

FORSYTH COUNTY
BOARD OF COMMISSIONERS

**BRIEFING
DRAFT**

MEETING DATE: SEPTEMBER 14, 2017

AGENDA ITEM NUMBER: _____

14

SUBJECT:

RESOLUTION AUTHORIZING EXECUTION OF A ONE-YEAR LEASE AGREEMENT BETWEEN FORSYTH COUNTY AND LIBERTY COMMONS NURSING AND REHABILITATION CENTER OF SPRINGWOOD, LLC FOR LEASE OF COUNTY OWNED PROPERTY LOCATED AT 5755 SHATTALON DRIVE, WINSTON-SALEM, N.C.

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:

ATTACHMENTS:-

YES

NO

SIGNATURE: _____

COUNTY MANAGER

DATE: _____

**RESOLUTION AUTHORIZING EXECUTION OF A ONE-YEAR LEASE
AGREEMENT BETWEEN FORSYTH COUNTY AND LIBERTY COMMONS
NURSING AND REHABILITATION CENTER OF SPRINGWOOD, LLC FOR
LEASE OF COUNTY OWNED PROPERTY LOCATED AT
5755 SHATTALON DRIVE, WINSTON-SALEM, N.C.**

WHEREAS, Forsyth County owns property located at 5755 Shattalon Drive, Winston-Salem, N.C., which Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC (“Tenant”) desires to lease for a one-year period at an annual rent of \$1.00 for the purpose of storing personal property purchased from the County by the Tenant to facilitate the transition of Tenant into the new nursing home facilities constructed by Tenant to serve the citizens of Forsyth County; and

WHEREAS, N.C.G.S. 160A-272 authorizes a county to lease property without a public notice for terms of one year or less, without options to renew or extend the lease to be included therein; and

WHEREAS, the County staff reports that Forsyth County does not have a need for the property for County purposes during the term of the proposed one-year, nonrenewable lease and recommends that the Forsyth County Board of Commissioners authorize execution of the lease;

NOW, THEREFORE, BE IT RESOLVED that the Forsyth County Board of Commissioners hereby determines that the property located at 5755 Shattalon Drive, Winston-Salem, N.C., which is the subject of the proposed lease agreement between Forsyth County and Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC, will not be needed by Forsyth County for County purposes during the term of the proposed twelve month, nonrenewable lease.

BE IT FURTHER RESOLVED that the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, a Lease Agreement with Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC, of the above-described property, at an annual rent of \$1.00 for the purpose of storing personal property purchased from the County, to facilitate the transition of Tenant into the new nursing home facilities constructed by Tenant to serve the citizens of Forsyth County, subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney. The original Lease Agreement is attached hereto and incorporated herein by reference.

Adopted this the 14th day of September 2017.

LEASE AGREEMENT

THIS AGREEMENT, made and entered into on [REDACTED], by and between Forsyth County ("Landlord"), a political subdivision of the State of North Carolina, and Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC ("Tenant"), a North Carolina limited liability company;

For the purpose and subject to the terms and conditions hereinafter set forth, the parties agree that Landlord shall lease to Tenant the properties hereinafter set forth.

1. PREMISES

Landlord, for and in consideration of the rents, conditions, and consideration hereinafter mentioned, provided for and covenanted to be paid, kept and performed by Tenant, leases to Tenant the building located at 5755 Shattalon Drive, Winston-Salem, North Carolina, as shown in Exhibit 1, attached hereto and incorporated herein by reference (hereinafter called the "Premises").

2. TERM

The Tenant shall have and hold the Premises for a term of one year beginning on [REDACTED], and ending on [REDACTED] (the "Term" unless sooner terminated as hereinafter provided. Notwithstanding anything to the contrary herein, Landlord and Tenant may terminate the Agreement, for any reason or for no reason, by providing written notice of at least 30 days prior to the date of termination.

3. RENTAL

Tenant agrees to pay Landlord without demand, deduction or set off, an annual rental for the Premises of one dollar (\$1) (the "Rent") due upon the first day of the Term.

4. LATE CHARGES

- . If Rent payment is not postmarked or hand delivered within 15 days after it becomes due, Tenant shall pay Landlord, as additional rental, a late charge equal to five percent (5%) of the overdue amount, plus any actual bank fees incurred for resumed or dishonored checks. The parties agree that such a late charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of such late payment.

5. UTILITIES

Tenant shall be responsible for providing electric, water, stormwater, septic and gas service to the Premises. Tenant shall also be responsible for providing its own telephone, computer and internet service (if Tenant elects to have any such services).

6. USE OF PREMISES

The Premises shall be used solely for the purpose of storing personal property belonging to Tenant. The Premises shall not be used for any illegal purposes, housing of staff or clientele, or in any manner to create any nuisance or trespass, nor in any manner to vitiate the insurance or increase the rate of insurance on the Premises. In the event Tenant's use of the Premises results in an increase in the rate of insurance on the Premises, Tenant shall pay to Landlord, upon demand and as additional rental, the amount of any such increase up to five percent (5.00%) of the current insurance rate on the Premises. This Lease shall be terminated immediately if the Premises are no longer used for the purpose set forth herein.

7. INDEMNITY; INSURANCE

Tenant agrees to and hereby does indemnify and hold Landlord harmless against all claims for damages to persons or property by reason of Tenant's use or occupancy of the Premises, and all expenses incurred by Landlord because thereof, including attorney's fees and court costs. Supplementing the foregoing and in addition thereto, Tenant shall during the Term of this Lease and any extension or renewal thereof, and at Tenant's expense, maintain in full force the following insurance coverage:

A. Commercial General Liability Insurance. The Tenant shall maintain occurrence version commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than three times the occurrence limit. Such insurance shall:

1. **Include the County, its officials, officers, and employees as additional insureds** with respect to performance of the Services. The coverage shall contain no special limitations on the scope of protection afforded to the above listed insureds.

2. Be primary with respect to any insurance or self-insured retention programs covering the County, its officials, officers, and employees.

The requirements of this section may be satisfied by a combination of self-insurance and Excess Liability insurance.

B. Commercial Property Insurance. The Landlord is responsible for maintaining property insurance for the building located at 5755 Shattalon Drive, Winston-Salem, North Carolina. The Tenant is solely responsible for maintaining insurance coverage for any improvements made to the building by the Tenant and any business personal property of the Tenant. In no event will the Landlord be required to repair or replace any improvements or personal property owned by the Tenant, its employees, or contractors.

C. Other Insurance Requirements. The Tenant shall:

1. Furnish the County with properly executed certificates of insurance which shall clearly evidence all insurance required in this section.
2. Provide certified copies of endorsements and policies, if requested by the County, in lieu of or in addition to certificates of insurance.
3. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of the services.
4. Maintain such insurance from the time the lease commences until the lease is terminated.
5. Place such insurance with insurers authorized to do business in North Carolina and having A. M. Best Company ratings of not less than A:VII. Any alternatives to this requirement shall require written approval of the County's Risk Manager.

D. The Tenant understands and acknowledges that these insurance coverage requirements are minimums and that they do not restrict or limit the hold harmless provisions of this agreement.

8. SERVICES BY LANDLORD

Landlord shall be solely responsible for the following expenses and services: (a) real property taxes; (b) repairs and replacements to the roof of the Premises; (c) major repairs to the Premises, such as structural repairs, heating and cooling systems repairs, hot water heater repairs, electrical systems, plumbing systems, outside wall maintenance, parking lot repairs, and all repairs to under slab utilities. Major repairs shall be defined as repairs exceeding \$250.00 per repair. Any glass, which is broken by an agent or employee of said Tenant, shall be repaired and replaced by Tenant. Glass broken by cause originating outside the Premises (i.e. vandalism, acts of nature, accidents, etc.) shall be repaired or replaced by Landlord. Landlord shall indemnify and hold Tenant harmless from any liability, claim, demand or cause of action arising on account of Landlord's breach of the provisions of this paragraph.

Landlord shall maintain the grounds surrounding the building, including paving, the mowing of the grass, care of shrubs, general landscaping and snow removal as scheduled by Landlord. Tenant shall report in writing to Landlord any defective condition known to it which Landlord is required to repair.

9. SERVICES AND REPAIRS BY TENANT

Tenant accepts the Premises in their present condition and as suited for the uses intended by Tenant. Tenant agrees to return the Premises to the Landlord at the expiration or prior termination of this Lease, in as good condition and repair as when first received, natural wear and tear, damage by storm, fire, lightning, earthquake or other casualty alone excepted. Tenant, Tenant's employees, agents, contractors or subcontractors shall take no action which may void any manufacturers or installers warranty with relation to the Premises. Tenant shall indemnify and hold Landlord harmless from any liability, claim, demand or cause of action arising on account of Tenant's breach of the provisions of this paragraph.

Tenant shall be solely responsible for the following expenses and services: (a) any and all Tenant improvements (as defined below); (b) construction changes to the interior of the Premises; (c) costs of purchase and installation of any and all trade fixtures; (d) maintenance to the interior of the Premises; (e) janitorial services rendered to the areas indicated on Exhibit 1.

10. ALTERATIONS

Tenant shall not make any alterations, additions, or improvements to the Premises without Landlord's prior written consent. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this Paragraph upon Landlord's written request. All approved alterations, additions, and improvements will be accomplished in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord, free of any liens or encumbrances. Landlord may require Tenant to remove any alterations, additions or improvements (whether or not made with Landlord's consent) at the termination of the Lease and to restore the Premises to its prior condition, all at Tenant's expense. All alterations, additions and improvements which Landlord has not required Tenant to remove shall become Landlord's property and shall be surrendered to Landlord upon the termination of this Lease, except that Tenant may remove any of Tenant's machinery or equipment which can be removed without material damage to the Premises. Tenant shall repair, at Tenant's expense, any damage to the Premises caused by the removal of any such machinery or equipment.

11. REMOVAL OF FIXTURES

Tenant may (if not in default hereunder) prior to the expiration of this Lease, or any extension or renewal thereof, remove all fixtures and equipment which it has placed in the Premises, provided Tenant repairs all damage to the Premises caused by such removal.

12. DESTRUCTION OF OR DAMAGE TO PREMISES

If the Premises are totally destroyed by storm, fire, lightning, earthquake or other casualty, this Lease shall terminate as of the date of such destruction and Rent shall be accounted for as between Landlord and Tenant as of that date. If the Premises are damaged but not wholly destroyed by any such casualties, Rent shall abate in such proportion as effective use of the Premises has been affected and Landlord shall restore Premises to substantially the same condition as before damage as speedily as is practicable, whereupon full Rent shall recommence. Tenant is responsible for insuring its personal property stored on the Premises, and Landlord shall not be responsible for any damage or loss to Tenant's property.

13. GOVERNMENTAL ORDERS

Tenant agrees, at its own expense, to comply promptly with all requirements of any legally constituted public authority made necessary by reason of Tenant's occupancy of the Premises. Landlord agrees to comply promptly with any such requirements if not made necessary by reason of Tenant's occupancy.

14. CONDEMNATION

If the whole of the Premises, or such portion thereof as will make the Premises unusable for the purposes herein leased, is condemned by any legally constituted authority for any public use or purpose, then in either of said events the Term hereby granted shall cease from the date when possession thereof is taken by public authorities, and Rent shall be accounted for as between Landlord and Tenant as of said date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damage caused by condemnation from the condemner. It is further understood and agreed that Tenant shall not have any rights in any award made to Landlord by any condemnation authority.

15. ASSIGNMENT AND SUBLETTING

Tenant shall not, without the prior written consent of Landlord, which shall not be unreasonably withheld, assign this Lease or any interest hereunder, or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than the Tenant. Consent to any assignment or sublease shall not impair this provision and all later assignments or subleases shall be made likewise only on the prior written consent of Landlord. The Assignee of Tenant, at the sole option of Landlord which option may be exercised only by written notice of Landlord to Tenant, may become directly liable to Landlord for all obligations of Tenant hereunder, but no sublease or assignment by Tenant shall relieve Tenant of any liability hereunder. Any assignee or sublessee of the Premises must comply with the use provisions set forth in Section 6 herein.

16. EVENTS OF DEFAULT

To the extent allowed by law, the happening of any one or more of the following events (hereinafter any one of which may be referred to as an "Event of Default") during the Term of this Lease or any renewal or extension thereof, shall constitute a breach of this Lease on the part of the Tenant: (a) Tenant fails to pay the Rent as provided for herein; (b) Tenant abandons or vacates the Premises; (c) Tenant fails to comply with or abide by and perform any other obligation imposed upon Tenant under this Lease; (d) Tenant is adjudicated bankrupt; (e) A permanent receiver is appointed for Tenant's property and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal; (f) Tenant, either voluntarily or involuntarily, takes advantage of any debt or relief proceedings under any present or future law, whereby the rent or any part thereof is, or is proposed to be reduced or payment thereof deferred; (g) Tenant makes an assignment for benefit of creditors; (h) Tenant's effects are levied upon or attached under process against Tenant, which is not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof.

17. REMEDIES UPON DEFAULT

Upon the occurrence of Event of Default, Landlord may pursue any one or more of the following remedies separately or concurrently, without prejudice to any other remedy herein provided or provided by law; (a) if the Event of Default involves nonpayment of Rent and Tenant fails to cure such default with five (5) days after receipt of written notice thereof from Landlord, or if the Event of Default involves a default in performing any of the terms or provisions of this Lease other than the payment of Rent and Tenant fails to cure such default within thirty (30) days after receipt of written notice of default from Landlord, Landlord may terminate this Lease (if Tenant has failed to cure such default after receiving 30 days written notice) by giving written notice to Tenant and upon such termination shall be entitled to recover from Tenant damages as may be permitted under applicable law; or (b) if the Event of Default involves any matter other than those set forth in item (a) of this paragraph, Landlord may terminate this Lease by giving written notice to Tenant and, upon such termination, shall be entitled to recover from the Tenant damages in an amount equal to all Rent which is due and all Rent which would otherwise have become due throughout the remaining term of this Lease, or any renewal or extension thereof (as if this Lease had not been terminated); or (c) upon any Event of Default (if Tenant has failed to cure such default after 30 days written notice), Landlord may, without terminating this Lease, re-let the Premises, in whole or in part, at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Landlord deems proper, with Tenant being liable to Landlords for the deficiency, if any, between Tenant's rent hereunder and the price obtained by Landlord on re-letting, provided however, that Landlord shall not be considered to

be under any duty by reason of this provision to take any action to mitigate damages by reason of Tenant's default. In the event Landlord hires an attorney to enforce its rights upon default, Tenant shall in addition be liable for reasonable attorney's fees and all costs of collection.

18. EXTERIOR SIGNS

Tenant shall place no signs upon the outside walls or roof of the Premises, except with the express written consent of the Landlord. Any and all signs placed on the Premises by Tenant shall be maintained in compliance with governmental rules and regulations governing such signs and Tenant shall be responsible to Landlord for any damage caused by installation, use or maintenance of said signs, and all damage incident to removal thereof.

19. PARKING

Tenant shall be entitled to use parking spaces as available and as assigned by Landlord in the lots serving the Premises.

20. LANDLORD'S ENTRY OF PREMISES

Landlord may advertise the Premises "For Rent" or "For Sale." Landlord may enter the Premises at any time necessary to exhibit the Premises to prospective purchasers or tenants, to inspect the Premises and to make repairs required of Landlord or to provide services under the terms hereof or to make repairs to Landlord's adjoining property, if any. Tenant shall promptly remove any storage items that interfere with Landlord's ability to properly maintain the Premises.

21. EFFECT OF TERMINATION OF LEASE

No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord's right to collect Rent for the period prior to termination thereof.

22. MORTGAGEE'S RIGHTS

Tenant's rights shall be subject to any bona fide mortgage, deed of trust or other security interest which is now or may hereafter be placed upon the Premises by Landlord. Tenant shall, if requested by Landlord, execute a separate agreement reflecting such subordination, and shall be obligated to execute such documentation as may facilitate Landlord's sale or refinancing of the Premises, including, but not limited to estoppel certificates, subordination or attornment agreements.

23. QUIET ENJOYMENT

So long as Tenant observes and performs the covenants and agreements contained herein, it shall at all times during the Lease term peacefully and quietly have and enjoy possession of the Premises, but always subject to the terms hereof. Notwithstanding anything to the contrary herein, in the event Landlord shall sell or otherwise transfer its interest in the Premises, Tenant agrees to attorn to any new owner or interest holder and shall, if requested by Landlord, execute a separate agreement reflecting such attornment, provided that said agreement requires the new owner or interest holder to recognize its obligations and Tenant's rights hereunder.

24. HOLDING OVER

If Tenant remains in possession of the Premises after expiration of the Term hereof, with Landlord's acquiescence and without any express agreement of the parties, Tenant shall be a tenant at will at the Rent rate which is in effect at end of this Lease and there shall be no renewal of this Lease by operation of law. If Tenant remains in possession of the Premises after expiration of the Term hereof without Landlord's acquiescence, Tenant shall be a tenant at sufferance and commencing on the fraction thereof during which Tenant so remains in possession of the premises, be twice the monthly rental otherwise payable under Paragraph 3 above.

25. RIGHTS CUMULATIVE

All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative and not restrictive of those given by law.

26. WAIVER OF RIGHTS

No failure of Landlord or Tenant to exercise any power given hereunder or to insist upon strict compliance of its obligations hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's or Tenant's right to demand exact compliance with the terms hereof.

27. ENVIRONMENTAL LAWS

Tenant shall be liable for all environmental damage, liability or cost, including reasonable attorney's fees, arising out of Tenant's use of the Premises and shall defend and hold Landlord harmless from any claims or actions relating to environmental damage, spills, exposure or other effects (collectively, "Environmental Hazards") caused by Tenant within the Premises. Tenant shall comply with all federal, state, and local laws, ordinances, and regulations. Tenant shall not bring unto the Premises any Hazardous Materials without the prior

written approval by Landlord. Any approval must be preceded by submission to Landlord of appropriate Material Safety Data Sheets (MSDS Sheets). In the event of approval by Landlord, Tenant (1) covenants that it comply with all requirements of any constituted public authority and all federal, state, and local codes, statutes, rules and regulations, and laws, whether now in force or hereafter adopted relating to Tenant's use of the Premises, or relating to the storage, use, disposal, processing, distribution, shipping or sales of any hazardous, flammable, toxic or dangerous materials, waste or substance, the presence of which is regulated by a federal, state, or local law, ruling, rule or regulation (hereafter collectively referred to as "Hazardous Materials"); (2) comply with any reasonable recommendations by the insurance carrier of either Landlord or Tenant relating to the use by Tenant on the Premises of such Hazardous Materials; (3) refrain from unlawfully disposing of or allowing the disposal of any Hazardous Materials upon, within, about or under the Premises; and (4) remove all Hazardous Materials from the Premises, either after their use by Tenant or upon the expiration or earlier termination of this Lease, in compliance with all applicable laws.

Landlord shall hold Tenant harmless, and indemnify Tenant from any penalty, fine, claim, demand, liability, cost, or charge of any kind whatsoever which Tenant shall incur, or which Tenant would otherwise incur, as a result of any acts of Landlord or any Environmental Hazards that existed prior to Tenant's occupancy of the Premises.

28. TIME OF ESSENCE

Time is of the essence in this Lease.

29. DEFINITIONS

"Landlord" as used in this Lease shall include the undersigned, its representatives, assigns, and successors in title to the Premises. "Tenant" shall include the undersigned and its representatives, assigns and successors, and if this Lease shall be validly assigned or sublet, shall include also Tenant's assignees or sublease as to the Premises covered by such assignment or sublease. "Landlord" and "Tenant", include male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

30. NOTICES

All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by U.S. certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered or sent to the following address:

Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC
Paul Babinski, President
2334 S. 41st Street
Wilmington, NC 28403

With a copy to:
Liberty Healthcare Management, Inc.
Yoel Balter, General Counsel
2334 S. 41st Street
Wilmington, NC 28403

Notice to Landlord shall be delivered or sent to the following address:

Dudley Watts
County Manager
Forsyth County Government Center
201 N. Chestnut St.
Winston-Salem, NC 27101

All notices shall be effective upon delivery. Any party may change its notice address upon written notice to the other parties, given as provided herein.

32. ENTIRE AGREEMENT

This Lease contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein shall be of any force or effect. This Lease may not be modified except by a writing signed by all the parties hereto.

33. AUTHORIZED LEASE EXECUTION

Each individual executing this Lease as director, officer, partner, member or agent of a corporation, limited liability company, or partnership represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of such corporation, limited liability company, or partnership.

34. TRANSFER OF LANDLORD'S INTEREST

In the event of the sale, assignment or transfer by Landlord of its interest in the Premises or in this Lease (other than a collateral assignment to secure a debt of Landlord) to a successor in interest who expressly assumes the obligations of Landlord under this Lease, Landlord shall thereupon be released and discharged from all its covenants and obligations under this Lease, except those obligations that have accrued prior such sale, assignment or transfer. Landlord's assignment of this Lease, or of any or all of its rights in this Lease, shall not affect Tenant's obligations hereunder, and Tenant shall attorn and look to the assignee as Landlord, provided Tenant has first received written notice of the assignment of Landlord's interest.

35. MEMORANDUM OF LEASE

Upon request by either Landlord or Tenant, the parties hereto shall execute a short form lease (Memorandum of Lease) in recordable form, setting forth such provisions hereof (other than the amount of Rent and other sums due) as either party may wish to incorporate. The cost of recording such Memorandum of Lease shall be borne by the party requesting execution of same.

36. GOVERNING LAW

This Agreement is governed by the laws of North Carolina, except that provisions relating to conflict of laws shall not apply.

37. EXHIBITS

Exhibit 1, a drawing that shows the Premises described in Section 1 hereinabove, is incorporated herein by reference. **This drawing is not a formal survey and is only a general representation of boundaries.**

[Signature Page is Next Page]

IN WITNESS WHEREOF, Landlord and Tenant have set their hands and seals as of the day and year first above written.

FORSYTH COUNTY, NORTH CAROLINA

By: _____
County Manager

ATTEST:

Clerk to the Board

(SEAL)

**LIBERTY COMMONS NURSING AND
REHABILITATION CENTER OF
SPRINGWOOD, LLC**

By: _____
Paul Babinski, President

Exhibit 1
(attached hereto)