agreement.

(d) From and after the Effective Time, Seller shall remain solely responsible for any and all benefit liability relating to or arising in connection with any applicable legal requirements to provide continuation of health care coverage under any employee benefit plan with respect to (i) the Employees, other than the Transferred Employees and their covered dependents, and (ii) to the extent related to a qualifying event occurring on or before the Effective Time, the Transferred Employees and their covered dependents.

(e) From and after the Effective Time, Seller also shall remain solely responsible for any and all liability to or in respect of any Employees relating to or arising in connection with any and all claims for workers' compensation benefits arising in connection with any occupational injury or disease occurring prior to the Effective Time.

(f) With respect to Transferred Employees, Purchaser shall, and shall cause its Affiliates to, (i) recognize service credit with Seller prior to the Effective Time for purposes of eligibility and vesting under Purchaser's and its Affiliates' benefit plans, and (ii) cause their respective health plans to waive any otherwise applicable waiting period or other service requirements so that Transferred Employees are eligible for healthcare coverage as of the Effective Time, in accordance with applicable plan terms and Law. Purchaser shall make COBRA continuation coverage (as described in Section 601 of the federal Employee Retirement Income Security Act of 1974, as amended) available to all individuals who are classified as "M&A qualified beneficiaries" (as such term is defined in Treasury Regulation § 54.4980B-9) as a result of the consummation of the transactions contemplated by this Agreement.

15. **Cost Report Matters.** Seller shall timely prepare, execute, and file all Cost Reports for periods ending prior to the Closing Date or required as a result of the consummation of the transactions set forth herein, including terminating cost reports for the Medicare and the Medicaid programs (the "Terminating Cost Reports"). Seller will provide the fiscal intermediary or CMS with any information needed to support claims for reimbursement made by Seller either in the Terminating Cost Reports or in any cost reports filed for prior cost reporting periods, it being specifically understood and agreed that the intent and purpose of this provision is to ensure that the reimbursement paid to Purchaser after it becomes the licensed operator of the Business is not reduced or offset in any manner as a result of Seller's failure to timely file, or filing an inaccurate or incomplete, final cost report or supporting documentation with respect to any past reimbursement claims, including, but not limited to, those included in the Terminating Cost Reports. Purchaser shall, promptly after receipt by Purchaser, forward to Seller any demand for payments relating to government cost report settlements, Seller's cost reports, and/or any Seller cost report reopened prior to the Effective Time, but only to the extent such demand for payment relates to a Retained Liability. Seller agrees to deliver to Purchaser a copy of any action, order, notice (including, any notice of program reimbursement), or other correspondence from the fiscal intermediary or CMS received by Seller relating to Seller's cost reports.

16. **Overpayments and Offsets.** Subject to the provisions of Section 13, Purchaser and Seller covenant and agree that Seller and Purchaser shall remit, with reasonable promptness, to the other any payments received, which payments are on or in respect of accounts or notes receivable owned by (or are otherwise payable to) Seller or Purchaser, as applicable. In addition, and without limitation, in the event of a determination by any governmental or third-party payor that payments to Seller for the Business resulted in an overpayment or other determination that funds previously paid by any program or plan to Seller for the Business must be repaid, Seller shall be responsible for repayment of said monies (or defense of such actions) if such overpayment or other repayment determination was for services rendered prior to the Effective Time and Purchaser shall be responsible for repayment of said monies (or defense of such actions) if such overpayment or other repayment determination was for services rendered after the Effective Time. Subject to the preceding sentence and in accordance with applicable Law, Purchaser and Seller shall reasonably cooperate with one another, and provide one another with reasonable access to documents and materials, to the extent necessary to determine the validity of, and, if applicable, dispute such alleged overpayments or other determinations. From the Effective Time to such date as CMS issues the Tie-In Notice, Seller hereby grants Purchaser the right to submit claims, reports, documents and other information to CMS using Seller's Medicare provider number and other information, for services provided to patients through the Business during such period, as necessary to receive payment for such services.

17. **Representations and Warranties of Seller.** To induce Purchaser to enter into this Agreement, Seller represents and warrants to Purchaser that:

(a) **Organization and Good Standing.** Seller is a North Carolina body corporate and politic that has full power and authority to own the Assets and to carry on the Business as it is now being conducted, including the home health services provided by the Business.

(b) **Authority.** Except as set forth in Schedule 17(b), (i) Seller has full power, authority, and legal capacity to enter into this Agreement and to consummate the transactions contemplated hereby, (ii) the execution, delivery, and performance of this Agreement has been duly authorized by Seller and (iii) this Agreement constitutes a valid and legally binding obligation of Seller, enforceable in accordance with its terms, except to the extent enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to or limiting creditors' rights generally and general principles of equity.

(c) **Notices and Consents.** Except as set forth in Schedule 17(c), Seller is not and will not be required to give any notice to or obtain any consent from any individual, corporation, limited liability company, partnership, trust, firm or governmental authority ("Person") in connection with the execution and delivery of this Agreement or the consummation or performance of the transactions contemplated hereby. All notices and consents set forth on Schedule 17(c) have been or shall have been obtained by the parties prior to the Closing Date.

(d) **Assets.** Seller owns and has good and marketable title to the Assets, free and clear of all obligations, charges, security interests, conditional sales contracts, leases, claims, encumbrances, and liens whatsoever. The Assets (other than the Excluded Assets and the non-assignable licenses, permits and certifications) constitute all of the assets constituting, used or being held for use in the conduct of the Business as currently conducted.

(e) **Licenses, Authorizations and Provider Programs.** Seller, with respect to the Business, is: (i) the holder of all valid licenses and other rights, permits and authorizations required by Law or any governmental authority necessary to operate the Business, (ii) certified for participation and reimbursement under Titles XVIII and XIX of the Social Security Act (the "Medicare and Medicaid Programs") (The Medicare and Medicaid programs and such other similar federal, state, or local reimbursement or governmental programs for which Seller is eligible to receive payments on account of services provided by the Business are hereinafter referred to collectively as the "Government Programs"), and (iii) the holder of current provider agreements for such Government Programs. Set forth on Schedule 17(e), as to the Business, is a correct and complete list of all such licenses, permits and other authorizations, and provider agreements under all Government Programs. Each such license, permit, authorization and agreement is valid and in full force and effect.

(f) **Account.** Seller has directed the Government Programs to electronically deposit all payments owed by the Government Programs for services provided by the Business into the Account, and Seller represents and warrants that, to Seller's Knowledge, the Government Programs do not (i) send any payments for services provided by the Business to any other Person, or (ii) deposit (electronically or otherwise) any payments for goods and services provided by the Business into any bank account other than the Account. Seller agrees that,

except as permitted by Section 13 or as otherwise permitted by this Agreement, it will not change, cause to be changed, or permit to be changed, the instructions to the Government Programs regarding payments to the Account prior to the end of the Transition Period.

(g) **No Conflict.** Except as set forth in Schedule 17(g), neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby will (i) violate any judgment, order or Law to which Seller is subject, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Seller is a party or by which it is bound or to which any of the Assets is subject.

(h) **Litigation.** There are no actions, suits, labor disputes or arbitrations, or legal or administrative proceedings or investigations pending against Seller for the operation of the Business, and no such actions or proceedings have been commenced within the last three (3) years. To Seller's Knowledge (as defined below), no such actions, suits, labor disputes or arbitrations, or legal or administrative proceedings or investigations are contemplated or threatened against Seller for the operation of the Business. To Seller's Knowledge, no event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement by any Person of any action, suit, proceeding or investigation against Seller relating to the operation of the Business.

(i) **Compliance with Laws.** Seller is in compliance in all material respects with the applicable Laws promulgated by any governmental authority which apply to Seller for the use of the Assets or for the conduct of the Business, and Seller has not received notice of a material violation or alleged material violation of any such Law.

(j) **Insurance.** The Asset and property used in the operation of the Business, as well as employees of Seller with respect to the Business, are insured in a manner customary for a business similar to the Business, and all insurance policies and arrangements of Seller (which include general liability, professional liability, property, casualty, fire and workers' compensation insurance policies and arrangements) are in full force and effect, all premiums due with respect thereto are currently paid, and Seller is in compliance in all material respects with the terms thereof. Said insurance is adequate and customary for the Business and is sufficient for compliance by Seller in all material respects with all requirements of Law and all contracts to which Seller is a party. Each such insurance policy shall continue to be in full force and effect immediately prior to the Effective Time.

(k) **Employees; Labor Matters.** Seller is not delinquent in payments to any of its employees used to operate the Business for any wages, salaries, commissions, bonuses, or other direct compensation for any services performed for it to the date hereof or any material amounts required to be reimbursed to such employees. Seller is in compliance in all material respects with all applicable Laws respecting labor, employment, fair employment practices, work place safety and health, terms and conditions of employment, and wages and hours. There are no charges of employment discrimination or unfair labor practices, nor are there any strikes, slowdowns, stoppages of work, or any other concerted interference with normal operations of the Business existing, pending, or, to the Seller's Knowledge, threatened against or involving the Business.

(1) **Health Care Compliance.**

(i) Seller is participating in or otherwise authorized to receive reimbursement from or is a party to agreements with the Government Programs. All necessary certifications and contracts required for participation in such programs are in full force and effect and have not been amended or otherwise modified, rescinded, revoked, or assigned as of the date hereof, and, to Seller's Knowledge, no condition exists or event has occurred which in itself or with the giving of notice or the lapse of time or both would result in the suspension, revocation, impairment, forfeiture, exclusion, or non-renewal of any such programs. Seller has been and continues to be in compliance with the requirements of such Government Programs. Seller has neither billed nor received any payment or reimbursement from such Government Programs in excess of amounts allowed by Law, except any such amounts which have been promptly repaid to such Government Programs. Seller has not received any notice of any pending or threatened governmental investigations or surveys.

(ii) With respect to the Business, neither Seller nor, to Seller's Knowledge, any natural Person providing home health services on behalf of Seller has engaged in any activities that are prohibited under any legal requirement including, but not limited to, 42 U.S.C. § 1320a-7b, 42 U.S.C. § 1395nn, or 31 U.S.C. §§ 3729-3733 (or other federal or state legal requirements related to false or fraudulent claims) or the regulations promulgated thereunder pursuant to such statutes, or related state or local legal requirements related to professional conduct.

(iii) Seller has been and is currently in compliance in all material respects with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, as amended by the HITECH Act of the American Recovery and Reinvestment Act of 2009 ("HIPAA") and its implementing regulations, including without limitation, the Standards for Electronic Transaction and Code Set (45 CFR Parts 160 and 162), the Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164), the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Parts 160 and 164) and such other regulations that may, from time to time, be promulgated thereunder. Seller has not received any notice from any governmental authority that such governmental authority has imposed or intends to impose any enforcement actions, fines or penalties for any failure or alleged failure to comply with HIPAA or its implementing regulations.

(iv) Seller has no liabilities with respect to, and there are no outstanding claims against Seller by any customer, insurer or third party payor with respect to, overpayments made to Seller in connection with the operation of the Business. Seller has no Knowledge of any pending or threatened claims against Seller by any customer, insurer or third party payor for overpayments in connection with the operation of the Business. Seller has no liabilities associated with any third party audits or denials by any third party payors in connection with the operation of the Business.

(v) All of Seller's professional staff used in the operation of the Business are qualified and licensed to practice their respective professional services without restriction or limitation in such capacity in the State of North Carolina.

(m) **Indebtedness.** With the exception of the Retained Liabilities, Seller will not have, as of Closing, any direct or indirect liabilities, indebtedness, obligations, penalties or debts (collectively, the "Indebtedness") related to the operation of the Business. The accounts payable of Seller were incurred in the ordinary course of business will be paid and satisfied by Seller when due.

(n) **Changes in Representations.** None of the information contained in the representations and warranties of Seller set forth in this Agreement, when read in light of the Schedules attached hereto, contains or will contain on the Closing Date any untrue statement of material fact or omits or will omit on the Closing Date to state a material fact necessary to make the statements contained herein or therein not misleading.

18. **Representations of Purchaser.** To induce Seller to enter into this Agreement, Purchaser represents and warrants to Seller that:

(a) **Organization and Good Standing.** Purchaser is a limited liability company duly organized and validly existing in the State of Georgia and is duly and validly existing and qualified to transact business in the State of North Carolina, with full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby.

(b) **No Conflict.** The execution, delivery, and performance of this Agreement does not conflict with any provision contained in the governing documents of Purchaser or with any provision of any agreement, instrument, judgment, order, or Law to which Purchaser is a party or is subject or by which it is bound. This Agreement has been duly executed and delivered by Purchaser and constitutes a valid and legally binding obligation of Purchaser, enforceable in accordance with its terms.

(c) **Changes in Representations.** All information of Purchaser furnished and to be furnished to Seller is and will be accurate as of the date thereof. None of the information contained in the representations and warranties of Purchaser set forth in this Agreement or in any of the exhibits, lists, documents, schedules, or other instruments delivered or to be delivered to Seller as contemplated by any provision of this Agreement, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained herein or therein not misleading.

19. **Conditions to Purchaser's Performance.** The obligations of Purchaser under this Agreement shall be subject to each of the following conditions, any one or more of which may be waived by Purchaser:

(a) All representations and warranties of Seller contained in this Agreement or in any other document delivered by Seller pursuant to this Agreement shall be true, correct, and complete in all material respects as of the date when made and on and as of the Closing Date.

(b) Seller shall have performed all of the terms and conditions of this Agreement required to be performed by Seller prior to the Closing.

(c) Purchaser shall have received a determination by DHHS, Division of Health Service Regulation, CON Section, that Seller's sale, and Purchaser's acquisition, of the Assets is exempt from certificate of need review.

(d) No action, suit or proceeding shall be pending or threatened in writing which may result in any order, writ, judgment or injunction by any court or other governmental authority which would prevent consummation of (or require rescission of) the transaction contemplated by this Agreement.

(e) Seller shall have delivered the documents and instruments required by Section 8.

20. **Conditions to Seller's Performance.** The obligations of Seller under this Agreement shall be subject to the following conditions, any one or more of which may be waived by Seller:

(a) All representations and warranties of Purchaser contained in this Agreement or in any other document delivered by Purchaser pursuant to this Agreement shall be true, correct, and complete in all material respects on or as of the date when made and on and as of the Closing Date.

(b) Purchaser shall have performed all of the terms and conditions of this Agreement to be performed by Purchaser.

(c) No action, suit or proceeding shall be pending or threatened in writing which may result in any order, writ, judgment or injunction by any court or other governmental authority which would prevent consummation of (or require rescission of) the transaction contemplated by this Agreement.

(d) Purchaser shall have paid the Purchase Price to Seller.

(e) Purchaser shall have delivered the documents and instruments required by Section 9.

21. **Termination.**

(a) **Termination Events.** By written notice given prior to or at the Closing, subject to Section 21(b), this Agreement may be terminated as follows:

(1) by Purchaser, in the event a material breach of this Agreement has been committed by Seller and such breach has not been cured within thirty (30) days by Seller or waived in writing by Purchaser;

(2) by Seller, in the event a material breach of this Agreement has been committed by Purchaser, and such breach has not been cured within thirty (30) days by Purchaser or waived in writing by Seller;

(3) by Purchaser, if the satisfaction of any of the conditions to Purchaser's obligation to close the transactions contemplated hereby as set forth in Section 19 becomes impossible (other than through the failure of Purchaser to comply with its obligations under this Agreement), and Purchaser has not waived such condition in writing;

(4) by Seller, if the satisfaction of any of the conditions to Seller's obligation to close the transactions contemplated hereby as set forth in Section 20 becomes impossible (other than through the failure of Seller to comply with its obligations under this Agreement), and Seller has not waived such condition in writing;

(5) by mutual written consent of Purchaser and Seller; and

(6) by Purchaser or Seller, if the Closing has not occurred on or before May 31, 2016, or such later date as the parties may agree upon in writing, unless the terminating party is in material breach of this Agreement.

(b) **Effect of Termination.** If this Agreement is terminated for any reason, Seller shall be entitled to retain the Earnest Money; provided, however, that if this Agreement is terminated by Purchaser pursuant to Section 21(a)(1) or Section 21(a)(3) (and Purchaser has not committed a material breach of this Agreement), Seller shall return the Earnest Money to Purchaser. If the Agreement is terminated pursuant to Section 21(a), all obligations of the parties under this Agreement will terminate, except that any termination pursuant to Section 21(a) shall not relieve any party of (i) any liability or obligation under this Section 21(b) or (ii) any liability or obligation which expressly provides for its survival after such termination.

22. **Indemnification by Purchaser.** To the extent permitted by applicable Law and subject to Section 25, Purchaser agrees to indemnify Seller and hold Seller harmless from and against any and all losses, damages, costs, liabilities, and expenses (including all reasonable attorneys' fees) resulting from, or incident to:

(a) Any breach by Purchaser of any of its obligations or duties under this Agreement or the incorrectness of any representation or warranty made by Purchaser in this Agreement;

(b) The operation of the Business by Purchaser after the Effective Time including, but not limited to, billing practices;

(c) Any failure by Purchaser to comply with all Laws and orders applicable to its business and operations; and

(d) Any and all professional liability incurred by Purchaser or Purchaser's employees after the Effective Time.

23. **Indemnification by Seller.** To the extent permitted by applicable Law and subject to Section 25, Seller agrees to indemnify Purchaser and hold Purchaser harmless from and against any and all losses, damages, costs, liabilities, and expenses (including all reasonable attorneys' fees) resulting from, or incident to:

(a) Any breach by Seller of any of its obligations or duties under this Agreement or the incorrectness of any representation or warranty made by Seller in this Agreement;

(b) The operation of the Business by Seller prior to the Effective Time including, but not limited to, billing practices;

(c) Any failure by Seller to comply with all Laws and orders applicable to the Business and its operations prior to the Effective Time;

(d) Any Retained Liabilities; and

(e) Any and all professional liability incurred by Seller or Seller's employees relating to the operation of the Business prior to the Effective Time.

24. **Method of Asserting Claims.** The party seeking indemnification (the "Indemnified Party") shall give prompt written notice to the other party (the "Indemnifying Party") within the applicable survival period set forth in Section 25, if any, of any claim which it discovers or of which it receives notice after the Closing and which might give rise to a claim by it against Indemnifying Party, stating the nature, basis and (to the extent known) amount of such claim; provided that failure to give prompt notice shall not jeopardize the right of any Indemnified Party to indemnification except to the extent such failure shall have materially prejudiced the ability of the Indemnifying Party to defend such claim.

25. **Certain Limitations.**

(a) The representations and warranties made by Seller, on the one hand, and by Purchaser, on the other hand, under this Agreement shall survive until the date that is eighteen (18) months after the Closing Date, except that the representations and warranties set forth in Section 17(a), (b), (c), (i) and (l) and 18(a) and (b) shall survive the Closing until sixty (60) days after the expiration of the applicable statute of limitations. The obligations and covenants of Purchaser under Sections 2, 3, 14(a) and 14(f) shall survive until sixty (60) days after the expiration of the applicable statute of limitations.

(b) Seller shall have no obligation to indemnify Purchaser under Section 23 until the aggregate amount of indemnifiable claims under Section 23 exceeds Thirty-Five Thousand Dollars (\$35,000) (the "Threshold"), at which point Seller shall be responsible for amounts in excess of the Threshold. The maximum aggregate liability of Seller under Section 23 shall not exceed an amount equal to Three Hundred Fifty Thousand Dollars (\$350,000), except that the maximum aggregate liability of Seller under Section 23(a) with respect to the representations and warranties set for in Section 17(a), (b), (c), (i) and (l) shall not exceed the Purchase Price. Purchaser shall have no obligation to indemnify Seller under Section 22 until the aggregate amount of Indemnifiable claims under Section 22 exceeds the Threshold, at which point Purchaser shall be responsible for amounts in excess of the Threshold. The maximum aggregate liability of Purchaser under Section 22 shall not exceed the Purchase Price. Notwithstanding any provision of this Agreement to the contrary, (i) no Indemnifying Party shall have any obligation to indemnify the Indemnified Party for lost profits, or for consequential, incidental, punitive or exemplary damages under this Agreement and (ii) Seller

shall have no obligation to indemnify Purchaser to the extent such obligation would be prohibited by applicable Law.

26. **Access.** Between the date of this Agreement and the Closing Date, and upon reasonable advance notice received from Purchaser, Seller shall afford Purchaser and its agents reasonable access to the Business to facilitate the transition of the Business operations from Seller to Purchaser. Purchaser shall not unreasonably interfere with the operations of the Business. In the event of the termination of this Agreement, all of Seller's information shall remain confidential and not be used by Purchaser, its members, officers, directors, employees or agents, and all copies thereof shall be returned to Seller.

27. **Licenses.** Should Seller receive notice or become aware of any adverse actions or deficiencies in the maintenance of any of Seller's provider numbers, Seller shall provide Purchaser with written notice within five (5) business days of its receipt of such notices. Notwithstanding the foregoing, Purchaser shall be solely responsible for the operation by Purchaser of the Business after the Effective Time, and any liabilities of Purchaser or the Business which arise out of Purchaser's operation of the Business after the Effective Time, subject to the provisions contained herein.

28. **Sales and Transfer Taxes.** All sales, transfer, purchase, use, value added, excise, income or similar taxes, fees, and duties under applicable Law incurred in connection with this Agreement or the transactions contemplated hereby shall be paid in accordance with applicable Law.

29. **Allocation of Purchase Price.** Seller and Purchaser agree to allocate the Purchase Price among the Assets in accordance with the provisions of Section 1060 of the Internal Revenue Code of 1986, as amended (the "Code"). Such allocation shall be binding on Seller and Purchaser and Seller and Purchaser shall use such allocation in satisfying any and all reporting requirements of the Internal Revenue Service and any state, local, or other taxing authority.

30. **Miscellaneous Provisions.**

(a) **Notices; Demands; Requests.** All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (i) delivered by hand (with written confirmation of receipt), (ii) sent by facsimile with confirmation of transmission by the transmitting equipment, (iii) received by the addressee, if sent by certified mail, return receipt requested, or (iv) received by the addressee, if sent by a nationally recognized overnight delivery service, in each case to the appropriate addresses or facsimile numbers set forth below (or to such other addresses or facsimile numbers as a party may designate by notice to the other parties):

As to Seller:	Catawba County P.O. Box 389 100 A Southwest Boulevard Newton, NC 28658-0389 Attn: Debra Bechtel, County Attorney
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With copy to: Catawba County  
P.O. Box 389  
100 A Southwest Boulevard  
Newton, NC 28658-0389  
Attention: County Manager

and a copy to: Parker Poe Adams & Bernstein LLP  
PNC Plaza  
301 Fayetteville Street, Suite 1400  
Raleigh, NC 27601  
Attention: Amanda Hayes

As to Purchaser: Capital Care Resources, LLC  
c/o Kindred Healthcare, Inc.  
680 South Fourth Street  
Louisville, KY 40202  
Attn: General Counsel

Any such addresses may be changed at any time upon written notice of such change sent by the means stated above, to the other party by the party effecting the change.

(b) **Severability.** If any one or more of the agreements or provisions of this Agreement shall be determined by a court of competent jurisdiction to be invalid, the invalidity of such covenants, agreements, and provisions shall in no way affect the validity or effectiveness of the remainder of this Agreement, and this Agreement shall continue in force to the fullest effect permitted by law.

(c) **State Law Controlling.** This Agreement shall be construed and enforced in accordance with the substantive Laws of the State of North Carolina.

(d) **Venue.** The parties agree that any litigation necessary to resolve a dispute arising under this Agreement shall be brought in the General Court of Justice in the County of Catawba and the State of North Carolina.

(e) **Knowledge.** For purposes of this Agreement, “Knowledge” means, with respect to Seller, the actual knowledge of Doug Urland. A person shall be deemed to have “actual knowledge” of a fact or matter if such person is actually aware of such fact or matter or could reasonably be expected to become aware of such fact or matter after reasonable inquiry.

(f) **Successors; Assignment.** This Agreement shall be binding upon and inure to the benefit of the legal representatives, successors, and permitted assigns of the parties. Neither party may assign this Agreement without the prior written consent of the other.

(g) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter and may not be changed, modified, or amended, except by an instrument in writing signed by the party against whom such change, modification, or amendment is asserted.

(h) **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

(i) **Execution of Agreement; Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the duly authorized officers of the parties hereof have executed this Agreement as of the date first written above.

**SELLER: THE COUNTY OF CATAWBA**

By: \_\_\_\_\_  
Name:  
Title:

This Agreement has been reviewed as to form.

\_\_\_\_\_  
Debra Bechtel, County Attorney

The terms of this Agreement are in compliance with the requirements of the Fiscal Control Act.

\_\_\_\_\_  
Jeanne C. Jarrett, Assistant County Finance Director

**PURCHASER: CAPITAL CARE RESOURCES, LLC**

By: \_\_\_\_\_  
Douglas Curnutte  
Its: Senior Vice President, Corporate Development

## List of Exhibits and Schedules

### **Exhibits**

Exhibit A - Form of Bill of Sale and Assignment

### **Schedules**

Schedule 1A - Excluded Assets  
Schedule 17(b) - Authorization  
Schedule 17(c) - Notices and Consents  
Schedule 17(e) - Governmental Authorizations  
Schedule 17(g) - Conflicts

**EXHIBIT A**

**BILL OF SALE**

THIS BILL OF SALE is made this \_\_\_ day of \_\_\_\_\_ 2016, by THE COUNTY OF CATAWBA, a body corporate and politic authorized by the laws of North Carolina (“Seller”), for the benefit of CAPITAL CARE RESOURCES, LLC, a Georgia limited liability company (“Purchaser”).

WHEREAS, Seller and Purchaser have entered into an Asset Purchase Agreement dated as of \_\_\_\_\_, \_\_\_\_ (the “Purchase Agreement”) providing, among other things, that Seller shall transfer to Purchaser certain of the properties and assets, tangible and intangible of Seller upon the terms and conditions set forth in the Purchase Agreement (each capitalized term used herein and not otherwise defined herein shall have the meaning ascribed to such term in the Purchase Agreement).

NOW, THEREFORE, for and in consideration of the purchase price set forth in the Purchase Agreement (and subject to Sections 2 and 3 and the other terms and conditions thereof), Seller does hereby sell, assign and transfer unto Purchaser and its successors and assigns free and clear of all liens (other than permitted liens), all right, title and interest of Seller in and to the Assets.

TO HAVE AND TO HOLD the Assets unto Purchaser, its successors and assigns, to and for its and their use and benefit forever.

Seller covenants and agrees that, from time to time, it will do, execute, acknowledge and deliver all such further acts, deeds and instruments as may be reasonably requested by Purchaser for the purpose of confirming the sale, transfer and assignment of the Assets to Purchaser.

The provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of Seller and Purchaser. In the event of any conflict between the terms of the Purchase Agreement and this Bill of Sale, the Purchase Agreement shall control. This Bill of Sale may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same instrument.

This Bill of Sale shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws principles.

*(Signatures appear on the following page.)*

**IN WITNESS WHEREOF**, Seller has caused this instrument to be duly executed and its corporate seal to be hereunto affixed the date first above written.

**SELLER:**

**THE COUNTY OF CATAWBA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The terms of this Bill of Sale are in compliance with the requirements of the Fiscal Control Act.

\_\_\_\_\_  
Jeanne C. Jarrett  
Assistant County Finance Director

This Bill of Sale has been reviewed as to form.

\_\_\_\_\_  
Debra Bechtel, County Attorney

**PURCHASER:**

**CAPITAL CARE RESOURCES,  
LLC**

By: \_\_\_\_\_  
Name: Douglas Curnutte  
Title: Senior Vice President,  
Corporate Development

**Schedule 1A**

**EXCLUDED ASSETS**

1. Cash and cash equivalents;
2. Accounts receivable;
3. Bank accounts and investments;
4. Office equipment;
5. Furniture and fixtures;
6. Computer hardware;
7. Real property used by the Business; and
8. Goodwill including without limitation, the name Catawba County Home Health Agency.

**Schedule 17(b)**

**AUTHORITY**

Seller's ability to grant or fulfill indemnification obligations is subject to limitations under North Carolina state Law.

**Schedule 17(c)**

**NOTICES AND CONSENTS**

1. Notices pursuant to N.C. Gen. Stat. §131E-13, including:
  - (a) notice of meeting to adopt a resolution declaring intent to sell pursuant to §131E-13(d)(1);
  - (b) written notice to DHHS, Division of Medical Assistance, pursuant to §131E-13(d)(1);
  - (c) written notice to North Carolina Office of State Budget and Management pursuant to §131E-13(d)(1);
  - (d) written notice to DHHS pursuant to §131E-13(d)(1)
  - (e) notice of public hearing on resolution of intent to sell pursuant to §131E-13(d)(3);
  - (f) notice of public hearing on proposals for lease or purchase pursuant to §131E-13(d)(5);
  - (g) notice of regular meeting to approve any lease, sale or conveyance pursuant to §131E-13(d)(7);
2. Written notice to DHHS, Division of Health Service Regulation, Acute and Home Care Section regarding change of ownership of Home Health Provider License No. 347053 pursuant to 10A NCAC 13J .0903(f);
3. Written notice to DHHS regarding change of ownership pursuant to N.C. Gen. Stat. § 108C-10(b); and
4. Three (3) weeks written notice to employees pursuant to Catawba County Code § 28-167.

**Schedule 17(e)**

**LICENSES AND PROVIDER AGREEMENTS**

1. North Carolina Home Health Provider License No. HC0490
2. Medicare Provider Number and Provider Agreement
3. Medicaid Provider Agreement
4. CLIA Certificate

**Schedule 17(g)**

**NO CONFLICT**

1. The contents of Schedules 17(b) and 17(c) are incorporated herein by reference.