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PALM DRIVE HEALTH CARE DISTRICT
7

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SANTA ROSA DIVISION

11
12 In Re:

13 PALM DRIVE HEALTH CARE
DISTRICT,

14 Debtor.
15
16
17

Bk. No. 14-10510-CN

Chapter 9

Date: TBD

Time: TBD

Place: U.S. Bankruptcy Court
99 South "E" Street
Santa Rosa, CA

Judge: Hon. Charles Novack

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19 **PALM DRIVE PLAN FOR ADJUSTMENT OF DEBTS Dated November 19, 2018**
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1 Palm Drive Health Care District, a California local health care district (“Palm Drive” or
2 “Debtor”), debtor in this case (the “Bankruptcy Case”) under the United States Bankruptcy Code,
3 proposes this Palm Drive Plan For Adjustment Of Debts Dated November 19 2018 (the “Plan”),
4 pursuant to the provisions of Chapter 9 of the Bankruptcy Code. The Disclosure Statement that
5 accompanies this Plan contains a discussion of the financial condition of Palm Drive and a
6 description of the Plan. Palm Drive commenced this voluntary case under Chapter 9 of the
7 Bankruptcy Code on April 7, 2014. Confirmation of the Plan is the culmination of the Chapter 9
8 process for the adjustment of Palm Drive’s debts. Creditors should thoroughly review both the Plan
9 and the accompanying Disclosure Statement before deciding whether to accept or reject the Plan.

10 **Definitions** of certain terms used in the Plan are provided in the following Article I.

11 **ARTICLE I**

12 **DEFINITIONS**

13 Unless the context requires otherwise, the following definitions apply in this Plan:

14 1.1 **“Administrative Claim”** means a claim for any cost or expense of administration of
15 a kind specified in Section 503(b) of the Bankruptcy Code, not already paid by Palm Drive, that is
16 entitled to priority over general unsecured claims under Section 507(a)(2) of the Bankruptcy Code,
17 as limited by Section 901(a) of the Bankruptcy Code, including, without limitation, (a) any actual or
18 necessary costs and expenses of preserving the property of the Debtor incurred on or after the
19 Petition Date and through and including the Effective Date of the Plan, (b) any cure amounts that
20 must be paid in connection with the assumption of any executory contract or unexpired lease of Palm
21 Drive under Section 365 of the Bankruptcy Code, and (c) timely-filed 503(b)(9) Claims.

22 (Compensation for fees and reimbursable expenses for legal and other services of professional
23 persons are dealt with separately below under Section 943(b)(3) of the Bankruptcy Code.)

24 1.2 **“Administrative Claims Bar Date”** means the date established by an order of the
25 Bankruptcy Court, issued concurrently with the Confirmation Order, as the last day to file proof of
26 an Administrative Claim, which date will be thirty (30) calendar days after the date of entry of the
27 Confirmation Order, after which date any Administrative Claim not timely filed will be forever
28 barred, and Palm Drive will have no obligation with respect thereto; *provided, however*, that no

1 filing of proof of an Administrative Claim will be required if such Administrative Claim was
2 incurred (a) in accordance with an order of the Bankruptcy Court or (b) with the written consent of
3 Palm Drive. The provision for payment of an Administrative Claim solely on the basis of consent by
4 the Debtor does not apply to claims of professional persons to be paid for services and expenses in
5 the Bankruptcy Case or incident to the Plan, which are subject to special rules and provisions. The
6 Administrative Claims Bar Date does not apply to post-petition ordinary trade payables or other
7 obligations incurred in the ordinary course of Palm Drive's post-petition activities, which claims
8 will, pursuant to Section 3.1(a) of the Plan, be payable in the ordinary course in accordance with the
9 existing terms otherwise applicable to such obligations.

10 1.3 **“Allowed Administrative Claim”** means all or any portion of an Administrative
11 Claim that has either been (a) allowed by a Final Order or (b) has not been objected to within the
12 time period established by the Plan or by an order of the Bankruptcy Court.

13 1.4 **“Allowed Claim”** means a claim against Palm Drive, other than an Administrative
14 Claim, as to which:

15 (a) A proof of claim was (i) timely filed not later than the Claims Bar Date
16 established by order of the Bankruptcy Court in the Bankruptcy Case, or any other applicable claim
17 filing deadline, or (ii) deemed filed and allowed under Sections 924 and 925 of the Bankruptcy
18 Code, or (iii) filed late with permission of the Bankruptcy Court after notice and an opportunity for
19 hearing appropriate in the circumstances; and

20 (b) Such claim is not a Disputed Claim, or, if a Disputed Claim, such claim has been
21 allowed in whole or in part by a Final Order, provided that any such claim shall be an Allowed
22 Claim only to the extent stated in any such Final Order. Unless otherwise provided in the Plan or
23 ordered by the Bankruptcy Court, no distributions shall be made under the Plan in respect of the
24 disputed portion of any Disputed Claim until there is a Final Order specifying the allowed amount of
25 such claim.

26 (c) No disputed portion of any claim shall be considered as an Allowed Claim if an
27 objection to the allowance of such claim is made by Palm Drive or another party in interest within
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1 the time set by the Plan or the Bankruptcy Court, and such objection to claim has not been denied by
2 a Final Order of the Bankruptcy Court.

3 1.5 **“Allowed Secured Claim”** means that amount of an Allowed Claim which is secured
4 by a lien or subject to offset within the provisions of Section 506(a) of the Bankruptcy Code.

5 1.6 **“Allowed Unsecured Claim”** means any Allowed Claim that is a general unsecured
6 claim, including a Rejection Claim or an Employee Claim, but does not include Allowed Secured
7 Claims, Allowed Administrative Claims, or Priority Claims.

8 1.7 **“Ballot”** means the ballot forms distributed to each holder of an impaired claim that
9 is entitled to vote to accept or reject the Plan, on which form the holder may cast its vote in respect
10 of the Plan, and which must be actually received by Palm Drive on or before the Ballot Deadline in
11 order to be counted.

12 1.8 **“Ballot Deadline”** means the deadline established by the Bankruptcy Court for the
13 receipt by Palm Drive of executed Ballots.

14 1.9 **“Bankruptcy Code”** or **“Code”** means Title 11 of the United States Code, as it was
15 in effect on the date of filing of the Plan, as amended by any amendments applicable to this
16 Bankruptcy Case, and for purposes of interpreting this Plan also includes Sections 157, 158, 1334,
17 1408-1412, and 1452 of Title 28 of the United States Code.

18 1.10 **“Bankruptcy Court”** or **“Court”** means the United States Bankruptcy Court for the
19 Northern District of California, Santa Rosa Division, having jurisdiction over this Bankruptcy Case,
20 and any other courts or panels of courts having competent jurisdiction over the Bankruptcy Case or
21 appeals from orders entered in the Bankruptcy Case.

22 1.11 **“Bankruptcy Rules”** means the rules of practice and procedure in cases under Title
23 11 of the United States Code, as promulgated under 28 U.S.C. § 2075.

24 1.12 **“Chapter 9”** means Chapter 9 of the Bankruptcy Code.

25 1.13 **“Claims Bar Date”** means October 8, 2014, the deadline date for filing proofs of
26 claim, other than Administrative Claims, by creditors against Palm Drive, which was established in
27 the Bankruptcy Case by court order and notice to creditors.
28

1 1.14 **“Claims Objection Deadline”** means, unless extended by the Bankruptcy Court
2 upon an application filed by Palm Drive, the date that is the later of (a) the first business day that is
3 at least ninety (90) calendar days after the Effective Date, and (b) the first business Day that is at
4 least ninety (90) calendar days after the date on which a proof of claim in respect of a claim has been
5 filed. For the avoidance of doubt, the Claims Objection Deadline may be extended one or more
6 times by the Bankruptcy Court.

7 1.15 **“Confirmation”** means the entry by the Bankruptcy Court of an order (the
8 **“Confirmation Order”**) confirming the Plan.

9 1.16 **“Creditors’ Committee”** means the Official Committee of Unsecured Creditors
10 appointed by the Office the United States Trustee in the Bankruptcy Case, with any subsequent
11 changes of membership prior to Confirmation.

12 1.17 **“Debtor”** means Palm Drive Health Care District, the debtor in the Bankruptcy Case.

13 1.18 **“Disputed Claim”** means any claim, proof of which has been filed or deemed filed
14 against the Debtor, as to which (a) such claim is listed as disputed, contingent, or unliquidated, or for
15 zero or no amount, on the List of Creditors filed by Palm Drive under Section 924 of the Bankruptcy
16 Code, or (b) an objection or adversary proceeding has been timely filed and has not been withdrawn
17 or disposed of by a Final Order of the Bankruptcy Court.

18 1.19 **“Disputed Claims Reserve Account”** means a non-segregated account, designated
19 on the books and records of Palm Drive and maintained and administered by Palm Drive, for the
20 purpose of holding funds attributable to Disputed Claims pending their resolution as allowed or
21 disallowed.

22 1.20 **“District”** means Palm Drive Health Care District.

23 1.21 **“Effective Date”** means the business day designated as such by Palm Drive that is at
24 least fifteen (15) calendar days following the entry of the Confirmation Order, unless such order is
25 stayed by order of a court with original or appellate jurisdiction over this Bankruptcy Case, in which
26 event such date shall be the first business day on or after the fourteenth calendar day after such stay
27 expires. Palm Drive shall give creditors and other parties in interest notice of the occurrence of the
28 Effective Date.

1 1.22 **“Employees Committee”** means the official committee of former employees of Palm
2 appointed in the Bankruptcy Case.

3 1.23 **“503(b)(9) Claim”** means a claim of a vendor to Palm Drive that provided *goods* to
4 Palm Drive that were *received* during the 20 days *before* the commencement of the Bankruptcy
5 Case, *i.e.*, from March 18 through April 6, 2014.

6 1.24 **“Final Order”** means an order of the Bankruptcy Court as to which the appeal period
7 has expired without an appeal having been timely taken or, if an appeal is timely taken, such order
8 has been affirmed (or not reversed) on appeal and any time for further appeal or petition has expired
9 without any such further appeal or petition having been filed.

10 1.25 **“General Unsecured Claim”** means an unsecured claim, including but not limited to
11 any claim arising from the rejection of an unexpired lease or other Executory Contract, and that is
12 not entitled to priority under the Bankruptcy Code or an order of the Bankruptcy Court. For the
13 avoidance of doubt, claims of former employees of Palm Drive are not entitled to priority status
14 under any provision of the Bankruptcy Code in Chapter 9 bankruptcy cases, and are treated as
15 unsecured claims.

16 1.26 **“Hospital”** means the public hospital operated by Palm Drive, whether directly or
17 through a management agreement with a third party, within the provisions of California health care
18 district law.

19 1.27 **“List of Creditors”** means the list of creditors filed by Palm Drive in the Bankruptcy
20 Case under Section 924 of the Bankruptcy Code as it has been amended in its entirety by Palm Drive
21 [Docket No. 159, filed August 21, 2014].

22 1.28 **“MSA”** means the Management and Staffing Services Agreement entered into
23 between Palm Drive and American Advanced Management Group, Inc. (“AAMG”) as of August 26
24 2018, as amended from time to time thereafter.

25 1.29 **“Petition Date”** means April 7, 2014, the date on which Palm Drive commenced the
26 Bankruptcy Case.

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1 1.30 **“Plan”** means this Palm Drive Plan for Adjustment of Debts Dated November 19,
2 2018, and filed by Palm Drive with the Bankruptcy Court, including any modification(s) or
3 amendment(s) thereto.

4 1.31 **“Priority Claim”** means any Allowed Claim entitled to priority pursuant to Section
5 507(a)(2) of the Bankruptcy Code.

6 1.32 **“Professional Fees Claim”** means any claim for amounts to be paid by the Debtor or
7 by any person for services or expenses in the Bankruptcy Case or incident to the Plan within the
8 meaning of Section 943(b)(3) of the Bankruptcy Code.

9 1.33 **“Rejection Claim”** means an Allowed Unsecured Claim arising from Palm Drive’s
10 rejection of an unexpired lease or executory contract pursuant to the Plan or pursuant to a prior or
11 subsequent order of the Bankruptcy Court.

12 1.34 **“Record Date”** means the date set by the Bankruptcy Court for determination of
13 entitlement status to receive the distributions provided by the Plan for holders of claims in secured
14 classes of bonded indebtedness, Classes 1, 2, and 3 under the Plan.

15 1.35 **“Series 2000 GO Bonds”** means the Palm Drive Health Care District Insured
16 General Obligation Bonds Series 2000.

17 1.36 **“Series 2005 Revenue Bonds”** means the Palm Drive Health Care District Parcel
18 Tax Revenue Bonds - Series 2005.

19 1.37 **“Series 2010 COPS”** means the Palm Drive Health Care District Certificates of
20 Participation (2010 Parcel Tax Secured Financing Program).

21 1.38 **“SSH”** means Sonoma Specialty Hospital, the dba of AAMG, the management entity
22 engaged by Palm Drive to operate the Hospital in Palm Drive’s facility, under the terms of the MSA.

23 1.39 **“Unclaimed Property”** means any distribution under the Plan that cannot be
24 delivered to, or is not accepted by, the holder of an Allowed Claim, and shall include, without
25 limitation, checks (and the funds represented thereby) that are returned as undeliverable without a
26 proper forwarding address, are not cashed, or are not delivered because of the absence of a proper
27 address to which to deliver the distribution. Distributions shall conclusively be deemed Unclaimed
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1 Property if any of the foregoing conditions remains in existence forty-five (45) calendar days after
2 the attempted distribution.

3 1.40. A capitalized term used in the Plan that is not defined in the Plan shall have the
4 meaning assigned to such term in the Bankruptcy Code, the Bankruptcy Rules, or the California
5 Health & Safety Code, if defined in those sources, unless the context plainly requires otherwise.

6 **ARTICLE II**

7 **DESIGNATION OF CLASSES OF CLAIMS**

8 The claims against Palm Drive, other than unclassified Administrative Claims and
9 professional fee claims treated elsewhere in this Plan, are designated and classified as provided
10 below for purposes of the Plan.

11 2.1 Class 1: The Secured Claims of holders of the Series 2000 GO Bonds.

12 2.2 Class 2: The Secured Claims of holders of the Series 2005 Revenue Bonds.

13 2.3 Class 3: The Secured Claims of holders of the Series 2010 COPs.

14 2.4 Class 4: The claims of former employees of Palm Drive greater than \$10,000 in
15 amount.

16 2.5 Class 5A: All General Unsecured Claims of \$250,000 or less in amount, including
17 executory contract Rejection Claims, other than claims in Classes 4, 5B, and 6.

18 2.6 Class 5B: All General Unsecured Claims greater than \$250,000 in amount, including
19 executory contract Rejection Claims, other than claims in Classes 4, 5A, and 6.

20 2.7 Class 6: Convenience class (holders of General Unsecured Claims that are less than
21 \$10,000 in amount, including claims of employees holding claims of this amount).

22 2.8 **IMPAIRMENT**: Classes 4, 5A, 5B, and 6 are impaired under the Plan, and will vote
23 on the Plan. Classes 1, 2, and 3 are not impaired under the Plan, and will not vote on the Plan.

24 **ARTICLE III**

25 **TREATMENT OF UNCLASSIFIED CLAIMS**

26 Allowed Claims that are unclassified pursuant to Section 1123(a)(1) of the Bankruptcy Code
27 shall be treated as follows:
28

1 3.1 Allowed Administrative Claims: Except to the extent that the holder of an Allowed
2 Administrative Claim has agreed in writing to different treatment of such claim or the Bankruptcy
3 Court orders disbursement at another time, the holder of an Allowed Administrative Claim will
4 receive cash in the allowed amount of such claim within thirty (30) calendar days after the
5 Administrative Claims Bar Date, or, if such Administrative Claim becomes an Allowed
6 Administrative Claim at a later date, then not later than twenty-one (21) calendar days after the date
7 an order allowing such Administrative Claim becomes a Final Order. Allowed Administrative
8 Claims include timely-filed and allowed 503(b)(9) Claims. Notwithstanding the foregoing, any
9 Administrative Claim incurred in the ordinary course of Palm Drive’s activities post-petition
10 (including without limitation any claim of an employee or contract laborer for post-petition
11 compensation and benefits) shall be paid in the ordinary course in accordance with the existing terms
12 for such obligation.

13 3.2 Professional Fee Claims:

14 (a) Fees and expenses of professionals incurred by Palm Drive “in the case or incident to
15 the Plan,” approved as reasonable by the Bankruptcy Court under Bankruptcy Code § 943(b)(3), will
16 be paid within twenty-one (21) days of an order of the Bankruptcy Court granting such approval. A
17 hearing on such approval should be held within 30 days of Confirmation. Professional persons
18 employed by the Debtor shall submit to the Debtor a summary of the work paid or to be paid for
19 services or expenses in the Bankruptcy Case or incident to the Plan, provided in sufficient detail to
20 evaluate reasonableness under Section 943(b) of the Bankruptcy Code. The Debtor shall submit
21 such summaries to the Bankruptcy Court not less than 14 days after entry of the Confirmation Order,
22 and the Court shall determine the reasonableness of those fees and expenses at a hearing held on or
23 after 30 days from entry of the Confirmation Order.

24 (b) Counsel employed by the Creditors’ Committee shall submit to the Bankruptcy Court
25 a summary of the work paid or to be paid for services or expenses in the Bankruptcy Case or
26 incident to the Plan, provided in sufficient detail to evaluate reasonableness under Section 943(b) of
27 the Bankruptcy Code. Counsel for the Creditors’ Committee shall submit such summaries to the
28 Bankruptcy Court not less than 14 days after entry of the Confirmation Order, and the Court shall

1 determine the reasonableness of those fees and expenses at a hearing held on or after 30 days from
2 entry of the Confirmation Order. Compensation for counsel for the Committee shall not exceed the
3 amount found to be reasonable by the Bankruptcy Court, but in any event shall not exceed \$50,000.
4 Such compensation shall be paid within twenty-one (21) days of entry of a Final Order approving the
5 reasonableness of such compensation.

6 (c) No claim of counsel for the Employees Committee for fees or expenses shall be
7 allowed, as an administrative expense or otherwise.

8 (d) Notwithstanding Section 1.21 of this Plan, the Effective Date shall not occur until the
9 Bankruptcy Court has made the required determinations of reasonableness of fees and expenses of
10 professional persons, consistent with Bankruptcy Code § 943(b).

11 3.3 Administrative Claims and Professional Fees Reserve:

12 The Debtor will hold an administrative claims and professional fees reserve in the amount of
13 \$100,000 after Confirmation, pending the resolution and payment of Allowed Administrative Claims
14 and court approval of the reasonableness of professional fees and expenses under Code Section
15 943(b)(3).

16 **ARTICLE IV**

17 **TREATMENT OF CLASSIFIED CLAIMS**

18 The classified claims designated in Article II of the Plan will receive the treatment specified
19 in this Article IV. Classes 4, 5A, 5B, and 6 are impaired under the Plan. Classes 1, 2, and 3 are
20 not impaired under the Plan.

21 4.1 Class 1 Claims — Secured Claims of Series 2000 GO Bonds: The holders of allowed
22 Secured Claims of the Series 2000 GO Bonds shall retain, unaltered, the legal, equitable, and
23 contractual rights to which such claim is entitled according to the existing terms thereof, and be paid
24 in due course in full per those terms, including contractually provided fees and charges as limited for
25 reasonableness by the terms of the governing documents. If the Hospital is sold prior to pay off in
26 the ordinary course of the Series 2000 GO Bonds, they will be paid off from sale proceeds and – to
27 the extent necessary – proceeds of refinancing with taxable bonds.
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1 4.2 Class 2 Claims — Secured Claims of Series 2005 Revenue Bonds. The holders of
2 allowed Secured Claims of the Series 2005 Revenue Bonds shall retain, unaltered, the legal,
3 equitable, and contractual rights to which such claim is entitled according to the existing terms
4 thereof, and be paid in due course in full per those terms, including contractually provided fees and
5 charges as limited for reasonableness by the terms of the governing documents. If the Hospital is
6 sold prior to pay off in the ordinary course of the Series 2005 Revenue Bonds, they will be paid off
7 from sale proceeds and – to the extent necessary – proceeds of refinancing with taxable bonds.

8 4.3 Class 3 Claims – Secured Claims of Series 2010 COPs. The holders of allowed
9 Secured Claims of the Series 2010 COPs shall retain, unaltered, the legal, equitable, and contractual
10 rights to which such claim is entitled according to the existing terms thereof, and be paid in due
11 course in full per those terms, including contractually provided fees and charges as limited for
12 reasonableness by the terms of the governing documents. If the Hospital is sold prior to pay off in
13 the ordinary course of the Series 2010 COPs, they will be paid off from sale proceeds and – to the
14 extent necessary – proceeds of refinancing with taxable bonds

15 4.4 For the avoidance of doubt, Palm Drive may, in its discretion, at any time refinance
16 the obligations of the Series 2000 GO Bonds, Series 2005 Revenue Bonds, and/or Series 2010 COPs.

17 4.5 Class 4 – Former Employees. Allowed Claims of former employees (unless they fall
18 into, or choose to opt into, Class 6 below) will receive sixty percent (60%) distribution of the
19 allowed amount of their claims, payable in two equal installments. The first installment will be paid
20 six months from the Effective Date. The second installment will be paid 12 months from the
21 Effective Date.

22 4.6 Class 5A – General Unsecured Claims of \$250,000 or Less. Allowed General
23 Unsecured Claims of \$250,000 or less, including executory contract Rejection Claims other than
24 claims in Classes 4, 5B, and 6, will receive distribution of fifty percent (50%) of the allowed amount
25 of their claims, paid in three annual installments in 2019-2021. The payment dates in each of these
26 years shall be August 1. The amount of each installment will not be equal, but will be determined in
27 relation to the amount necessary to make the required Plan payments in each such year to the
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1 Convenience Class and Employees Class; the variance between the high year and low year is
2 approximately \$65,000 (shown in the Disclosure Statement).

3 4.7 Class 5B – General Unsecured Claims Greater than \$250,000. Allowed General
4 Unsecured Claims greater than \$250,000, including executory contract Rejection Claims other than
5 claims in Classes 4, and 5A, and 6, will receive distribution of seventy-five half percent (75%) of the
6 allowed amount of their claims, paid in seven annual installments in 2021-2027. The payment dates
7 in each of these years shall be August 1. The amount of the first installment, in 2021, shall be
8 approximately 4.0% of the amount of each allowed claim in this class. Subsequent installments shall
9 be approximately 16.8% of the amount of the allowed claim, such that the cumulative distribution
10 shall be 75% of the amount of the allowed claim

11 4.8 Class 6 – Convenience Class. Holders of allowed General Unsecured Claims that are
12 less than \$10,000 in amount will receive distribution of forty percent (40%) of the allowed amount
13 of these claims on the date that is the later of (a) 90 days after the Effective date or (b) December 1,
14 2019. Creditors in Classes 4 and 5B who have claims larger than the Convenience Class amount
15 may, at their option stated on the Ballot form, reduce their claim to the Convenience Class amount
16 and receive the 40 percent distribution in the same manner as other members of the Convenience
17 Class. The Debtor will hold a reserve in the amount of \$100,000 after Confirmation, to cover
18 distributions to holders of Allowed Claims in Classes 4 and 5A who make the choice to opt to reduce
19 their claims to obtain the early payment treatment of the Convenience Class.

20 **ARTICLE V**

21 **EXECUTORY CONTRACTS**

22 Palm Drive's executory contracts and unexpired leases are treated as follows:

23 5.1 All pre-petition executory contracts or leases not previously assumed or rejected, or
24 otherwise dealt with by Bankruptcy Court order, shall be deemed rejected as of the Effective Date of
25 Plan. The provisions of this subsection of the Plan shall not affect any prior order(s) of the
26 Bankruptcy Court approving assumption or rejection of any specific contracts or leases, or the
27 disposition of any motion to assume or reject executory contracts or leases which motion is filed and
28 served not later than the hearing on Confirmation of the Plan.

1 (d) For so long as Palm Drive continues to keep the Hospital in operation, Palm
2 Drive may provide financial support to AAMG (or other engaged operator) for facilities
3 maintenance and other purposes as provided by the MSA, to the extent provided therein, and Palm
4 Drive has ultimate responsibility for operational losses under the AAMG MSA.

5 (e) In addition to operating the Hospital through AAMG (or otherwise), Palm
6 Drive will continue to engage in community-based health services. Palm Drive may do so directly
7 through programs of its own, or indirectly through cooperation with and financial support for other
8 agencies and entities active in Palm Drive's territory. If the Hospital is sold, the District can operate
9 as a Community Based Health Care District.

10 6.2 Payment of Administrative, Priority, and Professional Fees Claims: From cash on
11 hand, Palm Drive will pay promptly all payments under this Plan required to be made in connection
12 with the Effective Date, including:

13 (a) All Administrative Claims required to be paid on or about the Effective Date,
14 unless the holder of any such claim agrees in writing to a later payment date. Palm Drive will pay
15 any subsequently allowed Administrative Claims in full promptly after a Final Order allowing such
16 claim, unless otherwise agreed in writing by the holder of any such claim.

17 (b) Allowed Priority Claims, including allowed 503(b)(9) Claims, required to be paid
18 on or about the Effective Date.

19 (c) Professional Fees Claims will be paid as provided under Section 3.2 of this Plan.

20 6.3 Payment of Distributions on Classified Claims: In its annual budget process and any
21 supplemental budgeting decisions as may be necessary, Palm Drive will provide for payment of the
22 distributions to the classes of claims provided under Article IV of this Plan, according to the
23 treatment of those classes as provided herein. In making such distributions, Palm Drive will make
24 appropriate calculations, and provide for appropriate reserves in the Disputed Claims Reserve
25 Account as provided in Section 6.10(d) below. Palm Drive will act as disbursing agent under the
26 Plan with regard to all payments and distributions to be made to creditors or other parties in interest
27 hereunder, without bond.
28

1 6.4 Objections to Claims: Palm Drive is authorized to review and object to creditor
2 claims. Subject to making the payments required by Article IV of the Plan, and the funding of the
3 reserve required by Section 6.10(d), Palm Drive is authorized to enter into compromises to allow and
4 satisfy Disputed Claims, and to sell, liquidate, or abandon any claim or cause of action of Palm
5 Drive against any third party.

6 6.5 Post-Confirmation Powers of Palm Drive: Subject to the other express provisions of
7 the Plan, Palm Drive:

8 (a) is authorized to determine whether Palm Drive will pursue any claims or causes
9 of action available under applicable law; and

10 (b) if it determines that any such claim or cause of action should be pursued, to
11 commence, prosecute, or compromise such claim. Any recovery on such claim or cause of action
12 shall be considered property of Palm Drive, and treated as any other assets under the terms of the
13 Plan.

14 6.6 Post-Confirmation Reporting

15 (a) Annually, Palm Drive will file with the Bankruptcy Court a post-confirmation
16 status report ("Report"), the purpose of which is to explain the progress made toward full
17 administration of the confirmed plan of reorganization. The first Report will be filed for the portion
18 of the calendar year from the date of Confirmation to the end of the period. Subsequent reports will
19 be filed after the end of each calendar year thereafter until entry of a final decree closing the
20 Chapter 9 Case. Reports will be filed with the Bankruptcy Court not later than forty-five (45) days
21 after the expiration of the reporting period. Consistent with the bankruptcy law concept of
22 "substantial consummation" of a bankruptcy plan, closing is expected to occur long before the last
23 payments under the Plan are made.

24 (b) The Report will include a statement of receipts and disbursements, with the
25 ending cash balance, for the reporting period. The Report will also include information sufficiently
26 comprehensive to enable the Bankruptcy Court to determine: (1) whether the order confirming the
27 Plan has become final; (2) whether payments under the Plan have commenced; (3) whether
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1 payments required under the Plan are current; and (4) whether all motions, contested matters, claim
2 objections, and adversary proceedings have been finally resolved.

3 (c) A copy of each Report will be served promptly on such persons or entities as
4 have made a request for service of such Reports in writing with the Bankruptcy Court (“Post-
5 Confirmation Notice List”), with copy of such request served on Palm Drive and its counsel not later
6 than the day on which it is filed with the Bankruptcy Court.

7 (d) At such time as Palm Drive deems appropriate, consistent with applicable law
8 and rules, Palm Drive will file an application for entry of a final decree in this Bankruptcy Case, and
9 will serve the application on the Post-Confirmation Notice List, together with a proposed final
10 decree. Palm Drive will prepare and file any status report that may be required by the Bankruptcy
11 Court in connection with the issuance of a final decree. Those parties on the Post-Confirmation
12 Notice List will have twenty-one (21) days within which to object or otherwise comment upon
13 application to the Bankruptcy Court for entry of the final decree.

14 6.7 Other Post-Confirmation Powers: Palm Drive is authorized to do or cause to be done
15 all things necessary and appropriate to administer and execute the Plan, consistent with the terms of
16 the Plan, the Confirmation Order, and the Bankruptcy Code and the Bankruptcy Rules to the extent
17 applicable. Palm Drive shall have full power and authority to execute and deliver any and all
18 documents necessary or appropriate to carry out the Plan.

19 6.8 Creditors’ Committees: On the Effective Date, the Creditors’ Committee and
20 the Employees Committee will be dissolved. Post-confirmation, the former members of these
21 committees and their counsel (“Committee Releasees”) will enjoy all defenses and immunities
22 available under the Bankruptcy Code. Palm Drive releases any and all claims, rights, and causes of
23 action that it may hold against the Committee Releasees arising as a result of any action taken or
24 omitted to be taken by the Committee Releasees in connection with or related to the solicitation of
25 votes on the Plan, the confirmation of the Plan, or any action otherwise within the scope of the duties
26 and powers of a Committee or any Committee member, whether granted under the Bankruptcy
27 Code, under applicable court order, or otherwise, except to the extent that such claims or causes of
28 action arise as a result of willful misconduct by a Committee Releasee. Notwithstanding the

1 foregoing, the provisions of this Subsection 6.8 are not intended to, and shall have no effect on, the
2 allowability (or lack thereof) of any creditor claim held by any member of a Committee, or the status
3 or result of any objection to such creditor claim held by any member of a Committee.

4 6.9 Unclaimed Property: If a distribution to the holder of an Allowed Claim remains
5 unclaimed for forty-five (45) days following the attempted distribution, Palm Drive shall use
6 reasonable diligence to attempt to locate such claim holder. If after reasonable diligence, such claim
7 holder still cannot be located, such distribution shall be conclusively deemed waived by the holder of
8 the claim.

9 6.10 Disputed Claims:

10 (a) Except as otherwise provided in paragraph (b) immediately below, any objections
11 to claims must be filed no later than ninety (90) days after the Effective Date.

12 (b) The deadline set forth in paragraph (a) above for objecting to any claim may be
13 extended by:

14 (1) Written agreement of the holder of the claim; or

15 (2) Order of the Bankruptcy Court, made on a showing of good cause after
16 motion served before the expiration of the deadline (including any previously extended deadline) on
17 the holder of the claim; provided, that in the event the Bankruptcy Court denies any timely brought
18 motion to extend the deadline, the deadline shall nevertheless be extended until fourteen (14)
19 calendar days after the date of entry of the order denying the requested extension.

20 (c) Notwithstanding any other provisions of this Plan, the disputed portion of a
21 Disputed Claim shall not receive any distribution, unless and until the status of an Allowed Claim is
22 attained for such disputed amount.

23 (d) Palm Drive will maintain and administer, by designation on its books and
24 records, a non-segregated Disputed Claims Reserve Account, subject to the following provisions:

25 (1) In the event that a claim is disputed and has not become an Allowed
26 Claim as of the date of any distribution to creditors, an amount sufficient to pay the applicable
27 distribution to the Disputed Claim if allowed in the full amount for which it is asserted shall be
28 designated in the Disputed Claims Reserve Account.

1 (2) If and when a Disputed Claim becomes an Allowed Claim by entry of a
2 Final Order so ruling, the appropriate portion of the funds designated in the Disputed Claims
3 Reserve Account with respect to such claim shall be paid to the holder of the Disputed Claim as soon
4 as practicable thereafter.

5 (3) Funds attributable to the disallowed portion of Disputed Claims which are
6 disallowed in whole or in part by a Final Order shall be released from the Disputed Claims Reserve
7 Account.

8 (4) The Final Order which either allows or disallows a Disputed Claim shall
9 also specify and order the amounts that are to be disbursed from the Disputed Claims Reserve
10 Account.

11 6.11 Preservation of Claims and Objections: Nothing in the Plan is intended to, nor will it,
12 limit in any way the ability of Palm Drive to:

13 (a) exercise the rights and powers conferred upon it by applicable bankruptcy law,
14 including but not limited to the prosecution of objections to claims (whether or not their holders have
15 accepted the Plan);

16 (b) pursue recovery on any and all other causes of action held by Palm Drive prior to
17 Confirmation under otherwise applicable non-bankruptcy laws; or

18 (c) exercise the rights and powers of governance and take other official actions
19 through Palm Drive's Board of Directors and officers; provided that all such powers and actions are
20 exercised in all respects in compliance with the provisions of the Plan and the Confirmation Order,
21 and provided further that no claims, causes of action, rights, other powers of Palm Drive, or
22 objections to any claims against Palm Drive whatsoever are released, waived, deemed adjudicated,
23 or allowed by confirmation of the Plan except as expressly provided in the Plan or the Confirmation
24 Order.

25 **ARTICLE VII**

26 **INJUNCTION AND CUSTODIA LEGIS**

27 7.1 Confirmation of this Plan constitutes an injunction prohibiting any person from taking
28 any act, commencing any suit, or enforcing any right, including the right to a judicial or non-judicial

1 foreclosure of any lien, which has the effect of asserting, liquidating, or enforcing any claim
2 provided for herein against any property or revenues of Palm Drive, and prohibiting any person from
3 taking any act, commencing any suit, or enforcing any right which has the effect of asserting,
4 liquidating, or enforcing any claim provided for herein against Palm Drive except as provided
5 hereunder.

6 7.2 All of the property of Palm Drive shall be retained by Palm Drive as of and from the
7 Effective Date, free and clear of all claims and interests of creditors, subject to the provisions of the
8 Plan, and shall be under the control and direction of, and shall be administered by, Palm Drive.

9 7.3 Entry of the Confirmation Order acts as a discharge of any debt of Palm Drive that
10 arose prior to Confirmation to the extent provided by Section 944(b) of the Bankruptcy Code.
11 Neither Palm Drive nor its Board of Directors or officers shall have any liability to any creditors
12 other than to make the distributions expressly provided for under the Plan.

13 **ARTICLE VIII**

14 **RETAINED JURISDICTION**

15 After Confirmation, the Bankruptcy Court shall retain jurisdiction pursuant to Section 945 of
16 the Bankruptcy Code and this Plan to enforce the provisions, purposes, and intent of this Plan or any
17 modification hereof, including without limitation, matters or proceedings relating to:

18 8.1 Allowance, disallowance, reconsideration, estimation, compromise, settlement,
19 adjustment, treatment, or liquidation of claims and objections thereto;

20 8.2 Allowance of claims and requests for payment of administrative expenses of the
21 Debtor;

22 8.3 Determination of the reasonableness, and therefore permission for payment, of
23 Professional Fees Claims;

24 8.4 Resolution of controversies and disputes, including disputes regarding interpretation
25 of the Plan and the Confirmation Order, and the correction of any mistake, defect, or omission
26 regarding interpretation or enforcement of the Plan and the Confirmation Order;

27 8.5 Modification(s) of the Plan pursuant to Section 1127(d) or Section 942 of the
28 Bankruptcy Code;

