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| 11 | Counsel for Interested Party PALM DRIVE HEALTH CARE FOUNDATION | | |
| 12 13 | UNITED STATES BANKRUPTCY COURT | | |
| 14 | | | |
| 15 | NORTHERN DISTRICT OF CALIFORNIA SANTA ROSA DIVISION | | |
| 16 | SAIVIA ROS | A DIVISION | |
| 17 | In re | CHAPTER 9 | |
| 18 | PALM DRIVE HEALTH CARE DISTRICT, | CASE NO. 14-10510 | |
| 19 | Debtor. | PALM DRIVE HEALTH CARE | |
| 20 | | FOUNDATION'S EMERGENCY MOTION FOR APPOINTMENT OF | |
| 21 | | MEDIATOR | |
| 22 | | Date: May 16, 2014 Time: 10:00 a.m. | |
| 23 | | Place: 99 South "E" Street Santa Rosa, CA 95404 | |
| 24 | | Judge: The Honorable Alan Jaroslovsky | |
| 25 | TO THE HONORABLE ALAN JAROSLOVS | SKY, UNITED STATES BANKRUPTCY | |
| 26 | JUDGE: | | |
| 27 | Pursuant to Section 105(a) of title 11 of the United States Code and Local Bankruptcy | | |
| 28 | Rule 9014, Palm Drive Health Care Foundation ("Foundation"), an interested party in the above- | | |
| | | | |

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106745715 v3 1. MEDIATOR MOTION CASE No. 14-10510 Case: 14-10510 Doc# 68 Filed: 05/12/14 Entered: 05/12/14 15:07:35 Page 1 of 6

captioned bankruptcy case, hereby moves the Court to enter an order appointing a mediator, on an emergency basis, to address the pressing and immediate health care crisis facing the residents of the Palm Drive Health Care District ("District") in the wake of the closure of Palm Drive Hospital ("Hospital"). In support of the motion, the Foundation respectfully represents as follows:

I. INTRODUCTION

1. By this Motion, the Foundation requests that the Court appoint a mediator to resolve an impasse in discussions between the District and the Foundation regarding a proposal by the Foundation that, if approved, would allow for the immediate re-opening of the Hospital as a full-service health care facility for the benefit of creditors and the residents of the District.

II. JURISDICTION

2. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

III. FACTUAL BACKGROUND

A. The Foundation is the Hospital's Primary Pre-Bankruptcy Fundraiser and Benefactor

- 3. Prior to its closure, the Hospital was the sole emergency acute care medical facility west of U.S. Route 101 in Sonoma County. It alone served the entire coastal area of the 5th District and the area known as "West County." As such, the Hospital is critical to the health and safety of the citizens of the region, people traveling to the region, and the emergency medical responders who operate there.
- 4. The Foundation, an independent 501(c)(3) charitable organization, was established in 1999 to provide charitable donations to, and manage the operations of, the Hospital.
- 5. Upon the creation of the District in 2000, the Foundation transferred control over the Hospital's assets and liabilities to the District. Since the District's creation, the Foundation has steadfastly supported the Hospital and the District's founding mission and purpose to provide non-profit full service emergency room, in-patient and out-patient services to the residents of the District.

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6. Indeed, the Foundation has served as the Hospital's primary benefactor, and has donated over \$2 million in additional funds to the Hospital. In 2013, the Foundation donated \$153,000 to support funding for several priorities named by the Hospital's CEO, including a final payment for a digital mammogram machine for the Hospital.

7. Historically, the Foundation enjoyed a constructive working relationship with the District, the members of the District's board ("Board") and members of the Hospital's senior management. However, in late 2013 the relationship changed for the worse, as Hospital management complained that the Foundation had not provided the Hospital with donations sufficient to enable it to weather its financial difficulties. When the Foundation noted that its fundraising efforts were hampered by the District's lack of a strategic plan to correct the operational issues impacting the Hospital's financial performance, the District responded by requesting that the Foundation cede control of its endowment to the District. The Foundation refused, and in January 2014 the District voted to discontinue its relationship with the Foundation.

В. The District Board Forces the Closure of the Hospital and Rejects the Foundation's **Proposal**

- 8. On April 7, 2014, and without adequately exploring alternatives, the Board voted to commence these proceedings and to close the Hospital by April 28, 2014. The Board's decision was opposed by numerous community leaders in public sessions.
- 9. On April 11, 2014, under great pressure from the public to avoid closing the Hospital, the Board issued a Request For Proposals ("RFP") to continue services at the Hospital.
- 10. On April 18, 2014, the Foundation responded to the RFP with a comprehensive 71-page proposal, a true and correct copy of which is attached as **Exhibit A** to the Declaration of Gail Thomas in support of the Motion, concurrently filed herewith, that provided for the continuation of the vital services provided by the Hospital at no cost to the taxpayers or creditors by way of \$2 million in grants from private parties and a local charity.
- 11. On April 23, 2014, the Board responded to the Foundation's proposal with a litany of objections, some of which added new requirements not included in the RFP. The Foundation

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COOLEY LLP ATTORNEYS AT LAW SAN FRANCISCO responded to the Board's objections immediately, substantively rebutting its material objections and agreeing to make modifications where necessary to address governance and conflict concerns raised by the Board. Nevertheless, the Board maintained that nonspecific issues related to licensing, financial and governance issues remained with the proposal, and were unwilling to engage with the Foundation regarding concrete steps to remedy these purported defects.

- 12. While the Board failed to give the Foundation any concrete instructions on how to address its concerns, the date of the Hospital's closure drew near.
- 13. Importantly, the Board insisted that the Foundation's proposal be evaluated and vetted by Tom Harlan, the Hospital's Chief Executive Officer and Huron Consulting Group, the Hospital's restructuring advisors, notwithstanding that both parties had already expressed their belief that no entity could effectively run the Hospital as a full-service health care facility. The Foundation asserted that Mr. Harlan and Huron lacked the impartiality to fairly review the Foundation's proposal due to their preconception that operating the Hospital would not be feasible, and requested that the Hospital's independent auditors review the merits of its proposal instead, the Board failed to provide independent review.
- 14. On April 29, 2014, as the Hospital was closed, it was clear to the Foundation that the Board was too close-minded to fairly evaluate the Foundation's proposal. The Foundation requested that the Board submit the proposal to its independent auditors, which the Board said they could not do so because the auditors did not know how to proceed. On May 3, 2014, the Board issued a press release that incorrectly indicated that the Foundation had backed out of the negotiations.
- 15. Upon information and belief, the Board has commenced non-public negotiations with other parties, including a for-profit healthcare company and a local outpatient clinic, regarding the future of the Hospital and its premises. No party other than the Foundation has submitted an RFP that proposes to re-open the Hospital as a non-profit full-service health care facility consistent with the stated mission of the District.

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16. Moreover, the Board has cancelled its regular public meetings until further notice, depriving the residents of the District of any role in the decision making regarding the Hospital's future.

IV. RELIEF REQUESTED

- 17. By this Motion, the Foundation requests that the Court appoint a mediator to address the health care crisis facing the residents of this District as a result of the actions of the Board and Hospital management and the Hospital's closure.
- 18. The Foundation has submitted a compelling proposal to re-open the Hospital, and effectively addresses the health and safety of the community by keeping Emergency Room and other services operating while restoring the Hospital to the financial stability that it enjoyed prior to 2012. For reasons that remain unclear to the Foundation, its proposal has fallen on deaf ears.
- 19. In good faith negotiations, it is customary that, if one side objects to a proposal, it brings forth its ideas to correct the defects that it sees. This has not occurred here. Instead, the Board has articulated only vague objections to the Foundation's proposal without providing any roadmap for how to solve them, and summarily dismissed the Foundation's proposal without subjecting it to an independent and unbiased review. While unfortunate, the Board's position should not foreclose the residents and taxpayers of the District from receiving immediate access to the emergency medical and other healthcare services provided under the Foundation's proposal.
- 20. Accordingly, the Foundation respectfully asks this Court to appoint a mediator to resolve the impasse between the Foundation and the Board so that meaningful discussions to reopen the Hospital can re-commence in earnest. Mediations have been successfully used in other chapter 9 cases in California and throughout the country to address disputes that affected the needs of the public, and the Foundation believes that the appointment of a mediator here could be used to great effect. Indeed, given the supreme public health interests at stake, the Foundation's essential and achievable plans to re-open the Hospital should not be allowed to languish another day as a result of the Board's failure to openly engage the Foundation.

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MEDIATOR MOTION

106745715 v3

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V. NOTICE AND SERVICE

Consistent with Bankruptcy Rule 6006, this Mediator Motion is being served on (a) the Debtor, (b) Debtor's counsel, (c) the Office of the United States Trustee, (d) parties who have requested special notice, and (e) the list of 20 largest unsecured creditors. In order to provide maximum time in advance of the hearing for this Mediator Motion, notice is being given to parties (a) through (e) *via* email or overnight delivery.

VI. <u>CONCLUSION</u>

WHEREFORE, Applicant requests that the Court grant the Motion and appoint a mediator; and grant such other and further relief as may be just and proper.

Dated: May 12, 2014 COOLEY LLP

By: /s/ Robert L. Eisenbach III

Robert L. Eisenbach III (124896)

Attorneys for Interested Party
PALM DRIVE HEALTH CARE FOUNDATION

COOLEY LLP
ATTORNEYS AT LAW
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MEDIATOR MOTION CASE No. 14-10510 Page 6 of 6 **Proposed Order**

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| 11 | Counsel for Interested Party PALM DRIVE HEALTH CARE FOUNDATION | | |
| 12 | PALM DRIVE HEALTH CARE FOUNDATION | | |
| 13 | UNITED STATES BANKRUPTCY COURT | | |
| 14 | NORTHERN DISTRICT OF CALIFORNIA | | |
| 15 | SANTA ROSA DIVISION | | |
| 16 | | | |
| 17 | In re | CHAPTER 9 | |
| 18 | PALM DRIVE HEALTH CARE DISTRICT, | CASE NO. 14-10510 | |
| 19 | Debtor. | [Proposed] ORDER GRANTING PALM DRIVE HEALTH CARE | |
| 20 | | FOUNDATION'S MOTION FOR APPOINTMENT OF MEDIATOR | |
| 21 | | Date: May 16, 2014 | |
| 22 | | Time: 10:00 a.m. Place: 99 South "E" Street | |
| 23 | | Santa Rosa, CA 95404 Judge: The Honorable Alan Jaroslovsky | |
| 24 | | vauge. The Honorable Ham various visity | |
| 25 | Pursuant to the motion of Palm Drive Health Care District Foundation ("Applicant") | | |
| 26 | seeking entry of an order to appoint a mediator ("Motion"), and based on the pleadings submitted | | |
| 27 | by the Applicant in support thereof, the record before the Court, and any objections filed by an | | |
| 28 | interested party or arguments of counsel at a hearing, | | |
| LP t Law isco | 106745715 v3 | 1. ORDER GRANTING MEDIATOR MOTION CASE NO. 14-10510 | |
| Case: 14-10510 Doc# 68-1 Filed: 05/12/14 Entered: 05/12/14 15:07:35 Page 2 of 3 | | | |
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THE COURT HEREBY FINDS AND DETERMINES that:

- A. The Court has jurisdiction to consider the Motion and the relief requested.
- B. The Applicant has served the Motion, and given notice of the hearing thereon, *via* email or overnight delivery to (a) the Debtor, (b) Debtor's counsel, (c) the Office of the United States Trustee, (d) parties who have requested special notice, and (e) the list of 20 largest unsecured creditors of the debtor. Such notice is adequate and sufficient notice of the Mediator Motion and the hearing thereon under the circumstances.

Accordingly, and good cause appearing therefor,

- 1. The Motion is granted in its entirety.
- 2. Opposition, if any, to the relief sought in the Motion is hereby overruled.

*** END OF ORDER ***

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ORDER GRANTING MEDIATOR MOTION CASE NO. 14-10510

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