

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

In re:	) Chapter 11
	)
CARE FOUNDATION OF AMERICA, INC., et	) Case No. 08-12367 (KML)
al.,	) (Jointly Administered)
	)
Debtors.	) Judge Keith M. Lundin

**DEBTORS' JOINT PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE UNITED  
STATES BANKRUPTCY CODE**

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**INTRODUCTION**

Debtors Care Foundation of America, Inc., Brooksville Lessor/LLC, Bear Creek Lessor/LLC, Royal Oak Lessor/LLC, Cypress Cove Lessor/LLC, and Heather Hill Lessor/LLC, debtors and debtors-in-possession in the above-captioned Chapter 11 Cases, propose the following Plan (as hereinafter defined) in accordance with Chapter 11 of the United States Bankruptcy Code.

Reference is hereby made to the Disclosure Statement (as hereinafter defined) which discusses, among other things, Debtors' history, assets and liabilities, business plan, financial projections, and other relevant information. The Disclosure Statement also provides an overview and summary of this Plan. **YOU ARE URGED TO READ CAREFULLY THE DISCLOSURE STATEMENT IN EVALUATING HOW THIS PLAN WILL AFFECT YOUR CLAIM(S). [Pursuant to Section 1125 of the Bankruptcy Code, nothing contained in this Plan shall**

be construed as solicitation of acceptance of this Plan until such time as the Disclosure Statement has been approved by the Bankruptcy Court and distributed to all holders of claims and interests. The Disclosure Statement has not yet been approved by the Bankruptcy Court for use in soliciting acceptances of this Plan.]

## **ARTICLE I**

### **Definitions**

Unless the context otherwise requires, the following terms shall have the following meanings when used in an initially capitalized form in this Plan. Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any terms used in an initially-capitalized form in this Plan that are not defined herein, but are used in the Bankruptcy Code, shall have the meaning ascribed to such terms in the Bankruptcy Code. Additionally, the rules of construction contained in Section 102 of the Bankruptcy Code apply to the construction of this Plan.

1.1 **“Administrative Claim”** means any claim for the payment of any administrative cost or expense of a kind specified in Section 503(b) of the Bankruptcy Code that is entitled to a priority payment under Section 507(a)(2) of the Bankruptcy Code, and any fees and charges assessed against the Debtors’ Estates under 28 U.S.C. § 1930.

**1.2   “Administrative Convenience Claim”** means any pre-petition, unsecured claim which in the aggregate is either (a) one thousand dollars (\$1,000) or less, or (b) the Claimant elects to reduce its aggregate Class 4 Claim to one thousand dollars (\$1,000) and receive Class 3 treatment under this Plan.

**1.3   “Administrative Tax Claim”** means any tax claim allowable under Section 503(b) of the Bankruptcy Code.

**1.4   “Allowed”** when used in describing a Claim means any Claim that is (a) allowed in accordance with Section 502 or Section 503 of the Bankruptcy Code, (b) specifically allowed in this Plan, or (c) set forth in Debtors’ Schedules filed in these Chapter 11 Cases, unless: (i) such Claim has been listed in such Schedules as disputed, contingent, or unliquidated in which case such Claim shall be allowed, if at all, only in such amount and in such classification as is authorized by Order of the Bankruptcy Court in accordance with Section 502 of the Bankruptcy Code; or (ii) such Claim has been paid in full, withdrawn, or otherwise deemed satisfied in full.

**1.5   “Allowed Secured Claim”** means an Allowed Claim against one or more of the Debtors or their Estates for which the holder thereof has a valid and enforceable lien, security interest, or other encumbrance on property in which one or more of the Debtors has an interest, or which is subject to set off under Section 553 of the Bankruptcy Code, to the extent of the value (determined in accordance with Section 506(a) of the Bankruptcy Code) of the interest of the holder

of such Allowed Claim in Debtors' interests on such property, or to the extent of the amount subject to such set off, such as the case may be.

**1.6 [Intentionally Blank]**

**1.7 "Avoidance Actions"** means any claim or cause of action belonging to the Debtors and arising under the Bankruptcy Code, including, but not limited to, any such actions under Chapter 5 of the Bankruptcy Code.

**1.8 "Bankruptcy Code"** means the United States Bankruptcy Code, as amended, 11 U.S.C. §§ 101, et seq.

**1.9 "Bankruptcy Court"** means the United States Bankruptcy Court for the Middle District of Tennessee, having jurisdiction over this Chapter 11 Case, or to the extent that the reference has or may be withdrawn, the District Court sitting as a court of bankruptcy.

**1.10 "Bankruptcy Rule" or "Bankruptcy Rules"** means one or more of the Federal Rules of Bankruptcy Procedure, as amended.

**1.11 "Bar Date"** means the date fixed by Order of the Bankruptcy Court by which a proof of Claim, other than those listed on Debtors' Schedules which are not in dispute, contingent or unliquidated, must be filed against Debtors in these Chapter 11 Cases.

**1.12 "Board of Directors"** means the board of directors of Care Foundation as it exists immediately prior to the Effective Date.

**1.13 “Business Day”** means any day other than a Saturday, Sunday, or “legal holiday,” as that term is defined in Bankruptcy Rule 9006(a).

**1.14 “Care Foundation”** means Care Foundation of America, Inc., a Tennessee non-profit corporation.

**1.15 “Causes of Action”** means all claims or causes of action that belong to the Debtors and/or that could have been brought by the Debtors under state or federal law, including the Bankruptcy Code. Such claims and causes of actions include, but are not limited to, any claim or cause of action under a policy of insurance, claims, if any, against former officers and former directors of any of the Debtors, causes of actions and enforceable rights of the Debtors against third parties, causes of action under the Bankruptcy Code, including, without limitation, objections to claims under the appropriate provisions of the Bankruptcy Code, claims of the Debtors for recovery or avoidance, as the case may be, of obligations, transfers of property or interests in property, offsets, debt forgiveness, cash, and other types or kinds of property or interests in property (or the value thereof), recoverable or avoidable pursuant to applicable provisions of the Bankruptcy Code or relevant non-bankruptcy law, all claims and causes of action specifically identified in the Debtors’ Schedules, and any other causes of action belonging to the Debtors or their Estates.

**1.16 “Chapter 11 Case” or “Chapter 11 Cases”** means the jointly-administered Chapter 11 Cases filed by the Debtors pursuant to the provisions of Chapter 11 of the Bankruptcy Code or any single case of a Debtor.

**1.17 “Claim”** means (when used in an initially capitalized form in this Plan): (a) a right of payment from one or more of the Debtors, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) a right to an equitable remedy for breach of performances, if such breach gives rise to a right of payment from one or more of the Debtors, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

**1.18 “Claimant” or “Creditor”** means a holder of one or more Claims against one or more of the Debtors or their Estates.

**1.19 “Class”** means a category of holders of Claims as classified in Article II of this Plan.

**1.20 “Confirmation of the Plan” or “Confirmation”** means entry by the Bankruptcy Court of an Order confirming the Plan in accordance with Chapter 11.

**1.21 “Confirmation Hearing”** means the hearings which will be held before the Bankruptcy Court confirming this Plan pursuant to Section 1129 of the Bankruptcy Code.

**1.22 “Confirmation Date”** means the date on which the Confirmation Order becomes a Final Order.

**1.23 “Confirmation Order” or “Order of Confirmation”** means the Order of the Bankruptcy Court confirming this Plan pursuant to Section 1129 of the Bankruptcy Code.

**1.24 “Contested”** when used with respect to a Claim, shall mean a Claim against one or more of the Debtors or their Estates (i) that is listed in the Debtors’ Schedules as disputed, contingent, or unliquidated; (ii) that is Allowed under this Plan to the extent the Proof of Claim or amount set forth in the Debtors’ Schedules exceeds the amount Allowed in the Plan; (iii) that is listed in the Debtors’ Schedules in an amount less than a Proof of Claim filed for the Claim; (iv) that is not listed in the Debtors’ Schedules, but as to which a Proof of Claim has been timely filed with the Bankruptcy Court; or (v) as to which an objection has been filed, either before or after entry of the Confirmation Order.

**1.25 “Contingent”** means (whether or not such term is used in an initially capitalized form in this Plan), when used with respect to a Claim, a Claim that has not accrued and which is dependent upon a future event that may never occur.

**1.26 “Debtors”** means Care Foundation of America, Inc., Brooksville Lessor/LLC, Bear Creek Lessor/LLC, Royal Oak Lessor/LLC, Cypress Cove Lessor/LLC, and Heather Hill Lessor/LLC.

**1.27 “Debtors-in-Possession”** means the Debtors when they are exercising the rights, powers, and duties under Section 1107(a) of the Bankruptcy Code in these Chapter 11 Cases.

**1.28 “Disallowed Claim”** means any Claim (or any portion thereof) against one or more of the Debtors which has been disallowed pursuant to the applicable provisions of the Bankruptcy Code, including, without limitation, any Claim disallowed pursuant to Section 502 of the Bankruptcy Code.

**1.29 [Intentionally Blank]**

**1.30 “Disclosure Statement”** means Debtors’ Joint Disclosure Statement for Solicitation of Debtors’ Joint Plan of Reorganization, including all exhibits and schedules attached thereto or referenced therein, prepared by the Debtors pursuant to Section 1125 of the Bankruptcy Code, as such Disclosure Statement may be amended or modified from time to time.

**1.31 [Intentionally Blank]**

**1.32 “Effective Date”** means the first (1<sup>st</sup>) day of the month immediately following the month in which occurs the later of (i) the thirtieth (30<sup>th</sup>) day after entry by the Bankruptcy Court of the Confirmation Order, or (ii) the first (1<sup>st</sup>) day after such Confirmation Order has become final and unappealable; provided, no appeal of said Confirmation Order is pending; provided, further, the Debtors may waive the condition that no appeal of the Confirmation Order be pending by a writing duly executed by the Debtors and filed with the Bankruptcy Court on or



before the date which but for the pendency of an appeal would become the Effective Date of this Plan, and in the event that said condition is timely waived by the Debtors, this Plan shall become effective as provided herein, notwithstanding the pendency on said date of an appeal or appeals, and in the event that said condition is not timely waived, this Plan shall become effective on the first (1<sup>st</sup>) day of the month immediately following the first (1<sup>st</sup>) month in which an appeal ceases to be pending.

**1.33 “Estates”** means the estates created for the Debtors by Section 541 of the Bankruptcy Code as of the commencement of the Chapter 11 Cases.

**1.34 “Estimated Claim”** means any Contested Claim which is estimated in accordance with Section 502(c) of the Bankruptcy Code for purposes of voting.

**1.35 “Facilities”** means one or more of the skilled nursing facilities and related personal property owned by each of the Debtors, as reflected on their respective Schedules.

**1.36 “Final Order”** means an Order of the Bankruptcy Court as to which (a) the time to appeal, petition for certiorari, seek reargument or rehearing has expired (without regard to any time limits contained in Rule 60(d) of the Federal Rules of Civil Procedure or Rule 9024 of the Bankruptcy Rules) and as to which no appeal, reargument, certiorari proceeding, or rehearing is pending or as to which any right to appeal, reargue, petition for certiorari or rehearing has been waived in writing in a manner reasonably satisfactory to the proponents; or (b) if any appeal,

reargument, writ of certiorari, or rehearing thereof has been sought, the Order in question has been affirmed by the highest Bankruptcy Court to which the Order was appealed or from the reargument or rehearing was sought, or certiorari has been denied, and the time to take further appeal or to seek certiorari or further reargument or rehearing has expired (without regard to any time limits contained in Rule 60(b) of the Federal Rules of Civil Procedure or Rule 9024 of the Bankruptcy Rules) or has been waived.

**1.37 “General Unsecured Claim”** means any Unsecured Claim against any of the Debtors other than Administrative Claims, Administrative Convenience Claims, Executory Contract/Unexpired Lease Claims, and Tax Claims.

**1.38 “Leases”** means those six leases, as amended, between Debtors and Tenants, as reflected in Debtors’ respective Schedules, relating to the Facilities.

**1.39 “NHI”** means National Health Investors, Inc., a Maryland real estate investment trust.

**1.40 “NHI Cash Payment”** means the cash payment that will be due to the holder of the Allowed Class 1 Secured Claim if Debtors elect the Cash Option under Section 4.1 of this Plan.

**1.41 “NHI Cash Payment Amount”** means the Allowed amount, if any, of NHI’s Claim as of the Petition Date, as agreed to by the Debtors and NHI, or as determined by Final Order of the Bankruptcy Court, plus interest on such Allowed amount at the annual rate of 9.5% from the Petition Date through the date the NHI

Cash Payment is made, less any adequate protection payments received by NHI from Debtors prior to the date the NHI Cash Payment is made.

**1.42 “NHI Note”** means the promissory note that will be delivered to NHI if Debtors elect the Note Option under Section 4.1 of this Plan, the terms of which shall be as follows: Principal and interest on the NHI Note shall be payable in one-hundred twenty (120) equal monthly installments based on a twenty (20) year amortization schedule, with a final, lump-sum payment being due in the one-hundred twenty first (121<sup>st</sup>) month in the amount of the outstanding balance of the NHI Note. Payments on the NHI Note shall commence on the fifteenth (15<sup>th</sup>) day of the first (1<sup>st</sup>) full month following the date the NHI Note is delivered pursuant to this Plan, and each payment thereafter shall be due on the fifteenth (15<sup>th</sup>) day of the month. The NHI Note shall bear interest, commencing as of the date the NHI Note is delivered, pursuant to this Plan, at the annual rate of the lesser of (a) the prevailing market rate for a similar loan; or (b) nine and one-half percent (9.5%). Interest will be calculated on the NHI Note on a 365-day basis. Debtors shall be able to pre-pay the NHI Note at any time without any prepayment penalty or other charge.

**1.43 “NHI Note Amount”** means the amount of the NHI Note calculated as follows: the Allowed amount, if any, of NHI’s Claim as of the Petition Date, as agreed to by the Debtors and NHI, or as determined by Final Order of the Bankruptcy Court, plus interest on such Allowed amount at the annual rate of 9.5%

from the Petition Date through the date of the NHI Note, less any adequate protection payments received by NHI from Debtors prior to the date of the NHI Note.

**1.44 “Order”** means an order or judgment of the Bankruptcy Court.

**1.45 “Petition Date”** means December 31, 2008, the date on which Debtors filed their respective voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

**1.46 “Plan”** means Debtors’ Joint Plan of Reorganization in its present form or as it may be amended or modified from time to time pursuant to applicable provisions of the Bankruptcy Code.

**1.47 “Plan Documents”** means this Plan, the Disclosure Statement, and any and all other documents necessary to effectuate this Plan, and all exhibits and attachments to any of the foregoing.

**1.48 “Priority Claim”** means all Claims entitled to priority under Sections 507(a)(2)-(a)(7) and 507(a)(9)-(a)(10) of the Bankruptcy Code.

**1.49 “Priority Tax Claim”** means all Claims for taxes entitled to priority under Section 507(a)(8) of the Bankruptcy Code, including any such tax Claims secured by assets of the Estates.

**1.50 “Reorganization”** means the above-captioned Chapter 11 Case for the Debtors.

**1.51 “Reorganized Debtors”** means each of the Debtors following the Effective Date.

**1.52 “Retained Assets”** means all property of the Estates of the Debtors.

**1.53 “Schedules”** means those schedules and statements of financial affairs filed by the applicable Debtor under Bankruptcy Rule 1007, as same may be amended from time to time.

**1.54 “Secured Claim”** means a Claim that is secured by a lien on or security interest in property in which any of the Estates has an interest, or that is subject to setoff under Section 553 of the Bankruptcy Code, to the extent of the value of a Claimant’s interest in such Estate’s interest in such property, or to the extent of the amount subject to set off, as the case may be.

**1.55 “Substantial Consummation of the Plan”** or similar phrases shall be as defined in 11 U.S.C. § 1101(2).

**1.56 “Tenants”** means one or more of the following entities: Health Services Management, Inc., Ayers Health & Rehabilitation Center, LLC; Brooksville Health Care Center, LLC; Bear Creek Nursing Center, LLC; Cypress Cove Care Center, LLC; Heather Hill Nursing Center, LLC; and Royal Oak Nursing Center, LLC

**1.57 “Tort Claims”** means any Claims asserted against any of the Debtors arising out of personal injury to, or the death of, any of the residents of any of the Facilities.

## **ARTICLE II**

### **Treatment Of Non-Classified Claims**

Administrative Claims and Priority Tax Claims are not classified under Section 1123(a)(1) of the Bankruptcy Code for purposes of voting or receiving distributions under the Plan.

#### **2.1 Administrative Claims.**

(a) **General Allowed Administrative Claims.** Each holder of an Allowed Administrative Claim, except as otherwise set forth in sections (b) and (c) of this section 2.1 of this Plan, shall receive either: (i) with respect to Administrative Claims which are Allowed Claims on the Effective Date, the amount of such holder's Allowed Claim in cash on the Effective Date; (ii) with respect to Administrative Claims which become Allowed Claims after the Effective Date, the amount of such holder's Allowed Claim in one cash payment as soon as practicable after such claim becomes an Allowed Administrative Claim; or (iii) such other treatment agreed upon by the Debtors and such holder; provided, however, that any such Administrative Claim representing a liability incurred in the ordinary course of business by any of the Debtors shall be paid in accordance with the terms and conditions of the particular transaction giving rise to such liability and any agreements relating thereto. Payment of Bankruptcy Court-approved compensation for professionals shall be made promptly after the Order approving such compensation becomes a Final Order. The Reorganized Debtors will not have any obligation for any Administrative Claim that is disallowed or not approved by the

Bankruptcy Court. Any person or Entity that asserts an Administrative Claim that is not paid on the Effective Date shall be required to file with the Bankruptcy Court an application for payment of such asserted Administrative Claim and to serve notice thereof on all parties entitled to such notice. Any such Claims must be filed within 90 days from the Effective Date. The failure to file timely the application, as required under this Section 2.1(a) of this Plan, or in accordance with any Orders entered in these Chapter 11 Cases, shall result in the Administrative Claim being forever barred and discharged. An Administrative Claim with respect to which an application has been properly filed pursuant to this Section 2.1(a) of this Plan or pursuant to any Orders entered in these Chapter 11 Cases, and to which no objection has been filed, or an objection has been filed but overruled by the Bankruptcy Court, shall become an Allowed Administrative Claim to the extent such Claim is allowed by Final Order.

(b) **Administrative Tax Claims.** Each holder of an Administrative Tax Claim shall be paid the Allowed Amount of such holder's Administrative Tax Claim in cash, in full, on the latest of: (i) the Effective Date, (ii) if Contested or unknown to the applicable Debtor, the date such Administrative Tax Claim is Allowed by Final Order, or (iii) the date such payment is due under applicable law.

(c) **Payment of Fees to U.S. Trustee.** All fees payable under 28 U.S.C. § 1930 shall be paid in cash, in full, when due. Any fees due the U.S. Trustee after the Confirmation Date shall be paid by the Reorganized Debtors.

**2.2 Priority Tax Claims.** Each Priority Tax Claim shall be paid the Allowed Amount of such Claim in cash, in full, in accordance with the provisions of Section 1129(a) of the Bankruptcy Code, on the latest of (i) the Effective Date; (ii) the date a Contested Priority Tax Claim is allowed in whole or in part by Final Order, or (iii) the date such payment is due under applicable law. If any Allowed Priority Tax Claim is not paid in cash, in full, by the latest of the foregoing to occur, then the unpaid portion of such Allowed Priority Tax Claims shall bear interest from the Effective Date until the date of payment at the rate of 5% per annum; provided, however, that no Allowed Priority Tax Claim shall include any Claims for post-petition interest or for pre-petition and post-petition penalties, all of which interest and penalties, pre-confirmation and post-confirmation, shall be (i) deemed disallowed and (ii) fully discharged on the Confirmation Date. Each Contested Priority Tax Claim shall become an Allowed Priority Tax Claim only upon entry of, and only to the extent such Claim is allowed by, a Final Order.

### **ARTICLE III**

#### **Designation Of Classes Of Claims**

Pursuant to Section 1123 of the Bankruptcy Code, the Debtors designate the following Classes of Claims:

**3.1 Class 1 – Secured Claim of NHI.** Class 1 consists of the Allowed Secured Claim, if any, of NHI against one or more of the Debtors. NHI asserts a lien on substantially all of the Debtors' assets. The designation of NHI's Claim as the



Class 1 Claim does not constitute an acknowledgement by Debtors that NHI holds an Allowed Secured Claim but merely that NHI has filed a proof of claim against the Debtors as a Secured Claim.

**3.2 Class 2 – Other Secured Claims.** Class 2 consists of separate subclasses for any Allowed Secured Claim against any of the Debtors other than the Class 1 Secured Claim. Each subclass shall be treated as a separate class. The designation of a Class 2 Claim does not constitute an acknowledgement that that party holds an Allowed Secured Claim but merely that that party has filed a proof of claim against the Debtors as a Secured Claim.

**3.3 Class 3 – Administrative Convenience.** Class 3 consists of all Allowed Unsecured Claims of \$1,000 or less against the Debtors and the Allowed Claim of any other Unsecured Claimholder electing treatment as a Class 3 Claimant by reducing its claim to \$1,000 and waiving that portion of its Claim in excess of \$1,000.

**3.4 Class 4 – General Unsecured Claims.** Class 4 consists of all Allowed Unsecured Claims against any of the Debtors, other than those in any of the other Classes above or below.

**3.5 Class 5 – Tort Claims.** Class 5 consists of all Allowed Tort Claims against any of the Debtors.

## **ARTICLE IV**

### **Provisions For Satisfaction Of Classified Claims**

The Claims as classified in Article III above shall be satisfied in the manner set forth in this Article IV. The treatment of, and the consideration to be received by, any Claimant holding Allowed Claims against any of the Debtors pursuant to this Plan shall be in full settlement, release, and discharge of their respective Allowed Claims against all of the Debtors, but shall not affect the liability of any other party on such Claim.

**4.1    Class 1 –Secured Claim of NHI.** Except to the extent the Class 1 Claimant may otherwise agree, the holder of the Allowed Class 1 Claim shall be fully satisfied, at the Debtors’ option, by one of the following options (the “NHI Options”):

**(a)    Note Option:** The Debtors shall execute the NHI Note in the NHI Note Amount and deliver same to the holder of the Allowed Class 1 Secured Claim no later than the thirtieth (30<sup>th</sup>) Business Day after the later of the Effective Date or the date that such Class 1 Claim becomes an Allowed Secured Claim. Contemporaneously with the delivery of the NHI Note, Debtors shall also deliver to the holder of the Allowed Class 1 Secured Claim a mortgage or deed of trust and security agreement encumbering so much of the Facilities, including any leases related to the subject Facilities, as is necessary to fully secure the NHI Note with no more than an eighty percent (80%) loan-to-value ratio. The terms and provisions of

such mortgage or deed of trust and security agreement shall be those agreed to between the Debtors and the holder of the Class 1 Allowed Secured Claim, or in the event such parties cannot agree, as directed by the Bankruptcy Court. The holder of the Allowed Class 1 Secured Claim shall retain all liens granted under the mortgage or deed of trust and security agreement until the NHI Note is fully paid or until such holder otherwise agrees.

(b) **Cash Option:** The Debtors may also elect, at any time on or before the later of the Effective Date or the date the Class 1 Claim becomes an Allowed Secured Claim, to pay the NHI Cash Payment to the Allowed Class 1 Secured Claim by paying the NHI Cash Payment Amount to such holder promptly after the later of the Effective Date or the date the Class 1 Claim becomes an Allowed Secured Claim by Final Order of the Bankruptcy Court.

(c) **Release of Lien:** Upon the satisfaction of the Allowed Class 1 Secured Claim pursuant to either of the NHI Options provided for in this Plan, the holder of such Class 1 Secured Claim shall execute all instruments and documents necessary to release its liens securing such Class 1 Secured Claim or the NHI Note, whichever the case may be.

**4.2 Class 2 – Other Secured Claims.** Except to the extent a Class 2 Claimant may otherwise agree, the holder of each Allowed Class 2 Claim shall be fully satisfied, at the Debtors' option, by one of the following options (the "Other Secured Options"):

(a) **Note Option:** The applicable Debtor shall execute a promissory note and deliver same to the holder of any Allowed Class 2 Secured Claim no later than the thirtieth (30<sup>th</sup>) Business Day after the later of the Effective Date or the date that such Class 2 Claim becomes an Allowed Secured Claim. The original principal amount of any such note shall be the Allowed amount, if any, of such Class 2 Secured Claim as of the Petition Date, as agreed to by Debtors and the holder of such Class 2 Claim or as determined by Final Order of the Bankruptcy Court. Any such promissory note shall be payable in one-hundred twenty (120) equal monthly installments based on a twenty (20) year amortization schedule, with a final, lump-sum payment being due in the one-hundred twenty first (121<sup>st</sup>) month in the amount of the outstanding balance of the note. Payments on any such note shall commence on the fifteenth (15<sup>th</sup>) day of the first full month following the date the note is delivered pursuant to this Plan, and each payment thereafter shall be due on the fifteenth (15<sup>th</sup>) day of the month. The promissory note shall bear interest, commencing as of the date the note is delivered pursuant to this Plan, at the annual rate of five percent (5%). Interest will be calculated on the any such note on a 365-day basis. Debtors shall be able to pre-pay any such note at any time without any prepayment penalty or other charge.

Contemporaneously with the delivery of such promissory note, Debtors shall also deliver to the holder of the Allowed Class 2 Secured Claim a mortgage or deed of trust and security agreement encumbering the same collateral as secured

the Allowed Class 2 Secured Claim as of the Petition Date. The terms and provisions of such mortgage or deed of trust and security agreement shall be those agreed to between the Debtors and the holder of the Class 2 Allowed Secured Claim, or in the event such parties cannot agree, as directed by the Bankruptcy Court. The holder of the Allowed Class 2 Secured Claim shall retain all liens granted under the mortgage or deed of trust and security agreement until the promissory note is fully paid or until such holder otherwise agrees.

(b) **Cash Option:** The Debtors may also elect, at any time on or before the later of the Effective Date or the date a Class 2 Claim becomes an Allowed Secured Claim, to pay the holder of the Allowed Class 2 Secured Claim the Allowed amount of such Allowed Secured Claim in cash, in full, on the later of the Effective Date or the date the Class 2 Claim becomes an Allowed Secured Claim by Final Order of the Bankruptcy Court.

(c) **Release of Lien:** Upon the satisfaction of any Allowed Class 2 Secured Claim pursuant to either of the Other Secured Options provided for in this Plan, the holder of such Class 2 Secured Claim shall execute all instruments and documents necessary to release its liens securing such Class 2 Secured Claim or the note, whichever the case may be.

**4.3 Class 3 – Administrative Convenience.** Each holder of an Allowed Class 3 Claim will be paid in full, in cash, on the Effective Date of this Plan up to a maximum of \$1,000. Any Claimant having a Contested Class 3 Claim shall be

entitled to payment only after that Claim becomes an Allowed Class 3 Claim pursuant to a Final Order. Any holder of an Allowed General Unsecured Claim in excess of \$1,000 may elect to reduce its Allowed Claim to \$1,000 and be treated as a Class 3 Claim by so indicating on its Ballot.

**4.4 Class 4 – General Unsecured Claims.** Each Allowed Class 4 General Unsecured Claim in these Chapter 11 Cases shall be paid in full; shall bear interest from the Effective Date at an annual interest rate of five percent (5%), and shall be paid in twelve (12) equal monthly installments commencing thirty (30) days after the Effective Date. The amount due any Allowed Class 4 General Unsecured Claimant may be prepaid in whole or in part at any time without penalty. Any Claimant having a Contested Class 4 Claim shall be entitled to payment only after that Claim becomes an Allowed Claim pursuant to a Final Order. Upon entry of a Final Order creating an Allowed Class 4 General Unsecured Claim from a Contested Claim, the holder of the Allowed Class 4 General Unsecured Claim shall be paid promptly the total amount of installment payments that would have been due on that Allowed Claim if it had been Allowed as of the Effective Date.

**4.5 Class 5 – Tort Claims.** The holder of each Allowed Class 5 Tort Claim in these Cases shall be paid the full Allowed amount of said Class 5 Tort Claim, less any amounts the Class 5 Tort Claimant received from any other sources or parties on that Class 5 Tort Claim. Each Allowed Class 5 Tort Claim shall bear interest at the annual rate of five percent (5%) and shall be paid in one-hundred

twenty (120) equal monthly installments commencing the later of thirty (30) days after the Effective Date or the date the Class 5 Tort Claim becomes an Allowed Class 5 Tort Claim. The amount due any Allowed Class 5 Tort Claimant may be prepaid in whole or in part at any time without penalty. Any Claimant having a Contested Class 5 Tort Claim shall be entitled to payment only after that Claim becomes an Allowed Claim pursuant to a Final Order of the Bankruptcy Court.

## **ARTICLE V**

### **Designation Of The Classes Of Claims Impaired Under This Plan**

**5.1 Impaired Classes.** For purposes of Plan solicitation, Classes 1 through 5 are Impaired and are, therefore, entitled to cast ballots on this Plan; provided, however, if Debtors elect the Cash Option with respect to Class 1 at any time prior to the conclusion of the Confirmation Hearing, Class 1 will be deemed unimpaired.

**5.2 Unimpaired Classes.** For purposes of Plan solicitation, Class 1 is not Impaired and, therefore, is not entitled to cast a ballot on this Plan if Debtors elect the Cash Option with respect to Class 1 at any time prior to the conclusion of the Confirmation Hearing.

## **ARTICLE VI**

### **Acceptance Or Rejection Of Plan; “Cramdown”**

**6.1 Classes and Claims Entitled to Vote.** Each impaired Class of Claims shall be entitled to vote separately to accept or reject this Plan. Classes of

Claims not impaired under this Plan shall not be entitled to vote to accept or reject this Plan and shall be presumed to have accepted this Plan pursuant to Section 1126(f) of the Bankruptcy Code.

**6.2 Class Acceptance Requirement.** A Class of Claims shall have accepted this Plan if it is accepted by at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the Allowed Claims of such Class that voted on this Plan.

**6.3 One Vote Per Holder.** If a holder of a Claim holds more than one Claim in any one Class, all Claims of holders in such Class shall be aggregated and deemed to be one Claim for purposes of determining the number and amount of Claims in such Class voting on this Plan.

**6.4 Cramdown.** If all applicable requirements for confirmation of this Plan are met as set forth in Bankruptcy Sections 1129(a)(1) through (13), except subsection (8) thereof, the Debtors shall request that the Bankruptcy Court confirm this Plan in accordance with Section 1129(b) of the Bankruptcy Code, so long as one impaired Class of Claims has accepted this Plan, on the basis that this Plan is fair and equitable and does not discriminate unfairly with respect to any non-accepting, impaired Class of Claims. In the event the Bankruptcy Court refuses to impose a “cram-down” on the rights of a non-consenting Class unless certain modifications are made to the terms and conditions of such Class’s treatment under this Plan, the Debtors reserve the right, without re-solicitation, to propose such modification and



to confirm this Plan, provided such modification does not result in total extinguishment of the non-consenting Class's Claims. In addition, modifications required by this Plan shall not be deemed material, unless such required modification results in a total extinguishment of such Class's rights.

## **ARTICLE VII**

### **Means For Implementation Of The Plan**

**7.1 Payments Due Under The Plan.** The Debtors' operations will produce sufficient cash flow to make all payments due on the Effective Date and under this Plan, with the possible exception of the final payment due on the Allowed Class 1 Secured Claim under the NHI Note or the NHI Cash Payment Amount, depending on the Allowed amount, if any, of the Class 1 Secured Claim and depending on which of the two NHI Options is elected. If Debtors do not have sufficient accumulated cash on hand from operations to make the lump-sum payments on the Allowed Class 1 Secured Claim under either of the NHI Options, Debtors will either refinance and/or sell one or more of the Facilities in order to make the lump-sum cash payment due under either Option. Given the amount of equity the Debtors enjoy in the Facilities, even if NHI's Claim is Allowed in the amount as filed, Debtors will be able to accomplish one or the other, or a combination of both, in order to effectuate the lump-sum payment due to the holder of the Allowed Class 1 Secured Claim under either of the NHI Options. In addition, with respect to any Allowed Class 5 Tort Claims, Debtors have claims for

indemnification from one or more of the Tenants, which claims Debtors are expressly reserving under this Plan and intend to pursue as necessary.

**7.2 Amendments to Organizational Documents.** The Reorganized Debtors' organizational documents shall be amended, as necessary, to satisfy any provisions of this Plan and Section 1123(a)(6) of the Bankruptcy Code. All amendments to such organizational documents shall be filed with the appropriate filing offices on the Effective Date or as soon thereafter as is reasonably practicable and shall become effective on the date so filed. On or after the Effective Date, the Reorganized Debtors' organizational documents may be amended and supplemented to include some or all of the following:

- (a) Alter the number of directors on the Board of Directors of Debtor Care Foundation;
- (b) The entry of the Confirmation Order will be deemed to meet all necessary Board approval requirements under any applicable provisions of Tennessee and Florida law necessary to take the actions set forth in this Plan.

**7.3 Officers and Directors.** The executive officers of Care Foundation, which is a Tennessee non-profit corporation, will be James P. Earle III, as President/Executive Director, and Joseph P. Keane, as Secretary and Treasurer. The initial Directors of Care Foundation will be James P. Earle III, Joseph P. Keane, James M. Usdan, Thomas Davenport, and the Rev. Leigh Spruill. These

officers and directors reserve the right to decline to remain with the Reorganized Debtors, subject to any obligations under valid contracts of employment with the Debtors. Care Foundation will remain the single member of each of the other Debtors, which are all Florida limited liability companies. Upon the Effective Date, the operation of the Reorganized Debtors shall be the general responsibility of the Board of Directors, and the Board of Directors shall have the sole responsibility for the management, control, and operation of the Reorganized Debtors.

**7.4 Exoneration and Reliance.** Provided that the Debtors, members of the Board of Directors, attorneys, accountants, representatives, financial advisers, and agents of such entities act in good faith, they shall not be liable to any Claimant or other party with respect to any action, inaction, decision, or exercise of discretion taken during the period from the Petition Date to Substantial Consummation of the Plan in connection with (i) the Debtors' affairs, (ii) the implementation of any of the transactions or actions provided for, or contemplated, in this Plan or the Plan Documents, or (iii) the administration of this Plan or assets and property to be distributed pursuant to this Plan and the Plan Documents other than for willful misconduct or gross negligence.

**7.5 Causes of Action.** The Reorganized Debtors will be responsible for evaluating, funding, and pursuing any or none of the Causes of Action based on their reasonable business judgment for the benefit of the Reorganized Debtors. However, the Reorganized Debtors shall only be liable to fund such amounts as the

Reorganized Debtors, in their sole and absolute discretion, shall deem appropriate and reasonable.

**7.6 Authority for Settlement of Causes of Action.** After the Effective Date, the Reorganized Debtors shall, in their sole and absolute discretion, be authorized to compromise and settle any of the Causes of Action, including the pending litigation with NHI, without Bankruptcy Court approval or notice to any party, at any time, and for any consideration that the Reorganized Debtors believe to be in their best interests (and not necessarily in the best interest of their creditors) including, inter alia, the right to permit the Reorganized Debtors to accept zero-cash or non-cash benefits.

**7.7 Retention of the Debtors' Property.** On the Effective Date, all property of the Debtors and the Estates, including the Facilities, any related personal property, and any leases regarding same, shall vest in the Reorganized Debtors, free and clear of all liens, claims and encumbrances, except for those liens created or preserved as provided in the treatment of certain creditors under this Plan.

**7.8 Plan Documents.** On or before the Effective Date, the Debtors shall file with the Bankruptcy Court copies of any proposed documents to be executed in conjunction with the Confirmation of this Plan, together with all necessary exhibits or schedules thereto, as may be necessary to effectuate the terms and conditions of this Plan and the Disclosure Statement.

## **ARTICLE VIII**

### **Treatment Of Executory Contracts And Unexpired Leases**

**8.1 General Assumption of Executory Contracts.** All executory contracts and unexpired leases with any of the Debtors that have not, as of ten (10) days following the Effective Date, been specifically rejected shall be deemed contracts and leases that the Debtors have assumed, provided the Debtors agree to pay any Allowed Cure Claim (defined below). Any party to an executory contract or unexpired lease that is assumed pursuant to this provision that asserts that Debtors have defaulted under that contract or lease shall be required to file with the Bankruptcy Court a Claim identifying the amount allegedly due to cure any such defaults in accordance with Section 365(b)(1)(A) of the Bankruptcy Code (a “Cure Claim”). Any such Cure Claim must be filed within sixty (60) days from the Effective Date. The failure to file timely the application as required under this section of the Plan shall result in the Cure Claim being forever barred and discharged, and the related executory contract or unexpired lease shall be deemed assumed as of the Effective Date without further need to cure. All Cure Claims asserted pursuant to this section of the Plan to which no objection is filed or to which an objection is filed but overruled by a Final Order of the Bankruptcy Court shall become an Allowed Administrative Claim, and the related executory contract or unexpired lease shall be assumed as of the date of the payment of the Allowed Cure Claim. Notwithstanding anything in this section to the contrary, the

Reorganized Debtors may reject any executory contract or unexpired lease in the event the Reorganized Debtors determine that any Allowed Cure Claim renders assumption of that contract or lease to be not in the best interests of the Reorganized Debtors, in which event, the contract or lease shall be rejected, and the holder of the contract shall be entitled to file a Class 4 Claim for damages arising from the rejection.

**8.2 Rejection of Executory Contracts.** The Debtors shall reject as of the Effective Date those executory contracts set forth in a document to be filed with the Bankruptcy Court within ten (10) days after the Effective Date and under the provisions authorized in section 8.1 above.

**8.3 Claims for Damages.** Each person who is a party to an executory contract or unexpired lease rejected pursuant to this Article shall be entitled to file, not later than thirty (30) days after the date on which the contract or lease is rejected, a Claim for damages alleged to arise from the rejection of the executory contract or unexpired lease to which such person is a party. Any such Claims that ultimately become Allowed Claims shall be treated as Class 4 General Unsecured Claims.

## **ARTICLE IX**

### **Provisions For The Discharge, Settlement, And Adjustment Of Claims**

#### **9.1 No Distributions Pending Allowance or Estimation of Claims.**

No payments or distributions shall be made with respect to all or any portion of a

Contested Claim, unless and until such Claim becomes an Allowed Claim as determined by Final Order. All Claims which are not specifically stated to be allowed in this Plan or which are listed as disputed or contingent in Debtors' Schedules are hereby objected to, without filing of an objection by Debtors. The Reorganized Debtors retain the right to object to and obtain rulings from the Bankruptcy Court concerning the amount and validity of any Claims or liens asserted against the Debtors and Debtors-in-Possession or their property.

**9.2    Reserve for Certain Distributions.** The Reorganized Debtors shall reserve funds adequate to properly treat Contested Claims pending the resolution of any objection to such Claim.

**9.3    Unclaimed Property.** Any distribution or payment to a Claimant shall be sent by first-class mail to the Claimant's address indicated on the proof of claim filed by that Claimant in these Chapter 11 Cases or, if no proof of claim has been filed, to that Claimant's most recent address indicated on the Debtors' Schedules or known to the Reorganized Debtors. If a Creditor holds an Allowed Claim by virtue of a transfer of such Claim pursuant to Bankruptcy Rule 3001, then distributions to the holder of such Claim shall be sent to the address set forth in evidence of the transfer filed with the Bankruptcy Court. If any distribution remains unclaimed for a period of ninety (90) days after it is sent by Debtors, then the Creditor to whom such distribution was sent will be deemed to have forfeited the distribution, and such Claim shall no longer be deemed to be Allowed, but

rather, such Claim shall be deemed disallowed and expunged for all purposes, and such Creditor shall be deemed to have no further Claim in respect of such distribution and shall not participate in any further distributions under this Plan.

**9.4 Precluded Distributions.** No distribution shall be made in violation of Bankruptcy Code Section 502(d) (to an entity or transferee liable for recoverable property for an avoidable transfer). The Reorganized Debtors shall notify each affected Creditor of any contention that Bankruptcy Code Section 502(d) prohibits any distribution to such Creditor. If such notice is given, the Claim held by such Creditor will be treated as a Contested Claim hereunder.

**9.5 Treatment of Contingent or Unliquidated Claims.** Until such time as a Contingent Claim becomes fixed and Allowed, such Claim shall be treated as a Contested Claim for purposes related to voting, allowance, and distributions under this Plan. The Bankruptcy Court, upon request by the Debtors or, after the Effective Date by the Reorganized Debtors, shall in a summary proceeding for each such contingent Claim or unliquidated Claim, by estimation determine the allowability of each such contingent or unliquidated Claim for purposes of voting on this Plan.

**9.6 Payment Dates.** Whenever any payment or distribution to be made under this Plan or a note shall be due on a day other than a Business Day, such payment or distribution shall instead be made, without interest, on the next Business Day.



## **ARTICLE X**

### **Litigation**

**10.1 Reservation of Claims and Causes of Action.** All claims, cross claims or counterclaims held or assertable by the Debtors, including (i) the Causes of Action, (ii) all claims against NHI or any of its current or former affiliates, its former or current officers or directors, or its former or current agents, attorneys, accountants, or employees, whether or not covered under a directors and officers policy of liability insurance or otherwise; (iii) all claims against any of Debtors' former or current officers or directors, whether or not covered under a directors and officers policy of liability insurance or otherwise; (iv) any claim or cause of action arising from any payment made to any person or entity during the pendency of these cases, including a claim or cause of action for the disgorgement of the payment of Administrative Claims; (iv) all Avoidance Actions; (v) all claims against any one or more of the Tenants or their affiliates arising out of the Leases, including, but not limited to, any claims for indemnification; and (vi) any and all other claims, causes of action, counterclaims, demands, and controversies against third parties on account of costs, debts, sums of money, accounts, reckonings, bonds, bills, damages, obligations, liabilities, objections, and executions of any nature, type, or description which the Debtors have or may come to have, including, but not limited to, negligence, gross negligence, usury, fraud, deceit, misrepresentation, conspiracy, unconscionability, duress, economic duress, defamation, control,

interference with contractual and business relationships, conflicts of interest, misuse of insider information, concealment, disclosure, secrecy, misuse of collateral, wrongful release of collateral, failure to inspect, environmental due diligence, negligent loan processing and administration, wrongful setoff, violations of statutes and regulations of governmental entities, instrumentalities and agencies (both civil and criminal), racketeering activities, securities and antitrust laws violations, tying arrangements, deceptive trade practices, breach or abuse of fiduciary duty, breach of any alleged special relationship, course of conduct or dealing, obligation of fair dealing, obligation of good faith, and obligation of good faith and fair dealing, whether or not in connection with or related to the this Plan and/or the Plan Documents, at law or in equity, in contract in tort, or otherwise, known or unknown, suspected or unsuspected, are hereby preserved and retained for enforcement by and for the benefit of the Reorganized Debtors. It is the intent of the Debtors that this reservation of claims shall be as broad as permitted by applicable law and shall include all claims, whether or not disclosed in the Debtors' Schedules or any disclosure statement filed in these cases.

**10.2 Avoidance Actions.** The Reorganized Debtors are appointed as the representative of the Estates pursuant to Section 1123(b)(3) of the Bankruptcy Code to pursue Causes of Action and shall be the only entity authorized to pursue actions to recover preferences, fraudulent conveyances, and all other Avoidance Actions. Unless the Reorganized Debtors consent in writing, or unless otherwise ordered by

the Bankruptcy Court, no other party shall have the right or obligation to pursue any such actions. Any Creditor determined to have received a transfer that is voidable pursuant to Sections 544, 547, 548, 549, and/or 550 of the Bankruptcy Code or any other applicable law shall be required to remit to the Reorganized Debtors the determined amount of the avoided transfer prior to receiving any distribution under the Plan.

## **ARTICLE XI**

### **Effect Of Confirmation, Discharge, And Injunction**

**11.1 Vesting of Property.** Except as otherwise provided in this Plan, Confirmation of the Plan shall vest all of the property of the Debtors and the Debtors' Estates into the Reorganized Debtors.

**11.2 Property Free and Clear.** Except as otherwise provided in this Plan, all property dealt with by the Plan shall be free and clear of all claims, liens and interests of any party as of the Confirmation of the Plan. This Plan will evidence the release of any and all liens or encumbrances against all property dealt with by the Plan, unless such lien or encumbrance is specifically retained in the Plan.

**11.3 Legal Binding Effect; Discharge of Claims.** The provisions of this Plan shall: (i) bind all Claimants, whether or not they accept this Plan, and (ii) discharge the Debtors, jointly and severally, from all Claims, debts and liabilities that arose before the Petition Date, and from any Claims, debts and liabilities, including, without limitation, any Claims, debts and liabilities of a kind

specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, that arose, have been asserted against, or could have been asserted against, the Debtors, jointly or severally, at any time before the entry of the Confirmation Order or that arises from any pre-Confirmation conduct of the Debtors, jointly or severally, whether or not the Claims, debts and liabilities are known or knowable by the Claimant.

**11.4 No Liability for Tax Claims.** Without limiting the effect of the foregoing Section of this Plan, unless a Claimant has asserted a Claim against the Debtors before the appropriate Bar Date for taxes, penalties, or interest arising out of the failure, if any, of the Debtors to have filed any tax return including, but not limited to, any excise tax return in any prior year or arising out of an audit of any return of a period before the Petition Date, then no Claim for such taxes, penalties, or interest shall be allowed.

**11.5 Effect on Third Parties.** Except as otherwise expressly provided in this Plan, nothing contained in this Plan or in the Plan Documents shall affect any Claimants' rights as to any third party.

**11.6 Release and Discharge of Claims.** Except as otherwise provided by the Plan, the consideration distributed under the Plan shall be in complete satisfaction, release and discharge of the Debtors and their assets from all Claims of any Claimant, including Claims arising prior to the Confirmation Date, to the

fullest extent permitted under Section 524 and Section 1141(d) of the Bankruptcy Code.

**11.7 Permanent Injunction.** As provided in Section 524 of the Bankruptcy Code, a discharge provided under Section 1141 of the Bankruptcy Code operates as an injunction against the prosecution of any Claims so discharged. Accordingly, except as otherwise expressly provided in, or permitted under, this Plan, the Confirmation Order shall provide, among other things, that all Creditors and persons who have held, hold or may hold Claims that existed prior to the entry of the Confirmation Order, are permanently enjoined on and after the Effective Date against the: (i) commencement or continuation of any judicial, administrative, or other action or proceeding against any Debtor or the Reorganized Debtors or any of their non-debtor affiliates or subsidiaries on account of Claims against the Debtors arising prior to the entry of the Confirmation Order; (ii) enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree, or order against any Debtor or the Reorganized Debtors or any of their non-debtor affiliates or subsidiaries, or any assets or property of same with respect to Claims arising prior to the entry of the Confirmation Order; or (iii) creation, perfection or enforcement of any encumbrance of any kind against any Debtor or the Reorganized Debtors or any of their non-debtor affiliates or subsidiaries arising from a Claim arising prior to the entry of the Confirmation Order. This provision does not enjoin the prosecution of any Claims that arise on or after the entry of the

Confirmation Order nor does it enjoin the determination of the Allowed Amount of any Claims that arose prior to the entry of the Confirmation Order by the Bankruptcy Court.

## **ARTICLE XII**

### **Miscellaneous Provisions**

**12.1 Modification.** The Debtors may propose amendments or modifications of this Plan at any time prior to the Confirmation Date, with leave of the Bankruptcy Court, upon notice to appropriate parties if required under the Bankruptcy Code. After Confirmation, Debtors may, with approval of the Bankruptcy Court, and so long as it does not materially or adversely affect the interests of Creditors, remedy any defect or omission, or reconcile any inconsistencies in this Plan or in the Confirmation Order, in such manner as may be necessary to carry out the purposes and effect of this Plan. The foregoing provisions of this Article XII do not limit the ability of any party to modify the Plan under 11 U.S.C. § 1127 and applicable rules.

**12.2 Headings.** All headings utilized in this Plan are for convenience and reference only, and shall not constitute a part of this Plan for any other purpose.

**12.3 Due Authorization.** Each and every Claimant who elects to participate in the distributions provided for herein warrants that such Claimant is authorized to accept, in consideration of such Claim against the Debtors, the distributions provided for in this Plan and that there are not outstanding

commitments, agreements, or understandings, expressed or implied, that may or can in any way defeat or modify the rights conveyed or obligations undertaken by such Claimant under this Plan.

**12.4 Authorization of Corporate Action.** All matters and actions provided for under this Plan involving the organizational structure of the Debtors or Reorganized Debtors or action to be taken by or required of any Debtor, the Reorganized Debtors, or their affiliates shall be deemed to have occurred and be effective as provided herein, and shall be deemed to be authorized and approved in all respects without any requirement for further action by the directors or member of any Debtor or the Reorganized Debtors. Specifically, all amendments to the organizational documents of any Debtor or the Reorganized Debtors pursuant to this Plan and all other action on behalf of any Debtor or its affiliates or the Reorganized Debtors or their affiliates, as may be necessary to put into effect or carry out the terms and intent of this Plan and the Orders and decrees of the Bankruptcy Court entered in the Chapter 11 Case, may be effected, exercised and taken without further action by the directors, the Board of Directors, or any member of any Debtor or the Reorganized Debtors, as applicable, with like effect as if effected, exercised and taken by unanimous action of the directors and member of the Debtor or the Reorganized Debtors, as applicable.

**12.5 Further Assurances and Authorizations.** Any Debtor or its affiliates or the Reorganized Debtors or their affiliates, if and to the extent

necessary, shall seek such orders, judgments, injunctions, and rulings that may be required to carry out further the intentions and purposes, and to give full effect to the provisions, of this Plan. All terms and provisions of this Plan shall be construed in favor of the Debtors.

**12.6 Additional Acts Or Actions.** The Debtors may, but shall not be obligated to, take any action or commit any act that any of them determine to be necessary to facilitate the consummation, implementation, effectuation and execution of this Plan.

**12.7 Applicable Law.** Except to the extent that the Bankruptcy Code or other federal law is applicable, the rights, duties and obligations arising under this Plan shall be governed by and construed and enforced in accordance with the internal laws of the State of Tennessee without reference to the laws of other jurisdictions.

**12.8 No Interest.** Except as expressly stated in this Plan, or allowed by the Bankruptcy Court, no interest, penalty or late charge is to be Allowed on any Claim subsequent to the Filing Date.

**12.9 No Attorneys' Fees.** No attorneys' fees will be paid with respect to any Claim, other than Claims of professionals employed by the Debtors, except as specified herein or as allowed by a prior Order of the Bankruptcy Court.

**12.10 [Intentionally Blank]**



**12.11 Setoff.** Except as specifically provided in this Plan, no Creditor shall retain any contractual or statutory right to set off any asset in which the Debtors or Reorganized Debtors have an interest in satisfaction of that Creditor's pre-petition Claim. However, the Debtors may, but shall not be required to, set off against any Claim, including the payments or other distributions to be made pursuant to this Plan in respect to such Claim, claims of any nature whatsoever that the Debtors may have against the Claimant holding such Claim. Neither the failure to do so nor the disallowance of any Claim hereunder shall constitute a waiver or release of such claim that the Debtors shall have against such Claimant.

**12.12 Notice of Default.** In the event of any alleged default under the Plan, any Creditor or party-in-interest must give a written default notice to the Reorganized Debtors, with copies to counsel of record for the Reorganized Debtors, specifying the nature of the default. Upon receipt of the default notice, the Reorganized Debtors shall have ten (10) days to cure such default from the time of receipt of the default notice. If such default has not been cured within the applicable time period, the default may be brought to the attention of the Bankruptcy Court or any other Bankruptcy Court of competent jurisdiction.

**12.13 Notices.** All notices, requests, elections or demands in connection with the Plan shall be in writing and shall be deemed to have been given when received or, if mailed, five (5) days after the date of mailing provided such writing shall have been sent by registered or certified mail, postage prepaid, return receipt requested.

**12.14 Recordable Order and Exemption from Transfer Taxes.** The Confirmation Order shall be declared to be in recordable form and shall be accepted by a recording officer for filing and recording purposes without further or additional orders, certification, or other supporting documents. The Confirmation Order shall further provide that any sales of any property contemplated under this Plan are transfers under a plan pursuant to Section 1146(c) of the Bankruptcy Code and are exempt from all laws imposing a stamp tax or similar tax, including, but not limited to, any transfer taxes. The Order will provide transfer taxes required in the States of Tennessee and Florida are taxes from which the Debtors are exempt.

**12.15 Revocation of Plan.** The Debtors reserve the right to withdraw this Plan before the entry of the Confirmation Order. If the Debtors withdraw this Plan or the Confirmation of this Plan does not occur, then this Plan shall be deemed null and void and nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against such Debtors, as the case may be, or any other party or to prejudice in any manner the rights of the Debtors or any other party in further proceedings involving the Debtors.

**12.16 Entire Agreement.** This Plan, as described herein and the Disclosure Statement and Exhibits hereto and thereto, sets forth the entire agreement and understanding among the parties hereto relating to the subject matter hereof and supersedes all prior discussions and documents. No party hereto shall be bound by any terms, conditions, definitions, warranties, understandings or representations

with respect to the subject matter hereof, other than is expressly provided for herein, in the Confirmation Order, or as may hereafter be agreed to by the parties in writing.

**12.17 Administrative Claims Bar Date.** Unless otherwise ordered by the Bankruptcy Court, the Confirmation Order will operate to set a deadline for Administrative Claims incurred prior to the deadline (the “Administrative Claims Bar Date, which Administrative Claims Bar Date will be thirty (30) days after the Effective Date. Claimants holding Administrative Claims against the Debtors not paid on the Effective Date may submit proofs of claim on or before such Administrative Claims Bar Date.

**12.18 Confirmation Order.** In addition to the requirements set forth in this Plan, the Confirmation Order shall also ratify all transactions consistent with the provisions of this Plan, the Plan Documents, and the documents executed by the Debtors in furtherance of the Plan during the period commencing on the Petition Date and ending on the Effective Date.

**12.19 Prosecution of Objections.** After the date of entry of the Confirmation Order, only the Reorganized Debtors shall have the authority to make objections, litigate to judgment, settle or withdraw objections to Contested Claims.

**12.20 Successors and Assigns.** Rights and obligations of any Persons named or referred to in this Plan shall be binding upon and shall inure to the benefit of, the successors and assigns of such Person.

## **ARTICLE XIII**

### **Retention Of Jurisdiction**

**13.1 Jurisdiction.** The Bankruptcy Court shall retain exclusive jurisdiction over this Chapter 11 Case after Confirmation, notwithstanding Substantial Consummation of the Plan, for the following purposes:

- (a) to consider any modification of the Plan under Section 1127 of the Bankruptcy Code, or under Bankruptcy Rule 3020, and/or modification of the Plan after Substantial Consummation of the Plan as defined in Section 1101(2) of the Bankruptcy Code;.
- (b) to hear and determine all controversies, suits and disputes that may arise in connection with the interpretation, implementation, effectuation, consummation or enforcement of this Plan, including, but not limited to, the Reorganized Debtors' rights to substitute collateral, release liens for post confirmation sales, and prepay obligations.
- (c) to hear and determine all requests for compensation and/or reimbursement of expenses for the period commencing on the Petition Date through the Confirmation Date; provided, however, the Reorganized Debtors may hire attorneys and professionals after the Confirmation Date in the ordinary course

of business, and the payment of their fees and expenses shall not be subject to any Bankruptcy Court approval.

- (d) to hear and determine all objections to Claims, and to determine the appropriate classification of any Claim, and other controversies, suits and disputes that may be pending at or initiated after the Confirmation Date, including, but not limited to, the pending litigation between Debtors and NHI, and all Claims arising from the rejection of executory contracts and unexpired leases;
- (e) to hear and determine all matters relating to the assumption of executory contracts and unexpired leases and, if applicable, the assumption and assignment of such assumed executory contracts and unexpired leases.
- (f) to hear and determine all claims that the Debtors, as debtors-in-possession qua trustee or their affiliates, or the Reorganized Debtors or their affiliates as the successors and designated representatives of the Debtors and the Estates, could assert under the Bankruptcy Code;
- (g) to consider and act on such other matters consistent with this Plan as may be provided in the Confirmation Order;

- (h) to make such orders as are necessary and appropriate to carry out and implement the provisions of this Plan;
- (i) to approve the reasonableness of any payments made or to be made, within the meaning of Section 1129(a)(4) of the Bankruptcy Code;
- (j) to exercise the jurisdiction granted pursuant to Section 505(a) and (b) of the Bankruptcy Code to determine any and all federal, state, commonwealth, local and foreign tax liabilities of, and any and all refunds of such taxes paid by the Debtors;
- (k) to determine any and all motions, applications, adversary proceedings and contested matters whether pending in these Chapter 11 Cases as of the Effective Date or brought subsequently by the Reorganized Debtors.
- (l) to liquidate damages or estimate Claims in connection with any disputed, contingent or unliquidated Claim.
- (m) to adjudicate all Claims to an ownership interest in any property of the Debtors or of the estate or any proceeds thereof.
- (n) to adjudicate all Claims or controversies arising out of any purchase, sale or contract made or undertaken by the Debtors during the pendency of the case or pursuant to the terms of the

Plan, including, but not limited to, post-confirmation sales free and clear of liens, claims, and encumbrances.

- (o) to recover all assets and properties of the Debtors wherever located.
- (p) to hear and determine matters concerning state, local, and federal taxes pursuant to Sections 346, 505, 525, and 1146 of the Bankruptcy Code.
- (q) to hear and determine any action or proceeding brought by the Debtors under Sections 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, and 553 of the Bankruptcy Code.
- (r) to hear and determine all actions and proceedings brought by the Debtors arising in or related to these Chapter 11 Cases or arising under the Bankruptcy Code.
- (s) to determine the validity, extent, and priority of all liens against property of the Debtors' estates.
- (t) to hear and determine all requests for compensation and/or reimbursement of expenses of professionals that may be made after the Confirmation Date.
- (u) to hear and determine such matters and make such orders as are consistent with the Plan or as may be necessary or desirable to carry out the provisions thereof.

**13.2 Reservations Regarding Jurisdiction.** Nothing contained in this Article XIII shall be construed so as to limit the rights of the Reorganized Debtors or their affiliates to commence or prosecute any claim in any Court of competent jurisdiction. Moreover, if the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction or is otherwise without jurisdiction over any matter arising out of these Chapter 11 Cases, including the matters set forth herein, or, if the Debtors elect to bring an action in any other forum, this Article XIII shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other Court having jurisdiction with respect to such matter.

Executed on the 31st day of March, 2009.

Care Foundation of America, Inc.

By: /s/ James P. Earle, III  
James P. Earle, III, President

Brooksville Lessor/LLC

By: Care Foundation of America, Inc., its sole Member

By: /s/ James P. Earle, III.  
James P. Earle, III, President

Bear Creek Lessor/LLC

By: Care Foundation of America, Inc., its sole Member

By: /s/ James P. Earle, III.  
James P. Earle, III, President



Royal Oak Lessor/LLC

By: Care Foundation of America, Inc., its sole Member

By: /s/ James P. Earle, III.  
James P. Earle, III, President

Heather Hill Lessor/LLC

By: Care Foundation of America, Inc., its sole Member

By: /s/ James P. Earle, III.  
James P. Earle, III, President

Cypress Cove Lessor/LLC

By: Care Foundation of America, Inc., its sole Member

By: /s/ James P. Earle, III.  
James P. Earle, III, President

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ATTORNEYS FOR DEBTORS  
AND DEBTORS-IN-POSSESSION