

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:

NORTH BAY GENERAL HOSPITAL, INC.,
DEBTOR.

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CASE NO. 08-20368
(CHAPTER 11)

**NORTH BAY GENERAL HOSPITAL, INC.'S MODIFICATION
TO ITS PLAN OF LIQUIDATION**

TO THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, North Bay General Hospital, Inc. ("Hospital") and files this its Modification to its Plan of Liquidation and would show as follows:

BACKGROUND

1. On July 8, 2008, the Hospital filed for bankruptcy relief. On January 6, 2010, the Hospital obtained an Order from the Court¹ establishing procedures for notice, solicitation and voting regarding the Plan and Disclosure Statement (Docket No. 448). On January 11, 2010, the Hospital filed its Disclosure Statement and Plan of Liquidation.

2. February 10, 2010 was set as the deadline for the filing of objections to the confirmation of the Plan and approval of the Disclosure Statement. That date was also the deadline for voting to accept or reject the Plan.

3. The Hospital has tabulated the votes on the Plan. The Plan has been accepted by the creditors in Classes 9, 11, 13 and 16 in both the requisite number and percentage. The Plan has been rejected by Class 10, which is the secured claim of H-P. A tabulation of the votes was filed with the Court on February 10, 2010 (Docket No. 467).

¹ Unless defined herein, capitalized terms used herein have the meaning given to them in the Plan, Disclosure Statement or Code.

4. Since the filing and serving of the Disclosure Statement and Plan, the Hospital negotiated with Care Holdings, LLC, (the “Buyer”) regarding terms of the Sale; and with Northern Healthcare Capital, Inc. (“NHC”) in an effort to resolve the adversary proceeding brought by the Hospital against NHC (Adv. #09-2047)(the “Litigation”). The result of these negotiations require that the Plan be modified. Those changes were noticed in the Supplement that was served on February 19, 2010.

5. Pursuant to Section 1127(a) of the Bankruptcy Code, the Hospital may modify the Plan at any time before Confirmation. 11 U.S.C. § 1127(a). Furthermore, Section 14.2 of the Plan provides for a modification of the Plan. This Modification, together with the Plan, becomes the Hospital’s Plan and is to be treated the same as an original plan.

6. The terms of the sale of the Real Property remain substantially the same as previously disclosed in the Disclosure Statement; however, the Buyer has an additional year to rent the Real Property prior to being required to purchase same. The purchase price has remained \$4,500,000.00; the rent will be as follows:

Months 1-5	\$17,500.00
Months 6-36	\$25,000.00
Months 37-48	\$20,000.00

The Buyer has agreed that the rental income will be paid for at least 30 months. On or before the end of the 36th month, the Buyer will pay the Estate \$500,000.00 (“R.E. Payment”) toward the \$4,500,000.00 purchase price for the Real Property. A revised chart reflecting the payments to be made under the Plan, as modified, to Secured Creditors from the anticipated rental income is attached hereto as **Exhibit A**.

MODIFICATION OF PLAN

Article I

A) Section 1.37 – “Effective Date” shall mean the date the Plan, as modified becomes effective, which date shall be thirty (30) days after the Buyer purchases the Real Property.

Article III

3.1.a. The Debtor or Disbursing Agent (as the case may be) shall be responsible for timely payment of United States Trustee (“UST”) quarterly fees incurred pursuant to 28 U.S.C. §1930(a)(6). The Administrative Claims due to the UST and the Patient Care Ombudsman will be paid five (5) days after the Confirmation Date (“Pay Date”). After Confirmation, the Debtor shall continue to file monthly operating/financial reports. Monthly operating reports will be filed through the date of the Sale (anticipated to occur shortly after the Confirmation Date); thereafter, the Disbursing Agent will file with the Court quarterly reports of receipts and disbursements. UST fees will continue to accrue and be payable as long as the Case remains open. The Estate will pay UST quarterly fees as they accrue until the sale of the Debtor is consummated and equity in the Debtor is cancelled, with notice to the UST. The Debtor will be responsible for quarterly fees due upon funds transferred to the Disbursing Agent for distribution to creditors. After the Disbursing Agent is appointed, he/she will be responsible for paying UST quarterly fees on distributions (except for monies received from the Debtor on which UST fees have been paid) as long as this case remains open in the Bankruptcy Court. The Disbursing Agent shall file quarterly reports of distributions with the UST and pay quarterly fees on such distributions until this Case is closed by the Court.

3.1.b. Taxes – The Administrative Claims of the IRS and the Texas Workforce Commissions regarding post-petition payroll taxes will be paid out of the NHC Escrowed Funds on the Pay Date; and the IRS has agreed to waive its post-petition penalties. The taxes due the San Patricio Taxing Authorities for real property are dealt with in Section 3.2(a). The 2009 personal property taxes due to the San Patricio Taxing Authorities in the amount of \$19,334.95 were due on January 31, 2010 and will be paid in four (4) monthly payments of \$5,054.29.

3.1.c. Commissions Due – Commission for the Sale due to NTime in the approximate amount of \$97,500.00 and the commission due JLL, if any, will be paid in the same manner as the Post-petition Trade Payables as described below.

3.1.d. Post-petition Trade Payables – Claims for post-petition A/P not assumed by the Buyer will, once allowed by the Court, be payable approximately fifty percent (50%) after thirty (30) days after the Administrative Bar Date; approximately twenty to thirty percent (20%-30%) after the resolution of the Avoidance Actions and collection from the Avoidance Action defendants; and approximately twenty to thirty percent (20%-30%) after the Real Estate is sold.

All holders of Administrative Claims will be required to file an Administrative Claim prior to the Administrative Bar Date. An Administrative Claim form will be approved by the Court at Confirmation and served on each Creditor believed to have an Administrative Claim. A proposed form is attached hereto as **Exhibit B**.

3.1.e. NHC's DIP Claim – NHC will receive \$790,000.00 within five (5) business days (“Pay Date”) after the Confirmation Date from the NHC Escrowed Funds. NHC will receive \$316,000.00 out of the Settlement Proceeds on the Pay Date. In the thirty-sixth (36th) month after the Consummation Date, NHC will receive \$474,000.00 within five (5) days of the Estate’s receipt of the R.E. Payment which will satisfy NHC’s Administrative Claim. The Motion to

Compromise the NHC Adversary has been filed and served and a copy may be viewed at www.hirschwest.com.

3.2.a. Class 2 – Allowed Secured Claims of San Patricio Taxing Authorities – Class 2 Claims consist of the Allowed Secured Claims of San Patricio Taxing Authorities who, have the first Lien against the Debtor’s Real Property. Pursuant to the Compromise, the aggregate Claim of the San Patricio Taxing Authorities Secured by the Hospital’s Real Property is approximately \$478,173.42 and will be paid over forty-eight (48) months from the Consummation Date. Monthly payments will begin on the first of the month beginning with the second month of the Buyer’s lease payments. Assuming a Consummation Date in February 2010, then the first payment date would be April 1, 2010, leaving the principal balance to be paid over forty-eight (48) months at 12% interest resulting in a \$12,592.14 monthly payment to be paid from the Buyer’s rent income. In the event the Real Property is sold to the Buyer, the remaining Claim will be paid out of the proceeds at closing. Class 2 Claimants are Impaired and will be entitled to vote.

3.2.d. Class 5 – NHC’s Pre-Petition Claim – NHC has a consensual Lien against the Real Property pursuant to a deed of trust lien filed on August 3, 2006, in San Patricio County. NHC has filed a Proof of Claim asserting a Secured Claim in the amount of \$5,131,765.67 plus fees, interest and attorney fees. NHC asserts that its Claim is secured by the Hospital’s Real Property and personalty; however, a subordination agreement exists between NHC and MarCap with regards to the Debtor’s equipment. (MarCap has a first lien in and to the Debtor’s equipment.) Under the settlement, NHC will be allowed a pre-petition Secured Claim of \$3,825,768.00 which claim will be subordinated and junior to: a) Administrative Claims in an amount up to \$1,000,000.00 (inclusive of NHC’s \$474,000.00 Administrative Claim); b) a \$120,000.00 distribution for the Class 16 Unsecured Creditors; and c) a second distribution of

\$120,000.00 to the Unsecured Creditors after NHC is paid \$3,600,000.00 on its Secured Claim. NHC will also have an allowed Unsecured Claim in the amount of \$805,997.67 which shall be subordinate to all other Class 16 Unsecured Creditors. NHC will not recover on its subordinated Allowed Unsecured Claim unless and until all other Allowed Unsecured Creditors are paid in full, the Debtor does not believe that will occur. 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 (15th) day after the Hospital receives the Buyer's rent payment number thirty-nine (39), forty-two (42), forty-five (45) and forty-eight (48). The balance of NHC's Secured Claim will be paid from the proceeds received by the Estate from the sale of the Real Property, the closing of which is anticipated between the 37th and 48th month after the Consummation Date.

3.5 Allowed General Unsecured Claims

Class 16 – Allowed General Unsecured Creditors – Class 16 Claims consist of all Unsecured Creditors with Allowed General Unsecured Claims. The holders of Allowed Class 16 Claims, other than Arent Fox and NHC, will receive a pro rata amount of their Allowed Claim from a) the \$120,000.00 carve out from NHC's Secured Claim; b) a second \$120,000.00 distribution once NHC is paid \$3,600,000.00 on its Secured Claim; and c) a distribution based on the sums, if any, available once NHC receives \$3,825,768.00 on its Secured Claim.

3.6 Allowed Equity Interests

Class 17 – Allowed Equity Interest – All the capital stock of the Debtor previously issued and outstanding, including but not limited to that issued to NBMC, is cancelled.

Article IV- Supplementation

A. Patient Care Ombudsman – In Article IV of the Plan, certain parties are release from various claims of creditors, and creditors are enjoined from pursuing certain claims against the Debtor and Insiders of the Debtor. Carol Jendrzey, the Court appointed Patient Care Ombudsman (the “PCO”) is considered to be part of the Estate and the release of the Debtor and Estate in Section 4.3 of the Plan and the injunction in Section 4.4 of the Plan apply to the PCO. Additionally, upon Confirmation, the CPO’s duties will be terminated by the Court.

B. To the extent the Estate does not pay the post-petition, pre-confirmation Administrative Claim(s) of the Internal Revenue Service (“IRS”) and the Texas Workforce Commission (“TWC”), then none of the provisions of Sections 4.3 or 4.4 of the Plan shall be applicable to the IRS or TWC in seeking collection from any Person determined to be a “responsible person” pursuant to the Internal Revenue Code (including, but not limited to Sections 3505(b) and 6672(a)) or otherwise.

C. Notwithstanding the provisions in Article IV of the Plan, there is no intent by the Hospital and the Plan does not:

i. Affect the rights of the Texas Medicaid Authorities (including but not limited to the Texas Health and Human Services Commission) and/or the Federal Medicare authorities (including but not limited to the Federal Centers for Medicare and Medicaid Services (CMS)) from exercising their rights of recoupment, and the Debtor shall retain its rights to exhaust all administrative remedies to contest the dollar amount of any recoupment effectuated.

ii. Affect the Buyer’s obligation to fully comply with all applicable statutes, requirements and regulations pertaining to a change of ownership for the hospital, including but not limited to Medicaid and Medicare provider agreements.

D. The provisions of Section 4.3 and 4.4 of the Plan are not an attempt by the Hospital to interfere with the contractual rights of a Creditor as to a Person, other than the Hospital. To the extent a Creditor has a guaranty from a Person other than the Hospital, the Plan does not restrict a Creditor from exercising any contractual right or remedy such Creditor may have against any Person, other than the Hospital, that has executed such a guaranty. In that connection, nothing in the Plan shall restrict any right or remedy that NHC may have pursuant to any guaranty executed by McNaul for the benefit of NHC.

Disbursing Agent

7. Jay Stacy will initially serve as the Disbursing Agent to assist the Estate with the prosecution of the Avoidance Actions; and the filing of tax returns, monthly operating reports and cost reports and any administrative matters connected thereto.

Sale

8. Care Holdings purchase of the Hospital is for a purchase price of \$6,500,000.00. The sale shall occur in two tranches, both of which shall be free and clear of liens pursuant to 11 U.S.C. §363(k) and 1123(5)(D). The first tranche will be a sale of the personal property, free and clear of all liens, to close on the Consummation Date. The second tranche will occur after month 30 and before the end of month 48 after the Consummation Date, which will be a sale of the Real Estate, free and clear of liens. Care Holdings has paid the Hospital \$1,600,000.00 by replacing NHC as the DIP lender by posting \$1,500,000.00 in an escrow account subject to further order of the Court and by lending \$100,000.00 to the Hospital for working capital. An additional \$400,000.00 shall be paid by Care Holdings on or before the Consummation Date.

9. The \$4,500,000.00 purchase price for the Real Estate is to be paid to the Hospital within four years of the Consummation Date. Care Holdings' purchase obligation is to be personally guaranteed by Sunil P. Reddy. Until the purchase price is paid, the Real Property

shall remain titled in the name of the Hospital and subject to any Liens, Claims and encumbrances filed against the Real Property. The Asset Purchase Agreement (“APA”) may provide for a subrogation of the Estate’s lien in the event the Buyer desires to borrow money for further improvements to be made to the hospital. Additionally, the APA will contain certain representations and warranties regarding the hospital, its licenses, permits, equipment, accounts receivables and other property. The Buyer, in the event a breach of those representations and warranties may be able to offset rent payments or Real Estate purchase price payments which could have a negative impact on the Debtor’s payments to Creditors under the Plan.

10. Care Holdings will lease the Real Property from the Hospital for a term not to exceed forty-eight (48) months on the following basis: a) for the first five (5) months of the lease, rent shall be \$17,500.00 a month; b) during months six (6) through thirty-six (36), the rent shall be \$20,000.00 a month; and c) during months thirty-seven (37) through forty-eight (48), rent shall be \$25,500.00. Care Holdings will be responsible for all taxes, insurance and maintenance of and on the Real Property and buildings. All of the Purchased Assets being acquired by Care Holdings will be pledged to secure the lease and purchase obligation. Sunil P. Reddy will also personally guarantee Care Holdings’ obligations under the lease.

11. Care Holdings is obligated to employ all of the Hospital’s employees at their current salary and benefit accruals for a minimum of 90 days after the Consummation Date. Care Holdings will also be responsible for all employee benefits accruing within 180 days of the Filing Date and all benefits accruing post-petition. Care Holdings will also assume responsibility for maintaining all of the Hospital’s patient records.

12. On the Consummation Date, the Buyer of the Hospital’s assets and equity will have no liability for any obligation of the Hospital that accrued prior to the Consummation Date

except for those liabilities expressly assumed in the Sale Documents or which the Buyer thereafter voluntarily assumes. The Buyer will assume the TXU electrical service contract and the employee obligations as set forth above. As set forth in the Plan, the Buyer will have the ability to decide on the assumption or rejection of leases and executory contracts for a period of 60 days after the Confirmation Date, provided the Buyer has made payments on those contracts for the 60 day period. The APA, Lease, Security Agreement, Guaranty Agreement are currently being negotiated. It is the intention of the Hospital and Buyer to close on the sale and lease contemporaneously with the Confirmation Hearing which is set for March 4, 2010 at 2:30 p.m.

13. Upon the Consummation Date, Care Holdings will own 100% of the equity interest in the Hospital. All shares or capital stock presently issued to any party, including but not limited to NBMC will be cancelled and remain as authorized but unissued shares. New shares in North Bay will be issued to Care Holdings upon the Consummation Date.

14. On the Consummation Date, all of the Transferred Assets shall vest in the Buyer, free and clear of all Claims and interests, but subject to the obligations as set forth in the Plan, Sale Documents and the Confirmation Order.

DATED this 26th day of February, 2010.

NORTH BAY GENERAL HOSPITAL, INC, DEBTOR

By:

/s/ Jay Stacy

Name: Jay Stacy

Title: President

/s/ Michael J. Durrschmidt

Michael J. Durrschmidt
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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of February, 2010, a copy of North Bay General Hospital, Inc.'s Modification to its Plan of Liquidation was sent via first class mail, postage prepaid, and/or via the Clerk of the Court through ECF, to the parties listed on the attached service list.

/s/ Michael J. Durrschmidt

Michael J. Durrschmidt