

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

IN RE:	)	Case No. 15-bk-31133-DSK
	)	Chapter 11
NO PLACE LIKE HOME, INC.	)	
	)	
Debtor.	)	

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**DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT**  
*To Accompany First Amended Plan of Reorganization Dated August 8, 2016*

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## I INTRODUCTION

No Place Like Home, Inc., the debtor and debtor-in-possession in the above captioned Chapter 11 reorganization case (“NPLH” or the “Debtor”), submits this first amended disclosure statement (the "Amended Disclosure Statement") to (1) supplement and replace the Disclosure Statement to Accompany Plan of Reorganization filed on June 17, 2016 [Doc. # 192] and (2) provide to all known creditors to disclose information deemed by the Debtor to be material, important and necessary for its creditors to arrive at a reasonably informed decision in exercising their right to vote for acceptance of the First Amended Plan of Reorganization dated August 8, 2016 (the "Amended Plan") which was filed along with the Amended Disclosure Statement.

This Amended Disclosure Statement explains the circumstances leading to NPLH's bankruptcy filing, the nature of the Debtor's business and the Debtor's expectations for its business going forward, the Amended Plan and its means of implementation, and the available alternatives to the Amended Plan. The Court has determined that this Amended Disclosure Statement contains sufficient information to enable creditors to make an informed judgment about the Amended Plan.<sup>1</sup> As described herein, NPLH believes that acceptance and confirmation of this Amended Plan will provide the greatest return to creditors and the equity holder, and is superior to any available alternative.

**In general, the Amended Plan pays all creditors in full.** As described herein and more particularly in the Amended Plan the proposed payment to creditors is greater than if the Debtor were to liquidate. Priority Creditors will receive payment in full following Confirmation of the

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<sup>1</sup> This statement will be true when the Amended Disclosure Statement is submitted to creditors in connection with the solicitation of ballots; it is not true as of the date this Amended Disclosure Statement has been filed with the Court. If this Amended Disclosure Statement is approved by the Court, this footnote will be removed prior to circulation to creditors.

Amended Plan on or about the Effective Date<sup>2</sup> as defined in the Amended Plan.<sup>3</sup> Unsecured Creditors will receive an initial distribution upon Confirmation of the Amended Plan<sup>4</sup> and the remaining portion of allowed claims<sup>5</sup> (individually, an "Allowed Claim" and collectively, the "Allowed Claims") will be paid over a maximum of four years following Confirmation.<sup>6</sup> Unsecured Creditors will also receive 3% interest per annum, on any unpaid balance of each Allowed Claim, with interest accruing on the latter of the Effective Date or date the Court orders the allowance of such Allowed Claim.

The Amended Plan also provides for ownership of the business to be retained by the current equity holder. Although this treatment is described below, creditors and the equity holder should review the Amended Plan itself. Treatment of creditors and the equity holder under NPLH's proposed Amended Plan is described in more detail below.

The purpose of this Amended Disclosure Statement is to enable holders of Claims and Interests in the Debtor whose Claims and Interests are impaired under, and are entitled to vote on, the Amended Plan to make an informed decision in exercising their right to vote to accept or reject the Amended Plan.

**THIS AMENDED DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE AMENDED PLAN. PLEASE READ THIS DOCUMENT CAREFULLY.**

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<sup>2</sup> The Effective Date is the date thirty (30) days after entry of the Order confirming the Amended Plan, assuming no appeal of the Confirmation Order is taken and pending.

<sup>3</sup> Subject to order allowing the priority claim filed.

<sup>4</sup> The initial distribution to Unsecured Creditors shall also occur on or about the Effective Date subject to the claim of the Unsecured Creditor being allowed by order of the Court.

<sup>5</sup> As of the filing of this Amended Disclosure Statement, a total of 57 Proofs of Claims were filed, with 56 Claimants filing their own individual proofs of claim and the Department of Labor filing a proof of claim on behalf of the remaining scheduled Claimants (the "Department of Labor Claim"). There are 23 unresolved objections to proofs of claim. The remaining claims are Allowed Claims in the amount set forth in either: (1) the schedules, (2) filed proof of claim (not objected to) or (3) by order of this Court. [See Dkt #154 and 172].

<sup>6</sup> This assumes the Amended Plan is confirmed as proposed by the Debtor.

On August 15, 2016, the Bankruptcy Court conducted a hearing on the adequacy of the Amended Disclosure Statement and subsequently entered an order pursuant to section 1125 of the Bankruptcy Code (the “Amended Disclosure Statement Order”) approving this Amended Disclosure Statement as containing information of a kind, and in sufficient detail, to enable a hypothetical, reasonable investor, typical of the Holders of Claims against and Interests in the Debtor entitled to vote on the Amended Plan (if any), to make an informed judgment with respect to the acceptance or rejection of the Amended Plan. A copy of the Amended Disclosure Statement Order is included in the materials accompanying this Amended Disclosure Statement.

APPROVAL OF THIS AMENDED DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT DOES NOT CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT REGARDING THE FAIRNESS OR MERITS OF THE AMENDED PLAN. FURTHER, THIS AMENDED DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

Each holder of a Claim or Interest entitled to vote to accept or reject the Amended Plan, if any, should read this Amended Disclosure Statement and the Amended Plan in their entirety before voting. No solicitation of votes to accept or reject the Amended Plan may be made except pursuant to this Amended Disclosure Statement and section 1125 of the Bankruptcy Code. Except for the Debtor and their professionals, no person has been authorized to use or promulgate any information concerning the Debtor, their businesses, or the Amended Plan, other than the information contained herein, in connection with the solicitation of votes to accept or reject the Amended Plan. **Subsequent to the filing of this case, (i) neither the Debtor nor the**

**United States Bankruptcy Court for the Western District of Tennessee, Western Division (the "Court" or the "Bankruptcy Court") has authorized the communication of any information about the Amended Plan other than the information contained in this Amended Disclosure Statement and the related materials transmitted herewith or filed with the Bankruptcy Court; and (ii) Debtor has the exclusive right to solicit votes on the Chapter 11 Amended Plan submitted through and including September 16, 2016. No post-petition solicitation of votes on the Amended Plan from a creditor may be made until after September 17, 2016 [see Dkt # 153 and 224]. No Holder of a Claim or Interest entitled to vote on the Amended Plan should rely upon any information relating to the Debtor, its business, or the Amended Plan other than that contained in this Amended Disclosure Statement and the attached exhibits. Unless otherwise indicated, the sources of all information set forth herein are the Debtor and its professionals.**

**THE DEBTOR URGES ALL HOLDERS OF IMPAIRED CLAIMS TO ACCEPT THE AMENDED PLAN.**

## **II EXPLANATION OF CHAPTER 11**

### **A Overview of Chapter 11**

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Pursuant to chapter 11, the debtor attempts to reorganize its business for the benefit of the debtor, its creditors, and other parties in interest.

The commencement of a bankruptcy case creates an estate comprising all the legal and equitable interests of the debtor in property as of the date the bankruptcy petition is filed. In a chapter 11 case, sections 1101, 1107, and 1108 of the Bankruptcy Code provide that a debtor may continue to operate its business and remain in possession of its property as a “debtor in

possession” unless the bankruptcy court orders the appointment of a trustee. In the present chapter 11 case, the Debtor has remained in possession of its property and continued to operate their business as Debtor in possession.

The filing of a bankruptcy petition also triggers the automatic stay provisions of the Bankruptcy Code. Section 362 of the Bankruptcy Code provides, *inter alia*, for an automatic stay of all attempts to collect prepetition claims from the debtor or otherwise interfere with its property or business. Except as otherwise ordered by the Bankruptcy Court, the automatic stay remains in full force and effect until the effective date of a confirmed plan of reorganization.

The formulation of a plan of reorganization is the principal purpose of a chapter 11 case. The plan sets forth the means for satisfying the claims against and interests in the debtor. Generally, unless a trustee is appointed, only the debtor may file a plan during the first 120 days of a chapter 11 case (the “Exclusivity Period”). If the debtor files a plan during the first 120 days, the Exclusive Period is automatically extended an additional 60 days during which it may solicit acceptances of its plan. Additionally, section 1121(d) of the Bankruptcy Code permits the court to extend or reduce the Exclusivity Period upon a showing of “cause.” In the Debtor’s Bankruptcy Case, the Bankruptcy Court ordered an extension of the Exclusivity Period through September 16, 2016 [*See* Doc. #224].

## **B Plan of Reorganization**

Although referred to as a plan of reorganization, a debtor’s plan may provide for anything from a complex restructuring of a debtor’s business and its related obligations to a simple liquidation of the debtor’s assets. After a plan of reorganization has been filed, the holders of claims against or interests in a debtor are permitted to vote to accept or reject the plan. Before soliciting acceptances of the proposed plan, section 1125 of the Bankruptcy Code requires the



debtor to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. This Amended Disclosure Statement is presented to holders of Claims against and Interests in the Debtor to satisfy the requirements of section 1125 of the Bankruptcy Code.

If all classes of claims and interests accept a plan of reorganization, the bankruptcy court may nonetheless deny confirmation of the plan unless the court independently determines that the requirements of section 1129 of the Bankruptcy Code have been satisfied. Section 1129 sets forth the requirements for confirmation of a plan and, among other things, requires that a plan meet the “best interests” test and be “feasible.” The “best interests” test generally requires that the value of the property to be distributed to the holders of claims and interests under a plan may not be less than those parties would receive if the debtor were liquidated pursuant to a hypothetical liquidation under chapter 7 of the Bankruptcy Code. Under the “feasibility” requirement, the court generally must find that there is a reasonable probability that the debtor will be able to meet its obligations under its plan without the need for further financial reorganization. The Debtor believes that the Amended Plan satisfies all the applicable requirements of section 1129(a) of the Bankruptcy Code, including, in particular, the “best interests” test and the “feasibility” requirement.

Chapter 11 does not require that each holder of a claim against or interest in a debtor vote in favor of a plan of reorganization in order for the Bankruptcy Court to confirm the plan. At a minimum, however, the Amended Plan must be accepted by a majority in number and two-thirds in amount of those claims actually voting in at least one class of impaired claims under the plan. The Bankruptcy Code also defines acceptance of the plan by a class of interests (equity securities) as acceptance by holders of two-thirds of the number of shares actually voting. In the

present case, only the holders of Claims or Interests who are entitled to vote on the Amended Plan, and who actually vote on the Amended Plan, will be counted as either accepting or rejecting the Amended Plan.

In addition, classes of claims or interests that are not “impaired” under a plan of reorganization are conclusively presumed to have accepted the plan and thus are not entitled to vote. Accordingly, acceptances of a plan will generally be solicited only from those persons who hold claims or interests in an impaired class. A class is “impaired” if the legal, equitable, or contractual rights attaching to the claims or equity interests of that class are modified in any way under the plan. Modification for purposes of determining impairment, however, does not include curing defaults and reinstating maturity or payment in full in cash. **Under the Amended Plan, Claims in Classes 2 and 3 are impaired and are thus entitled to vote on the Amended Plan. Claims in Classes 1, and 4 are unimpaired and are thus not entitled to vote on the Amended Plan.** Administrative Claims and Unclassified Priority Tax Claims are unclassified because their treatment is prescribed by the Bankruptcy Code, and the Holders of such Claims are not entitled to vote on the Amended Plan. The holders of the equity interest listed in Class 4 is to retain her equity interest based upon her contribution to the Amended Plan and as such is not impaired.

The Debtor believes that the Amended Plan has been structured so that it will satisfy the requirements of the Bankruptcy Code, but reserves the right to seek confirmation of the Amended Plan or to amend the Amended Plan such that it can be confirmed on any ground possible including, if necessary, over the objection of any Class of Claims, including the right to request confirmation of the Amended Plan under the “cramdown” provisions of section 1129 of the Bankruptcy Code.

### III SUMMARY OF AMENDED PLAN TREATMENT

THIS IS ONLY A SUMMARY OF CERTAIN PROVISIONS OF THE AMENDED PLAN. THE AMENDED PLAN INCLUDES OTHER PROVISIONS THAT MAY AFFECT YOUR RIGHTS. YOU ARE URGED TO READ THE AMENDED PLAN IN ITS ENTIRETY BEFORE VOTING ON THE AMENDED PLAN.

The following is a brief summary of classes of creditors and interest holders under the proposed Amended Plan, and the treatment of each provided for in the Amended Plan. The full Amended Plan is attached as **Exhibit A**.

<b>Class</b>	<b>Creditors / Interest Holders</b>	<b>Treatment</b>
<b>Unclassified Administrative Claims</b>	Bankruptcy professionals and other administrative claimants	Paid in full on Effective Date (estimated October 17, 2016) or by agreement.
<b>Unclassified Priority Tax Claims</b>	Taxing authorities	Paid in full in the ordinary course of business on or before June 15, 2016. Post-Petition Taxes thru Fiscal Year End March 31, 2016 (which were paid) total \$57,524.00.
<b>Class 1</b> Estimated Amount: \$849,901.67 Estimated Number: 157	Priority Claims: Wages earned within 180 days prior to the Petition Date, not to exceed the statutory limit contained in 11 U.S.C.507(a)(4).	Allowed Priority Claims paid in full on Effective Date (estimated October 17, 2016). <sup>7</sup>
<b>Class 2</b> Estimated Amount: \$73,156.52 Estimated Number: 154	General Unsecured Claims under \$3,000.00	Payment in full equal to the allowed amount of such claim, with initial distribution on Effective Date (estimated October 17, 2016) and remaining balance of each Allowed Claim to be paid between March 31 and June 15 of 2017. Holders of Class 2 Allowed Claims will also receive 3% interest per annum, on any unpaid balance of each Allowed Claim, with interest accruing on the <u>latter</u> of the Effective Date or the date the Court orders the allowance of such Allowed Claim.

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<sup>7</sup> Priority Claims that are subject to an objection shall be paid upon entry of an order by the Court allowing such claims.

<b>Class 3</b> Estimated Amount: \$2,666,565.71 Estimated Number: 131	General Unsecured Claims	Payment in full equal to the allowed amount of such claim, with initial distribution on Effective Date (estimated October 17, 2016) and remaining balance of each Allowed Claim paid by semi-annual payments (payments occurring between (1) March 31 and June 15 and (2) October 15 and December 15 of each calendar year). Holders of Class 3 Allowed Claims will also receive 3% interest per annum, on any unpaid balance of each Allowed Claim, with interest accruing on the <u>latter</u> of the Effective Date or the date the Court orders the allowance of such Allowed Claim.
<b>Class 4</b>	Equity Interests	Preserved intact.

#### IV CONFIRMATION PROCEDURE

##### A Right to Vote on the Amended Plan

The Bankruptcy Code provides that only holders of claims or interests that are impaired under the terms of a Chapter 11 plan, and that are not deemed to have automatically rejected the Amended Plan, are entitled to vote to accept or reject the Amended Plan. Holders of claims or interests in classes that are not impaired are conclusively assumed to accept the Amended Plan and not entitled to vote.

With respect to the proposed Amended Plan, holders of Claims in Class 1 (Priority Claims) and Interests in Class 4 (equity interests) are conclusively presumed to have accepted the Amended Plan and are not entitled to vote on the Amended Plan. Holders of Claims or Interests in Class 2 (General Unsecured Claims under \$3,000) and Class 3 (General Unsecured Claims) are impaired and are entitled to vote to accept or reject the Amended Plan.

**B Acceptance or Rejection of the Amended Plan and Cramdown**

As provided in the Bankruptcy Code, a class of Claims accepts the Amended Plan if creditors in that class that hold at least two-thirds in dollar amount, and more than one-half in number, of the total of Claims in that class cast ballots vote to accept the Amended Plan. A class of equity interests accepts the Amended Plan if creditors in that class that hold at least two-thirds in dollar amount of the total of interests in that class cast ballots vote to accept the Amended Plan. If a class of Claims or Interests does not accept the Amended Plan, that Class is deemed to have rejected it.

If a Class of Claims or Interests rejects the Amended Plan and there is an accepting impaired Class of Claims, the Debtor has the right, and intends, to request confirmation of the Amended Plan nonetheless, pursuant to § 1129(b) of the Bankruptcy Code, known as a “cramdown.” Section 1129(b) permits the confirmation of a plan notwithstanding the rejection by one or more impaired classes of claims or equity interests if the plan does not “discriminate unfairly” and is “fair and equitable” with respect to each non-accepting class. The Debtor believes that the Amended Plan meets these requirements.

The Amended Plan provides for payment in full, plus interest, of all Allowed Claims, over a relatively short period. The Debtor believes that this is a better result than if its assets were liquidated under Chapter 7 of the Bankruptcy Code. Further, the equity holder retains her ownership interests through the Amended Plan. Therefore, the Debtor believes that after carefully reviewing the Amended Plan and this Amended Disclosure Statement, each holder of a Claim or Interest that is entitled to vote with respect to the Amended Plan should vote to accept the Amended Plan.

### **C Voting Instructions**

If you are entitled to vote to accept or reject the Amended Plan, a Ballot is enclosed for the purpose of voting on the Amended Plan.<sup>8</sup> Your Ballot must be returned to the following address by the deadline specified on the Ballot:

No Place Like Home, Inc.  
Amended Plan of Reorganization  
c/o Baker, Donelson, Bearman,  
Caldwell & Berkowitz, P.C.  
**Attention: E. Franklin Childress, Jr.**  
165 Madison Ave, Suite 2000  
Memphis, Tennessee 38103

If you are a creditor or equity holder entitled to vote on the Amended Plan and did not receive a Ballot, received a damaged Ballot or lost your Ballot, or if you have any questions concerning the procedures for voting on the Amended Plan, please call E. Franklin Childress, Jr. or M. Ruthie Hagan, Debtor's counsel, at (901) 577-2147 or (901) 577-8214, respectively.

### **D Confirmation Hearing**

Pursuant to § 1128 of the Bankruptcy Code, the Confirmation Hearing will be commenced on the date set forth in the notice provided with this Amended Disclosure Statement, before the Honorable David S. Kennedy, Chief Judge of the United States Bankruptcy Court for the Western District of Tennessee, at the United States Bankruptcy Court for the Western District of Tennessee, United States Courthouse, 200 Jefferson Ave, Room 945, Memphis, Tennessee 38103. The Bankruptcy Court has directed that objections, if any, to confirmation of the Amended Plan be served and filed so that they are received on or before the deadline stated in such notice. The Confirmation Hearing may be adjourned from time to time by the

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<sup>8</sup> Ballots will be enclosed when the Amended Plan and Amended Disclosure Statement are mailed out for voting. If this Amended Disclosure Statement is approved by the Court, this footnote will be removed prior to circulation to creditors.

Bankruptcy Court without further notice except for the announcement of the adjournment date at the Confirmation Hearing.

## **V BACKGROUND OF NPLH AND FACTORS LEADING TO THE BANKRUPTCY FILING**

NPLH is a Tennessee corporation established in 1999 which provides home health care to pediatric patients. NPLH is owned by Mary Lynn Flood (100%) who founded the company. It is a family owned and operated business. For numerous years, NPLH operated out of the personal residence of Mary Lynn Flood.

Since its founding, NPLH has provided an important service for our community - putting nurses together with pediatric patients needing in home care. NPLH maintains a solid patient/customer base which includes eighty-three (83) pediatric patients from which it derives its primary sources of income.

NPLH currently employs approximately two hundred (200) individuals in the Shelby County, Fayette County and Tipton County, Tennessee area, including nursing staff. While the patient base of NPLH has remained constant, NPLH has recently been scrutinized for its practice of compensating certain of its independent contractors.

With the increase in courts and government agencies, including the U.S. Department of Labor and its Wage and Hour Division, scrutinizing the healthcare industry, especially with respect to individuals engaged in home or companionship care for the ill or otherwise infirm patients, including NPLH's prior system of compensating its nurses engaged as independent contractors.

Because of certain actions initiated by nurses involved in arbitrations against NPLH and the numerous threats, from attorneys for these nurses, of an attempted class action, along with

aggressive solicitation campaigns by attorneys for these nurses for additional clients, without admitting any Fair Labor Standards Act ("FLSA") violation, NPLH made the business decision to change the prior classification of its independent contractor nurses, and reclassified them as non-exempt hourly employees under the FLSA. Debtor's new compensation practice for such nurses was effective Monday, November 16, 2015; after which time, NPLH no longer scheduled or used any nurse that was previously classified as an independent contractor.

Prior to November 16, 2015, NPLH had these nurses classified as independent contractors. After successfully dismissing an attempted class action lawsuit and deferring individual claimants to arbitration, NPLH decided that, without admitting liability, it would reclassify these nurses as employees and pay them overtime for the past two years for all hours worked over 40 in a workweek (*plus liquidated damages*). In an effort to avoid the exorbitant attorneys' fees and costs associated with defending class action lawsuits as well as a Chapter 7 bankruptcy resulting from a potential judgment, NPLH filed Chapter 11 bankruptcy.

It is important to note, NPLH could have made the business decision to litigate and defend litigation as it was commenced which would have resulted in years of litigation, a disruptive work environment, and potentially the closure of the business (and loss of jobs). Litigation may have resulted in more favorable defense verdicts and settlements which could have benefitted the Debtor. The decision to file the above-styled bankruptcy case was purely a business decision to expeditiously return the focus of the business back to the patients.

NPLH believes the filing of this bankruptcy has helped afford the Debtor (1) breathing room from the threat of additional arbitration demands and continued disruption of Debtor's



work environment by plaintiffs' counsel<sup>9</sup>, (2) ability to transition its nursing staff to W-2 employees, (3) ability to continue to provide viable employment to numerous individuals, (4) ability to continue to provide a valuable service to the community and Debtor's patients, and (5) sufficient time to allow Debtor to proceed with its reorganization efforts resulting in the filing of the Amended Plan which proposes to pay Allowed Claims in full, plus interest.<sup>10</sup>

## **VI THE BANKRUPTCY CASE TO DATE**

### **A Post-Petition Operations**

Subsequent to the Petition Date, NPLH has continued to operate its business as a debtor-in-possession. An official committee of unsecured creditors (the "Unsecured Creditors Committee") was formed on or about February 16, 2016. [See Doc. # 97, 107]. The Unsecured Creditors Committee retained counsel to represent it in this case. [See Doc. # 157, 158]. The Debtor has engaged in discussions and negotiations with the Unsecured Creditors Committee and its counsel resulting in the filing of this Amended Plan.

The Debtor's assets consist primarily of the Accounts Receivables and available Cash from Checking/Savings Accounts. The Debtor also asserts an ownership interest in a Certificate of Need and a Business License. The value of the Certificate of Need and Business License are difficult to determine in a liquidation due to required approvals by federal and/or state regulatory agencies for any transfer. As such, the Debtor has not ascribed any value to these assets in its liquidation analysis. The Debtor values other personal property, which consists of office furniture, equipment and other leasehold improvements to be approximately \$50,000.00. The

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<sup>9</sup> After the commencement of this bankruptcy case, NPLH obtained an injunction against the law firm of Nichols Kaster PLLP which limited the law firm's advertisement and solicitation campaign to recruit additional clients. See A.P. No. 15-405.

<sup>10</sup> As of the filing of this Amended Disclosure Statement, there has been no findings of liability by a court, arbitration panel or other administrative body as to any liability of the Debtor for alleged violations of the FLSA.

Debtor values these assets as of the Petition Date and the date of the last filed Monthly Operating Report to be as follows:

<b>Assets</b>	<b>Approximate Value as of Petition Date</b>	<b>Approximate Value as of Last Monthly Operating Report (June 30, 2016)</b>
Accounts Receivable	\$2,400,000.00	\$2,022,198.62
Checking/Savings Account	\$958,918.84	\$517,610.79
Qualified Settlement Fund Trust	\$0	\$1,000,000.00 <sup>11</sup>
Other Assets (Office furniture, leasehold improvements and equipment	\$50,000.00	Same, less depreciation
Business License and Certificate of Need	N/A	N/A
Total Assets	\$3,408,918.84	\$3,589,809.41

As there are no secured creditors in this case, there was no need for a cash collateral order in this case. Debtor has been using cash in the ordinary course of business, and any non-ordinary course of business transaction has been approved by the Court.

The Debtor also took steps to engage appropriate professionals to assist in the case, including Debtor's counsel. Debtor engaged ordinary course professionals such as an accountant and now former corporate counsel.<sup>12</sup>

Prior to submission of this Amended Disclosure Statement, Debtor deposited \$1,000,000.00 into a trust account to be distributed pursuant to a confirmed Chapter 11 Amended Plan or by further order of the court (the "QSF Trust"). The QSF Trust was approved by the Court on June 14, 2016 [*See* Dkt #188].

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<sup>11</sup> Pursuant to Order entered by the Bankruptcy Court styled Order Allowing Debtor to Establish and Fund a Qualified Settlement Fund Trust [ Dkt # 188] the reference sum is no longer property of the estate but is to be distributed to creditors holding Allowed Claims pursuant to the terms of the Amended Plan.

<sup>12</sup> Since the filing of this case, NPLH's former corporate counsel, David Velandier, retired from the practice of law.

As of the date of the Amended Disclosure Statement, there are approximately \$849,901.67 in allowed priority claims. There are approximately \$2,739,722.23 in unsecured claims.<sup>13</sup> The Amended Plan proposes to pay all Allowed Claims in full, plus interest.

Operationally, the Debtor has continued to provide quality patient care. Because of the uncertainty in budgeting with the change in compensation practices, Debtor experienced some uncertainty with increased costs to the business. The Debtor has stabilized these uncertain expenses, and the Debtor has prepared a budget based on the company's operations over the last 6 months as it relates to wages and other historical data.

The Debtor remains optimistic that the company is well on a path toward stabilization, and anticipates a viable business operation for many years to come.

## **VII NPLH'S CONTINUED OPERATIONS**

NPLH is uniquely positioned for a successful reorganization. In spite of the uncertainty of increased expenses due to the change in compensation practices, the quality of the Debtor's patient care has never been questioned. In fact, the Debtor maintains a strong patient base.

The QSF Trust created by the Debtor along with the cash contribution (the "Cash Contribution") by John Flood and Mary Lynn Flood in the amount of \$950,000.00 will provide the initial catalyst to fund the initial distributions under the Amended Plan (the "Initial Distributions Funding"). Available cash on hand from continued collection of accounts receivable (along with generating new accounts receivable as the business continues to thrive) will fund the remaining distributions under the Amended Plan. NPLH has prepared financial

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<sup>13</sup> As of the filing of this Amended Disclosure Statement, a total of 57 Proofs of Claims were filed, with 56 Claimants filing their own individual proofs of claim and the Department of Labor filing a proof of claim on behalf of the remaining scheduled Claimants (the "Department of Labor Claim"). There are 23 unresolved objections to proofs of claim. The remaining claims are Allowed Claims in the amount set forth in either: (1) the schedules, (2) filed proof of claim (not objected to) or (3) by order of this Court. [See Dkt #154 and 172]. Of the 23 unresolved claims, the priority claim listed in the proofs of claim are the same as the scheduled claim amounts; therefore, priority claims total \$849,901.67.

projections for the initial four-year period post-Confirmation, which are attached hereto as **Exhibit B** (the “Projections”). NPLH believes that the Projections are conservative and achievable.<sup>14</sup>

## **VIII AMENDED PLAN OF REORGANIZATION**

### **A Payment of Administrative Claims**

Debts incurred after the commencement of a bankruptcy case are generally referred to as “administrative claims” or “administrative expenses.” In order to confirm a plan of reorganization, all administrative expenses must be paid promptly after confirmation of the plan, in cash and in full, or subject to agreement between the Debtor and the holders of such claims. In general, administrative claims fall into two categories: the allowed fees of attorneys and other professionals employed by the estate, and other obligations of the business resulting from the ordinary course of its operations.

Professional fees are entitled to priority as administrative expenses only to the extent that they are approved by the Bankruptcy Court. To date, no fee application has been approved by the Court. Counsel for the Debtor anticipates filing a fee application within the next 45 days. Estimated additional professional fees through confirmation of the Amended Plan include anticipated fee applications by both LDP Law, LLC and Maynard Cooper & Gale, P.C. (Counsel for the Unsecured Creditors Committee). All outstanding fees remain subject to Court approval (and review by the U.S. Trustee's Office). Debtor intends to pay any outstanding professional fees due to Baker Donelson and/or Stallings & Associates from its continued operations in the ordinary course of business.<sup>15</sup> Debtor anticipates the only administrative expenses due at the

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<sup>14</sup> The Projections are subject to the limitations and risk factors set forth in Section X, below.

<sup>15</sup> Subject to Court Approval (and review by the U.S. Trustee's Office).

time of confirmation will be fees due to the attorneys for the Unsecured Creditors Committee, subject to Court approval and review by the U.S. Trustee's Office (the "Allowed Creditors Committee Fees").

Administrative expense priority is also afforded to other debts incurred by the Debtor in the course of operating during the bankruptcy case, whether in ordinary course of operating the business, or in connection to the case itself (e.g., quarterly fees due to the U.S. Trustee). To the extent any U.S. Trustee quarterly fees are due and unpaid as of the Amended Plan Effective Date, they will be paid in the ordinary course of business. Because the business is paying its post-petition bills in the ordinary course, it is unlikely there will be any expenses of operation from the period of the Chapter 11 case that are due and remain unpaid at the time of confirmation. To the extent that there are, they will be paid in the ordinary course of business.

## **B Treatment of Creditor and Equity Classes**

The Amended Plan has a total of three classes of creditors and equity holders. The classes and their treatment are summarized below.

### **1. Class 1 (Priority Claims)**

Class 1 consists of unsecured claims that are entitled to priority under the Bankruptcy Code, and not otherwise classified under the Amended Plan. Certain claims are entitled to priority of payment under the Bankruptcy Code, including some types of tax debt, and certain employee wage claims. As of the date of the Amended Disclosure Statement, there are approximately \$849,901.67 in priority claims.<sup>16</sup>

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<sup>16</sup> As of the filing of this Amended Disclosure Statement, a total of 57 Proofs of Claims were filed, with 56 Claimants filing their own individual proofs of claim and the Department of Labor filing a proof of claim on behalf of the remaining scheduled Claimants (the "Department of Labor Claim"). There are 23 unresolved objections to proofs of claim. The remaining claims are Allowed Claims in the amount set forth in (1) the schedules, (2) filed proof of claim or (3) by order of this Court. [See Dkt #154 and 172]. Of the 23 unresolved claims, the priority

The Amended Plan proposes to pay in full as of the Effective Date the allowed amount of all allowed priority claims from the Initial Distributions Funding. No distribution on a Disputed Claim<sup>17</sup> will be made until such claim is allowed by order of the Court. The Reorganized Debtor shall maintain a reasonable reserve to fund such Disputed Claim if allowed. The Class 1 claims are therefore unimpaired, and not entitled to vote on the Amended Plan.

**2. Class 2 (General Unsecured Claims under \$3,000.00)**

Class 2 consists of the claims of general unsecured creditors holding Allowed Claims in an amount of \$3,000.00 or less. The Debtor estimates the aggregate amount of all Class 2 Claims to be approximately \$73,156.52 as of the Confirmation Date. The Amended Plan proposes to pay all Allowed Claims in full, with 3% interest per annum, on any unpaid balance of each Allowed Claim, with interest accruing on the latter of the Effective Date or the date the Court orders the allowance of such Allowed Claim.<sup>18</sup> The Amended Plan provides for allowed Class 2 general unsecured creditors to receive payment in full of the Allowed Claims, in two payments, commencing on the Effective Date. The two payments on Class 2 Allowed Claims will be paid as follows:

Payment will be on or about the Effective Date.	Unsecured Creditor initial distribution on all Allowed Claims will be <i>pro rata</i> share (calculated in conjunction with the Allowed Claims in Class 3) of QSF Trust funds <sup>19</sup> and Cash Contribution funds remaining after payment of the Allowed Creditors Committee Fees and allowed priority claims.
2017 Payment	Amount of payment will be the remaining

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claim listed in the proofs of claim are the same as the scheduled claim amounts; therefore, priority claims total \$849,901.67.

<sup>17</sup> As defined in the Amended Plan.

<sup>18</sup> As of the filing of this Amended Disclosure Statement, there are 23 unresolved objections to proofs of claim. The remaining claims are Allowed Claims in the amount set forth in either: (1) the schedules, (2) filed proof of claim or (3) by Order of this Court [*See* Dkt #154 and 172].

<sup>19</sup> The Qualified Settlement Fund Trust funds shall only be used to pay allowed Priority Wage Claims and unsecured claims.

Payment will be made between <u>March 31 and June 15, 2017</u>	balance of the remaining each Allowed Claim, including 3% interest per annum, on the unpaid balance of each Allowed Claim, with interest accruing on the <u>latter</u> of the Effective Date or the date the Court orders the allowance of such Allowed Claim.
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The Class 2 claims are impaired, and are therefore entitled to vote on the Amended Plan.

### 3. Class 3 (General Unsecured Claims)

Class 3 consists of the balance of claims of general unsecured creditors holding Allowed Claims. The Debtor estimates the aggregate amount of all Class 3 Claims to be approximately \$2,666,565.71 as of the Confirmation Date. The Amended Plan proposes to pay all Allowed Claims in full, with 3% interest per annum, on any unpaid balance of each Allowed Claim, with interest accruing on the latter of the Effective Date or the date the Court orders the allowance of such Allowed Claim.<sup>20</sup>

The Amended Plan provides for allowed Class 3 general unsecured creditors to receive payment in full of the Allowed Claims, in semi-annual payments, on the Effective Date. The semi-annual payments will be paid as follows:

Payment will be on or about the Effective Date.	Unsecured Creditor initial distribution on all Allowed Claims will be <i>pro rata</i> share (calculated in conjunction with the Allowed Claims in Class 2) of QSF Trust funds <sup>21</sup> and Cash Contribution funds remaining after payment of Allowed Creditors Committee Fees and allowed priority claims.
2017 Semi-Annual Payment  Payment will be made between <u>March 31 and June 15, 2017</u>	Amount of payment will be <u>at least 25%</u> of the remaining balance of each Allowed Claim amount due after application of the initial distribution (the "Claim Balance"),

<sup>20</sup> As of the filing of this Amended Disclosure Statement, there are 23 unresolved objections to proofs of claim. The remaining claims are Allowed Claims in the amount set forth in either: (1) the schedules, (2) filed proof of claim or (3) by Order of this Court [*See* Dkt #154 and 172].

<sup>21</sup> The Qualified Settlement Fund Trust funds shall only be used to pay allowed Priority Wage Claims and unsecured claims

	plus 3% interest per annum, on any unpaid balance of each Allowed Claim, with interest accruing on the <u>latter</u> of the Effective Date or the date the Court orders the allowance of such Allowed Claim.
2017 Semi-Annual Payment  Payment will be made between <u>October 15 and December 15, 2017</u>	Amount of payment will be <u>at least 12.5%</u> of the Claim Balance, plus 3% interest per annum, on any unpaid balance of each Allowed Claim, with interest accruing on the <u>latter</u> of the Effective Date or the date the Court orders the allowance of such Allowed Claim.
2018 Semi-Annual Payment  Payment will be made between <u>March 31 and June 15, 2018</u>	Amount of payment will be <u>at least 12.5%</u> of the Claim Balance, plus 3% interest per annum, on any unpaid balance of each Allowed Claim, with interest accruing on the <u>latter</u> of the Effective Date or the date the Court orders the allowance of such Allowed Claim.
2018 Semi-Annual Payment  Payment will be made between <u>October 15 and December 15, 2018</u>	Amount of payment will be <u>at least 12.5%</u> of the Claim Balance, plus 3% interest per annum, on any unpaid balance of each Allowed Claim, with interest accruing on the <u>latter</u> of the Effective Date or the date the Court orders the allowance of such Allowed Claim.
2019 Semi-Annual Payment  Payment will be made between <u>March 31 and June 15, 2019</u>	Amount of payment will be <u>at least 12.5%</u> of the Claim Balance, plus 3% interest per annum, on any unpaid balance of each Allowed Claim, with interest accruing on the <u>latter</u> of the Effective Date or the date the Court orders the allowance of such Allowed Claim.
2019 Semi-Annual Payment  Payment will be made between <u>October 15 and December 15, 2019</u>	Amount of payment will be <u>at least 12.5%</u> of the Claim Balance, plus 3% interest per annum, on any unpaid balance of each Allowed Claim, with interest accruing on the <u>latter</u> of the Effective Date or the date the Court orders the allowance of such Allowed Claim.
2020 Payment  Payment will be made between <u>March 31 and June 15, 2020</u>	Amount of payment will be <u>the balance</u> of the Claim Balance, plus 3% interest per annum, on any unpaid balance of each Allowed Claim, with interest accruing on the <u>latter</u> of the Effective Date or the date the



	Court orders the allowance of such Allowed Claim.
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The Reorganized Debtor reserves the right to make additional distributions ("Excess Payments") on the Class 3 Allowed Claims as it determines in its sole discretion. Any Excess Payments made will be applied, first, to reduce the last payment due on the Class 3 Allowed Claims, i.e. the 2020 Payment, then to the second 2019 Semi-Annual Payment, etc.

The Class 3 claims are impaired, and are therefore entitled to vote on the Amended Plan.

#### **4. Class 4 (Equity)**

Class 4 consists of all equity interests in NPLH.

The Amended Plan provides for the holder of the Class 4 Claim to retain her equity interest. The Class 4 claim is therefore unimpaired, and not entitled to vote on the Amended Plan.

#### **C Executory Contracts**

The Bankruptcy Code classifies contracts as to which further performance is due from both sides as "executory." Over the course of the bankruptcy case or under its Amended Plan of reorganization, a debtor must "assume" or "reject" all executory contracts. In order to assume a contract, the debtor must cure all defaults and thereafter comply with the contract according to its terms. If a contract is rejected, performance on both sides ordinarily terminates and the other party is entitled to assert a claim for damages, which will be treated as a general unsecured pre-bankruptcy claim; i.e., a Class 3 claim.

In this case, the Debtor has a limited number of material executory contracts. The Amended Plan provides that executory contracts not expressly rejected under the Amended Plan

will be deemed assumed which includes, but not limited to, Debtor's Lease Agreement for the premises located at 354 New Byhalia Road, Collierville, Tennessee.

## **IX IMPLEMENTATION OF THE AMENDED PLAN**

### **A Revesting Subject to Amended Plan**

On the Effective Date, all property will revest in the Reorganized Debtor, free and clear of claims and liens, except as specified in the Amended Plan. From and after the Effective Date, the Reorganized Debtor will be able to freely use or transfer its cash and assets, enforce its rights and exercise its powers, and otherwise conduct its business in its unfettered discretion, subject only to the requirements of the Amended Plan, and otherwise applicable non-bankruptcy law.

### **B Bankruptcy Transition and Procedure**

Matters subject to the Court's retained jurisdiction will be initiated and prosecuted following the Effective Date substantially in the same manner as they would be prior to the Effective Date. Notice of post-Confirmation matters will be given to the Reorganized Debtor, the US Trustee, and persons who request notice in writing after the Confirmation Date. NPLH will file quarterly reports and continue to pay US Trustee fees after the Confirmation Date and until entry of the Final Decree.

The Amended Plan anticipates that NPLH will close the bankruptcy case as soon as reasonably possible after the Effective Date.

### **C Management and Corporate Matters**

Mary Lynn Flood will continue to be 100% owner of the Reorganized Debtor. John Flood will continue to be the President of the Reorganized Debtor. All other management will remain the same.

#### **D Objections to Claims**

The Debtor and Reorganized Debtor may object to a Claim at any time. **If an objection is filed, the Claim will be treated as a Disputed Claim, and will not receive any distribution until the objection is resolved.** As of the filing of this Amended Disclosure Statement, there are 23 Disputed Claims pending [See Dkt #120].

Any Claim or Amended Claim that was not timely filed by the applicable Claims Bar Date [See Dkt #53], or not otherwise resolved by the Court's Orders dated April 27, 2016 and June 2, 2016 [Dkt #154 and 172], will be disallowed and/or reduced to the scheduled amount.

#### **E Co-Obligor Claims**

The Amended Plan includes “Co-Obligor Claims” provisions, which essentially provide that a debt of the Debtor which could also be asserted as a claim against another person, such as a guarantor (a “Related Claim”) shall be asserted only against the Debtor as long as the Reorganized Debtor is in compliance with the terms of the Amended Plan. The premise of this provision is that creditors are only entitled to be paid in full once, and that the Amended Plan provides an appropriate and efficient means of paying all creditors.

#### **F Release of Contributing Parties**

The Amended Plan will be funded in part by contributions from NPLH's Owner, Mary Lynn Flood, and NPLH's President, John Flood (collectively referred to as the “Contributing Parties”). In exchange for such funding contributions, *potential* claims, including but not limited to, any FLSA-related claim or litigation arising from a bona fide dispute regarding payment of overtime wages, against the Contributing Parties shall be released pursuant to the Amended Plan.

The Amended Plan Proponent estimates a total contribution from the Contributing Parties of \$950,000.00 (which will be immediately available for distribution pursuant to the Amended

Plan, upon a final, non-appealable order confirming the Amended Plan). In exchange for the payment of the \$950,000.00 by the Contributing Parties, all claims creditors may *arguably*<sup>22</sup> hold against any or all of the Contributing Parties will be released and will be forever barred, estopped and enjoined from asserting those claims against the Contributing Parties.

The amount contributed by the Contributing Parties is substantial. Further, these parties condition their \$950,000.00 contribution on receiving the releases contemplated by the Amended Plan. Simply put, the *Contributing Parties will only make this substantial contribution if these releases and related injunctions are part of the Amended Plan*. The Contributing Parties will not agree to make their substantial contribution for the benefit of the estate and creditors if the Contributing Parties remain vulnerable to potential FLSA-related litigation and liability after Amended Plan confirmation. Because of the value provided by the contribution of \$950,000.00 by the Contributing Parties, the Plan Proponent believes it is appropriate to provide the releases described herein. Upon the Contributing Parties' release, proceeds of \$950,000.00 shall be distributed pursuant to the Amended Plan.

## **G Discharge**

The Amended Plan provides for a broad discharge of all claims that are not timely asserted in the bankruptcy case, or which are asserted and disallowed by the Bankruptcy Court. The Amended Plan prohibits efforts to pursue collection on discharged claims.

## **H Consummation**

For all purposes, Consummation (and substantial consummation of the Amended Plan) shall occur the instant upon which the first distribution of cash or property have been made to

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<sup>22</sup> To date, there has been no finding of liability against the company or John Flood and Mary Lynn Flood individually. John Flood and Mary Lynn Flood affirmatively state that they are not subject to claims that may be asserted under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et seq.

any class of Creditors under the Amended Plan, at which time, the Amended Plan shall be deemed fully consummated.

## **X ALTERNATIVES TO THE PROPOSED AMENDED PLAN**

### **A Going Concern Sale in Chapter 11**

NPLH believes that any sale at this time would be depressed by the event of the Chapter 11 case, the potential FLSA claims, certain state and regulatory approval requirements for any transfer, and the nature of a bankruptcy sale. Further, NPLH believes that purchasers would value the NPLH operation based on predictable and established operating results. Although NPLH has successfully operated through the bankruptcy case, operation in a Chapter 11 case inherently involves substantial extraordinary costs and business disruption. As a consequence, a sale during or immediately following bankruptcy would result in a depressed sale price that would not give full value to NPLH's creditors and equity holders.

### **B Liquidation**

NPLH believes that a liquidation of its assets would be unreasonable, and entirely ineffective in realizing value for NPLH's creditors and equity holders. The primary asset in a liquidation would be the Accounts Receivables, which could be expected to command a lower price in a liquidation scenario than as part of an ongoing operating enterprise because collectability may be unpredictable. There is little likelihood that the collection of Accounts Receivable could be pursued effectively without the Debtor's involvement. The amount that might be recovered from NPLH's Accounts Receivables in a Chapter 7 liquidation is highly

uncertain, at best. NPLH's estimate of the liquidation value of its assets is shown in summary attached hereto as Exhibit C.<sup>23</sup> There is little or no liquidation value to any other assets.

Based on NPLH's best estimates, it is likely that a Chapter 7 liquidation would not generate funds sufficient to pay the unsecured debt. Liquidation values shown would have to be discounted by the costs of sale, costs to attempt to collect the Accounts Receivable, and the costs of Chapter 7 administration, both of which could be substantial. The cessation of operations in a Chapter 7 may increase claims, and some of these claims may arise from post-petition obligations and therefore be entitled to administrative priority.

The liquidation value of Debtor consists primarily of the proceeds from a sale of the Debtor's assets and collection of certain accounts receivable. The proceeds from a Chapter 7 liquidation that would be available to all holders of unsecured claims would be reduced by the costs and expenses of liquidation and post-petition claims against the Debtor during the liquidation period. Costs of liquidation under Chapter 7 of the Bankruptcy Code would include the fees and commissions of a trustee and, of course, other professionals (including financial advisors and accountants) retained by the trustee, taxes and asset disposition expenses and claims arising during the Chapter 7 case and other administrative claims arising from post-petition wages.<sup>24</sup> For purposes of this analysis, the Debtor has estimated such cost at approximately \$1,739,172.77 which amount includes, among other things, commissions, payment of priority tax claims, taxes due on the sale of the assets, pre-petition priority claims and any outstanding post-

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<sup>23</sup> NPLH does not equate "Liquidation Value" with the fair market value threshold imposed by Tenn. Code Ann. § 35-5-118. Fair market value is higher, since it would be arrived at during or immediately after an intentionally-driven, coordinated marketing and sales effort. Liquidation Value assumes a "fire sale" price obtained on the heels of an aborted chapter 11 proceeding.

<sup>24</sup> Payroll is paid one week in arrears, so at the time of any liquidation, one to two weeks of payroll may be due.

petition wages due. Further, there will be administrative expenses which include those expenses under section 503(b)(8) relating to the closure of a health care business.

NPLH believes that a Chapter 7 liquidation would involve substantial uncertainty for unsecured creditors. Further, even to the extent it did result in payment, it would not be a more favorable result than the payment in full provided by the Amended Plan. Debtor estimates Unsecured Creditors would receive less than 33% of their unsecured claim in a Chapter 7 liquidation. As an additional factor, a substantial number of the creditors are current employees of the Debtor. A Chapter 7 liquidation will undoubtedly result in loss of all jobs.

Additionally, in a Chapter 7 liquidation, there would be no return to the equity holder.

The liquidation itself could trigger certain priority claims and other priority payments that otherwise would be due in the ordinary course of business. Priority claims would be paid in full out of the liquidation proceeds before any balance would be made available to pay unsecured claims or to make any distributions in respect to interests.

It is also uncertain when unsecured creditors might be paid in a Chapter 7 liquidation. Including other issues of administration, NPLH estimates that it would be between 9 and 12 months before unsecured creditors would receive any payment in a liquidation, and there is a significant chance the time would be longer, if such a distribution was forthcoming at all.

Additionally, as reflected in Exhibit C, significant reductions in values of the Debtor's interest in accounts receivable would likely occur.

This analysis is provided solely to disclose the holders of claims and interests the effects of a hypothetical Chapter 7 liquidation of the Debtor, subject to the assumptions set forth in the analysis. In confirming the Amended Plan, the Bankruptcy Court will decide whether the Amended Plan provides a greater recovery for creditors and interest holders than a liquidation of

the Debtor under Chapter 7 (the "best interest test"). In doing so, the Bankruptcy Court will make its own findings as to the liquidation value of the Debtor. The Debtor's liquidation analysis was prepared to assist the Bankruptcy Court in making the determination and should not be used for any other purpose.

The liquidation analysis is based on assumptions and estimates that, although considered reasonable by the Debtor, are inherently subject to significant uncertainties and contingencies beyond the control of Debtor. Accordingly, there can be no assurance that the results shown would be realized if the Debtor was liquidated and actual results in such a case could vary materially from those presented. If actual results were lower than those shown, or if the assumptions used in formulating the liquidation analysis were not realized, distributions to each member of each class of claims could be adversely affected.

## **XI OTHER ISSUES**

### **A Feasibility of the Amended Plan**

The Bankruptcy Code requires that NPLH demonstrate that confirmation of the Amended Plan is not likely to be followed by liquidation or the need for further reorganization. NPLH believes that it will be able to perform all of its obligations under the Amended Plan in a timely manner, and that the Amended Plan is therefore feasible. In fact, NPLH has established, pre-Confirmation, an initial payment of \$1,000,000.00 in the QSF Trust to be distributed pursuant to a Chapter 11 Amended Plan. Additionally, certain interested third parties, Mary Lynn Flood and John Flood, are contributing \$950,000.00, contingent on and, in exchange for a release of their respective *potential* individual liability.<sup>25</sup> **This additional influx of cash will allow for an initial**

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<sup>25</sup> To date, there has been no finding of liability against the company or John Flood and Mary Lynn Flood individually. John Flood and Mary Lynn Flood affirmatively state that they are not subject to claims asserted under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et seq.



*distribution to creditors, upon confirmation, for at least 50% of the company's obligations.*<sup>26</sup>

Additionally, the initial distribution, alone, under the Amended Plan will be more than what the creditors would receive in a Chapter 7 liquidation.<sup>27</sup> The initial distribution shows NPLH's creditors its good faith effort to pay a substantial portion of the outstanding debt within 30 days of Confirmation of the Amended Plan.

The remaining indebtedness will be paid within four years with semi-annual distributions with the first semi-annual distribution being at least 25% of the Claim Balance.<sup>28</sup> All remaining semi-annual distributions will be at least 12.5% of the Claim Balance.<sup>29</sup>

Although the financial Projections offered in support of the Amended Plan are subject to various assumptions and risk factors, NPLH believes that they are reasonable and achievable. NPLH has endeavored to be conservative with regard to the assumptions that inform the Projections. In order to be conservative, NPLH used what it believes to be at the lower end of the range of reasonable estimated revenue growth. The Projections should be read in conjunction with the risk factors set forth in this Amended Disclosure Statement, as they may affect the financial feasibility of the Amended Plan.

THE PROJECTIONS ARE PRESENTED SOLELY FOR THE PURPOSE OF PROVIDING "ADEQUATE INFORMATION" UNDER SECTION 1125 OF THE BANKRUPTCY CODE TO ENABLE THE HOLDERS OF CLAIMS AND INTERESTS IN VOTING CLASSES TO MAKE AN INFORMED JUDGMENT ABOUT THE AMENDED PLAN AND SHOULD NOT BE USED OR RELIED UPON BY ANY OTHER ENTITY OR

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<sup>26</sup> Consisting of the allowed Priority and Unsecured Claims.

<sup>27</sup> Under Chapter 7, total payment to Allowed Claims will be approximately **\$1,753,098.81**. The initial distribution under Debtor's Chapter 11 Amended Plan will be **\$1,950,000** (with the remaining Allowed Claims paid within four years).

<sup>28</sup> Plus interest at 3% per annum.

<sup>29</sup> Plus interest at 3% per annum.

FOR ANY OTHER PURPOSE, INCLUDING THE PURCHASE OR SALE OF CLAIMS, SECURITIES OR EQUITY INTERESTS IN NPLH OR THE REORGANIZED DEBTOR.

MANY FACTORS COULD CAUSE THE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS OF THE REORGANIZED DEBTOR TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS THAT MAY BE EXPRESSED OR IMPLIED BY THE PROJECTIONS. SHOULD ONE OR MORE OF THESE RISKS OR UNCERTAINTIES MATERIALIZE, OR SHOULD ANY ASSUMPTIONS UNDERLYING THE PROJECTIONS PROVE INCORRECT, ACTUAL RESULTS COULD VARY MATERIALLY FROM THOSE SET FORTH IN THE PROJECTIONS. NPLH DOES NOT INTEND, AND DOES NOT ASSUME ANY DUTY OR OBLIGATION, TO UPDATE OR REVISE THE PROJECTIONS, WHETHER AS THE RESULT OF NEW INFORMATION, FUTURE EVENTS OR OTHERWISE, EXCEPT AS OTHERWISE REQUIRED BY LAW.

THE PROJECTIONS WERE NOT PREPARED WITH A VIEW TO COMPLYING WITH THE GUIDELINES FOR PROSPECTIVE FINANCIAL STATEMENTS PUBLISHED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS NOR IN ACCORDANCE WITH GAAP. THE PROJECTIONS HAVE NOT BEEN EXAMINED OR COMPILED BY INDEPENDENT AUDITORS OR ACCOUNTANTS.

## **B Risk Factors**

There are a number of risk factors to be considered in weighing the prospect that NPLH will successfully complete its payments under the Amended Plan. In addition to the risks inherently associated with any business, the following factors should be considered.

First, NPLH could default on obligations prior to the date provided for final payment of unsecured creditors.

Second, NPLH's business is very closely tied to continuing patient care, patients, ability to staff demands of patients and highly regulated reimbursement rates by Medicaid, TennCare and other third party insurance companies. In recent years, NPLH has seen steady growth in its patient base. Should patient care, number of patients, staffing or reimbursement rates deteriorate, NPLH's ability to perform under the Amended Plan would be less certain.

Third, NPLH is a healthcare business, and therefore could be susceptible to government and other regulatory conditions affecting the healthcare industry.

### **C Tax Consequences**

This Amended Disclosure Statement does not purport to provide tax advice. Creditors and equity holders should consult their own tax advisors regarding any questions as to tax implications of the Amended Plan. The following statement is intended only to provide a general discussion for the purposes of evaluating the Amended Plan, but should not be relied upon as definitive for any particular person.

It is NPLH's best estimate that confirmation of the Amended Plan will generally be tax neutral for creditors and the Debtor. **However, for each Allowed Claim, half of the Allowed Claim will be paid as a W-2 wage which will be subject to employment tax withholding.** NPLH will be responsible for all employer's portion of payroll tax responsibilities associated with the payment of the W-2 wage Allowed Claims.

#### **1. Tax Treatment of Creditors**

All creditors are to be paid in full under the Amended Plan. The payments to be made under the Amended Plan will therefore likely have the same tax attributes they would have had if timely paid outside the bankruptcy case, except for changes regarding timing of payment. To the extent that creditors holding claims against NPLH are cash-basis tax payers, the distributions

from NPLH will constitute income in the year received, as opposed to the year in which they were due to be received. To the extent that creditors are accrual-basis tax payers and have written off their claims against NPLH, the distributions under the Amended Plan will likely constitute taxable income. To the extent that creditors holding claims against NPLH are accrual-basis tax payers and paid taxes on their claims against NPLH in the year that payment was due, the distributions from NPLH will likely not constitute taxable income in the year received.

## **2. Tax Treatment of Equity Holders**

The Equity holder will retain interests in NPLH. NPLH therefore expects that confirmation of the Amended Plan will be largely tax neutral for the equity holder, although she is strongly advised to contact her own tax advisors.

## **XII CONCLUSION**

As a result of its current operating profitability, NPLH believes that the Amended Plan will pay at least 50% of the allowed obligations of the Debtor within 30 days of Confirmation of the Amended Plan. The remaining amount of the Allowed Claims will be **paid in full**, plus interest accruing on the latter of the Effective Date or the date the Court orders the allowance of such Allowed Claim, in semi-annual payments paid within four years. The Amended Plan also preserves the ownership interests and value of the business for its equity holder.

**NPLH urges all creditors to vote in favor of the Amended Plan.**

This 8th day of August, 2016.

Respectfully submitted,

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, PC

/s/ E. Franklin Childress, Jr.

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*Attorneys for No Place Like Home, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of August, 2016, a copy of the foregoing electronically filed Amended Disclosure Statement and Exhibits were served on the following parties by overnight FedEx, or electronic mail, unless such party is a registered CM/ECF participant who has consented to electronic notice and the Notice of Electronic filing indicates that notice was electronically mailed to said party.

U.S. Trustee  
Office of the U.S. Trustee  
One Memphis Place  
200 Jefferson Avenue, Suite 400  
Memphis, TN 38103

Kevin Gray  
Maynard, Cooper & Gale, PC  
655 Gallatin Street  
Huntsville, AL 35801

Leland Murphree  
Maynard Cooper & Gale PC  
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/s/ E. Franklin Childress, Jr. \_\_\_\_\_  
E. Franklin Childress, Jr.