

MICHAEL J. DURRSCHMIDT  
BOARD CERTIFIED BUSINESS BANKRUPTCY  
TEXAS BOARD OF LEGAL SPECIALIZATION  
(713) 220-9165

LAW OFFICES OF  
**HIRSCH & WESTHEIMER, P.C.**

700 LOUISIANA, 25<sup>TH</sup> FLOOR  
HOUSTON, TEXAS 77002-2772

www.hirschwest.com  
mdurrschmidt@hirschwest.com

Main Office: (713) 223-5181 Facsimile: (713) 223-9319

February 24, 2010

Steven Shurn, Esq.  
Hughes Watters Askanase, LLP  
Three Allen Center  
333 Clay, 29th Floor  
Houston, Texas 77002

*Via Email: sshurn@hwa.com*

Re: *North Bay General Hospital, Inc. v. Northern Healthcare Capital, LLC; In the United States Bankruptcy Court for the Southern District of Texas Adversary No. 09-2047*

Dear Steve:

Outlined below is the proposed settlement of the above-referenced adversary proceeding, subject to Bankruptcy Court approval after notice and an opportunity for hearing. This settlement is also subject to the Sale Documents (as that term is defined in the Plan) being executed and becoming effective and title to the Transferred Assets (as that term is defined in the Plan) being conveyed to Care Holdings, LLC or another bidder who actually consummates the Sale (as that term is defined in the Plan).

**NHC's Administrative Claim**

We have agreed that NHC shall be entitled to an administrative claim in the amount of \$1,580,000.00, which will be paid in full as follows:

- A) Out of the NHC Escrow, established by agreement of the parties, pursuant to the Order Granting Emergency Motion to Substitute Care Holdings, LLC as Lender Under the Previously Approved DIP Final Order [Docket No. 439], NHC will receive \$790,000.00 within five (5) business days ("Pay Date") after the Court's order confirming the Hospital's Plan of Liquidation becomes final.
- B) NHC will receive \$316,000.00, on the Pay Date, out of the settlement proceeds generated by the Hospital's litigation against the insider and the prior case professionals [Adversary Nos. 08-3422 and 08-3489].
- C) The balance of NHC's administrative claim (\$474,000.00) will be paid from the initial \$500,000.00 payment due from Care Holdings, LLC ("Buyer") for the purchase of the Hospital's real estate, which is to be paid on or before the end of the thirty-sixth (36<sup>th</sup>) month after the initial closing with the Buyer.

- D) After NHC receives the payments set forth in Paragraphs A and B, other than a lien on all the Debtor's real property ("Real Property") to secure the \$474,000.00 administrative claim discussed in Paragraph C, NHC will have no other claim or lien on any of the Hospital's or the Bankruptcy Estate's assets regarding NHC's administrative claim. The lien for the \$474,000.00 administrative claim shall (i) have the same priority as NHC's allowed pre-petition secured claim discussed below and (ii) be perfected pursuant to NHC's already recorded deed of trust.

#### **NHC's Pre-Petition Claim**

NHC shall be allowed a pre-petition secured claim in the amount of \$3,825,768.00. This secured claim will be junior and subordinated to the outstanding administrative claims (in an amount up to \$1,000,000.00, inclusive of NHC's \$474,000.00 remaining administrative claim) ("Administrative Carve-Out") and to a prior distribution of \$120,000.00 to the Class 16 unsecured creditors, and a second distribution of \$120,000.00 to Class 16 unsecured creditors only after NHC is paid \$3,600,000.00 on its secured claim ("Unsecured Carve-Out") (collectively, the "Carve-Outs"). If, for any reason, the administrative expense claims are less than \$1,000,000.00 when the Real Property is sold then the administrative claim carve out shall be reduced to such lesser amount. In no event shall the administrative claim carve out be greater than \$1,000,000.00.

The Debtor anticipates selling its Real Property for \$4,500,000.00 through its Plan ("Real Estate Purchase Price"). Based upon the above, it is anticipated that at the closing of such sale NHC will receive \$3,380,000.00 on its \$3,825,768.00 secured claim, plus the \$90,000.00 of anticipated lease payments discussed below.

It is anticipated that NHC will receive \$90,000.00 of the anticipated lease payments scheduled to be received from the Buyer in months thirty-seven (37) through forty-eight (48). These sums will be paid to NHC in quarterly payments of \$22,500.00 beginning on the fifteenth (15<sup>th</sup>) day after the Hospital receives the Buyer's rent payment number thirty-nine (39), forty-two (42), forty-five (45) and forty-eight (48).

In addition to NHC's pre-petition allowed \$3,825,768.00 secured claim and the allowed \$1,580,000.00 administrative claim discussed above, NHC will be allowed an unsecured claim in the amount of \$805,997.67, which claim shall be subordinated to all Class 16 claimants.

In addition, NHC shall retain its lien on the Hospital's pre-petition accounts (those generated prior to July 8, 2008) ("Pre-Petition Accounts"). At NHC's request, (and after Court approval of this settlement) the Debtor shall convey ownership of the Pre-Petition Accounts "as is, where is" and without any representation to NHC and shall take such actions as NHC may reasonably request, at NHC's cost, to assist NHC regarding possible limitation impediments to

Steven Shurn, Esq.  
February 24, 2010  
Page 3

the collection of the Pre-Petition Accounts. Collections on the Pre-Petition Accounts, if any, shall not reduce NHC's entitlement to any other proceeds described herein. The Debtor and Buyer shall provide reasonable access to any and all information, supporting documentation and data relating to the Pre-Petition Accounts.

The Hospital and NHC recognize that this settlement has risks that are out of either parties' controls. For example, in the event the Buyer i) offsets (either with or without justification) lease payments or the purchase price; ii) fails or refuses to make timely payments; or iii) disrupts the flow of anticipated funds, the ultimate return to NHC may be adversely effected. Once the Buyer pays the Real Estate Purchase Price and makes all the required payments under the lease (collectively the "Consideration") to or for the benefit of the Hospital's bankruptcy estate, and NHC receives from the Consideration, all amounts it is entitled to receive attributable to its secured claim and administrative claim based on the priority of NHC's lien, NHC shall release its lien against the Real Estate. Until NHC receives the Consideration, NHC, subject to the, Carve-Outs shall retain a lien (with all rights as provided for in NHC's deed of trust, subject to the Plan) in and to the Real Property. NHC's lien shall be junior only to the real property ad valorem tax liens of the San Patricio Taxing Authorities and their assigns and the Carve Outs. However, any and all other liens or claims of NHC (other than the Pre-petition Accounts) shall be released upon the receipt of the initial two payments on NHC's administrative claims to be paid on the Pay Date, subject to Paragraph "D" above. So long as the Buyer is complying with the Lease and Sale Documents and Distributions are being made under the Plan, NHC shall not exercise its remedies under the deed of trust and its loan documents.

NHC and the Hospital will exchange mutual releases thereby releasing each other together with their respective officers, employees, agents, attorneys and representatives. NHC will release any and all claims it may have against NTime, LLC, its principals, employees, agents, attorneys and representatives. Likewise, NTime will release any and all claims it may have against NHC, its principals, employees, agents, attorneys and representatives. Provided, however, that NHC shall retain any and all rights, claims and causes of action against Thomas McNaull pursuant to the Guaranty Agreement or otherwise.

The Debtor will seek Bankruptcy Court approval of this compromise through its Plan or through a Motion to Compromise Controversy.

If this letter agreement accurately reflects our understanding, please sign below on behalf of NHC.

Steven Shurn, Esq.  
February 24, 2010  
Page 4

Very truly yours,

HIRSCH & WESTHEIMER, P.C.

By   
Michael J. Durrschmidt

Agreed and Accepted:

  
Steve Shurn,  
Attorney for Northern Healthcare Capital, LLC

  
Timothy Peters,  
Manager of Northern Healthcare Capital, LLC

MJD/lpr