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Public Hospital District*

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:

Kennewick Public Hospital District,
Debtor.

Case No. 17-02025-9

DECLARATION OF CRAIG
CUDWORTH IN SUPPORT OF
FIRST DAY PLEADINGS

I, Craig Cudworth, declare:

I am and make this Declaration in my capacity as the Chief Executive Officer of Kennewick Public Hospital District (d/b/a Trios Health) (the “District” or “Trios”),¹ debtor in the above-captioned case (the “Chapter 9 Case”). I am of

¹ The District was formed and is legally named as captioned above, but is also sometimes known or listed in other public documents as Kennewick Public Hospital District No. 1 or Kennewick Public Hospital District, Benton County, Washington. Trios Health, formerly known as Kennewick General Hospital, is only a business and trade name of the District, not an existing or separate entity.

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1 legal age, have personal knowledge of the facts stated herein, and am competent to
2 testify thereto.

3 1. I submit this Declaration in support of the District's (a) Petition for
4 Relief (the "Petition") under Chapter 9 of Title 11 of the United States Code, 11
5 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"); (b) Certification of
6 Qualifications Under 11 U.S.C. § 109(c) (the "Certification"); and (c) the pleadings
7 and requested relief described in Section III of this Declaration (together with the
8 Petition and the Certification, collectively, the "First Day Pleadings").

9 2. This Declaration sets forth a discussion of the District's history,
10 operations, material indebtedness, and circumstances leading to the
11 commencement of the Chapter 9 Case and in support of the filing of and relief
12 requested in the First Day Pleadings. Any capitalized term not defined in this
13 Declaration shall have the meaning ascribed to that term in the relevant First Day
14 Pleading.

15 I. OVERVIEW

16 3. The District is established in Benton County as a "public hospital
17 district," a form of municipal corporation authorized under Chapter 44 of Title 70
18 of the Revised Code of Washington ("RCW"), Wash. Rev. Code §§ 70.44.003-910
19 (the "Public Hospital Districts Act").

20 4. The District is governed by a seven-member, publicly elected Board
21 of Commissioners (the "Board").
22

1 5. Originally established in 1948, the District, doing business as Trios
2 Health, owns and operates a multi-faceted public healthcare system primarily
3 serving residents in Kennewick, Pasco, Richland, and surrounding communities.
4 Trios is one of the largest multi-specialty medical groups in Eastern Washington. It
5 has two hospitals and multiple urgent and outpatient care centers, which together
6 provide inpatient and outpatient services at 12 different locations in the city of
7 Kennewick. The District maintains a workforce of approximately 1,104 employees,
8 including medical staff comprising over 89 providers.

9 **A. Facilities and Services**

10 6. Into the mid-2000's, the District's sole hospital was located in a
11 facility built in the 1950s at the District's existing campus at 900 South Auburn
12 Street in Kennewick. The hospital facility underwent a series of additions and
13 improvements during that time, including as recently as 2006. Nevertheless, in the
14 face of increasing competition, primarily from Kadlec Medical Center ("Kadlec")²
15 in Richland, the District determined that significant further expansion and
16 improvements would be required in order to remain competitive and retain market
17 share. Rather than expand in its existing location, the District elected to maintain it

18 ² In 2014, Kadlec agreed to formally affiliate with Providence Health & Services
19 by joining Western HealthConnect, the non-religious organization formed by
20 Providence, a Catholic organization, to allow its affiliation with secular
21 organizations such as Swedish Health Services. See [http://www.tri-](http://www.tri-cityherald.com/news/business/article32183145.html)
22 [cityherald.com/news/business/article32183145.html](http://www.tri-cityherald.com/news/business/article32183145.html) (accessed June 29, 2017).

1 as a 37-bed hospital, which it now operates as the Trios Women's and Children's
2 Hospital (the "Women's and Children's Hospital"), and open a second hospital in a
3 new location.

4 7. The District approved plans and acquired land for construction of a
5 new hospital facility in the fast-growing and relatively affluent Southridge area of
6 Kennewick. In addition, the District authorized construction of an adjoining six
7 story office building containing medical office space and outpatient services (the
8 "Medical Office Building") to support its expanding base of physicians and
9 outpatient services. Construction on the new hospital was completed in July 2014
10 and on the outpatient care center and offices by the following year. Today, the
11 District is anchored by the new Trios Southridge Hospital (the "Southridge
12 Hospital"), a 74-bed full-service hospital offering patients state-of-the-art medical
13 facilities, equipment, and services. Together with the Women's and Children's
14 Hospital, Trios now provides 111 beds at hospitals in two locations serving the
15 Benton County region.

16 8. Apart from its two hospitals, the District also offers a wide variety of
17 medical services at two other urgent care centers and eight outpatient provider-
18 based care centers at different locations in Kennewick. In addition, the District
19 provides adult day services, community and professional education, diabetes and
20 nutrition education, home health care, and ambulatory, pharmacy, and other
21 community outreach and medical services to patients and customers throughout the
22 Tri-Cities region.

1 9. The District served 3,386 surgery patients (2,392 on an outpatient
2 basis), admitted 7,957 patients to the hospitals, and served 29,529 emergency room
3 patients and 27,627 urgent care patients in 2016.

4 **B. The District's Indebtedness**

5 10. As of the Petition Date, the District's aggregate outstanding
6 indebtedness was approximately \$220 million, consisting of an approximate
7 aggregate amount of:

- 8 • \$110 million (book value) under the Southridge Hospital lease
9 financing agreements (the "Southridge Hospital Financing");
- 10 • \$48.76 million (book value) under the Medical Office Building
11 lease financing agreements (the "Medical Office Building
12 Financing" and, together with the Southridge Hospital
13 Financing, the "Facility Financings");
- 14 • \$24.07 million under certain equipment capital lease financing
15 agreements (collectively, the "Equipment Financings");
- 16 • \$4.075 million in outstanding principal under those certain
17 Hospital System Revenue Improvement and Refunding Bonds,
18 2001 maturing January 1, 2019 and 2025 (the "2001 Revenue
19 Bonds");
- 20 • \$4.05 million in outstanding principal under that certain
21 Limited Tax General Obligation Bond, 2006 maturing
22 December 1, 2021 (the "2006 LTGO Bond");
- \$6.88 million in outstanding principal and past-due interest
 under certain notes (collectively, the "Notes"); and
- \$22.1 million in outstanding amounts payable to vendors, of
 which at least \$19.8 million is past due.

1 11. The Board's resolution (as amended, the "2001 Bond Resolution")³
2 authorizing the 2001 Revenue Bonds requires that the District set aside out of its
3 monthly Gross Revenues (as defined in the 2001 Bond Resolution) and pay into
4 the accounts of a fund established by the District (the "Bond Fund") certain
5 amounts to be credited against and available for payment in full of the ensuing
6 required principal redemption and interest payments. The District's payment
7 obligations to the Bond Fund are secured by a pledge of Gross Revenues, such
8 pledge constituting a lien and charge on such Gross Revenues, subject only to
9 certain expenses as described in the 2001 Bond Resolution.

10 12. Under the Board's resolution (as amended, the "2006 Bond
11 Resolution") authorizing the 2006 LTGO Bond, the District agrees to levy taxes
12 annually, for each year the Bond is outstanding, in an amount at least equal to the
13 principal of and interest on the 2006 LTGO Bond due and payable in that year, and
14 that the full faith, credit, and resources of the District are pledged irrevocably for
15 the prompt payment of such principal and interest. All taxes levied and allocated
16 for the payment of principal and interest on the 2006 LTGO Bond, together with
17 other revenues of the District available for such purpose and allocated to that

18 ³ The terms of the 2001 Bond Resolution were amended by a resolution adopted by
19 the Board on May 30, 2002. The amending resolution modified details of the
20 project plan, which costs were authorized to be paid from proceeds of the 2001
21 Revenue Bonds. The financial terms of the 2001 Revenue Bonds were otherwise
22 unchanged.

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1 purpose, must be deposited in the Bond Fund. The principal and interest on the
2 2006 LTGO Bond are paid out of the Bond Fund.

3 **C. Events Leading to Restructuring**

4 **i. Growth of Revenues and Debt Service Obligations**

5 13. The District's decision to proceed with construction of the Southridge
6 Hospital and Medical Office Building was based on a 2010 feasibility study. The
7 feasibility study projected that Trios' revenues would grow, both during the
8 construction period and afterward, by sufficient measure to support the increased
9 debt service costs associated with its financing of the project. For the period
10 between 2010 and 2014, the feasibility study projected that Trios' net revenue
11 would grow at an average rate of between 11.5% and 12.5% The feasibility study
12 projected continued growth averaging 11.5% after the 2014 opening of the
13 Southridge Hospital and through 2015, slowing to below 10% by 2016.

14 14. Net revenues between 2010 and 2011 did, in fact, grow at a promising
15 15.5% rate. That was the only pre-opening period, however, to meet or exceed
16 expectations. Growth dropped to approximately 2% for both 2012 and 2013 and
17 fell just short of 10% for 2014, a year that partially included the period after
18 opening of the Southridge Hospital. Net revenues did grow at a rate exceeding
19 expectations in 2015, jumping to over 15%, but dropped to a negative rate in 2016.

20 15. The gap between Trios' actual and forecast revenue growth rates is
21 largely attributable to two unforeseen actions undertaken by Kadlec. First, in 2011,
22 Kadlec successfully negotiated for the exclusion of Trios from coverage under the

1 HMO and PPO plans offered by Group Health. Prior to that time, payments from
2 Group Health represented approximately 4% of Trios' total revenue. After losing
3 the Group Health contract, Trios experienced an annual reduction in net patient
4 revenue of approximately \$5.3 million. Trios was unable to replace that lost
5 revenue or its source with gains from new or existing sources of revenue.

6 16. Second, after the District announced its intention to construct the
7 Southridge Hospital, Kadlec announced its own plans to locate a free-standing
8 emergency room in close proximity to the District's new Southridge Hospital.
9 Following Kadlec's opening of its Southridge emergency room, Trios experienced
10 an immediate decline in patient visits to its own emergency room, along with a
11 corresponding decline in hospital admissions that are normally associated with
12 such visits. In 2010, Trios had 34,211 emergency room visits. By 2014, that
13 number decreased to 27,265 patient visits, a decline of over 20% representing a
14 loss of 6,946 emergency room visits. Moreover, Trios could historically expect
15 that approximately 9% of emergency room visits would result in admissions,
16 implying a potential loss of over 600 admissions annually by 2014.

17 17. As a result of the foregoing, Trios generated net revenues in an
18 amount totaling \$142.1 million less than what had been forecast for the cumulative
19 period between 2011 and 2016. Meanwhile, Trios' corresponding interest and
20 rental expenses during the same period increased faster than originally forecast.

21 18. As described above, the District financed the Southridge Hospital, the
22 Medical Office Building, and much of the new equipment for those facilities with

1 lease financing. Payment obligations thereunder would and did begin to increase
2 dramatically after the Southridge Hospital opened in 2014. Prior to that time,
3 however, Trios was unable to accumulate cash, causing it to obtain additional lease
4 financing in amounts exceeding the District's original forecast. Consequently,
5 Trios' annual rental and interest expenses jumped from approximately \$3.38
6 million 2013—the last full year before the Southridge Hospital opened—to \$8.62
7 million in 2014. Those expenses climbed in 2015 to \$16.26 million and again in
8 2016, as scheduled lease payment obligations reached over \$20 million. Trios'
9 2016 rental and interest expenses were \$4 million greater than forecast by the
10 feasibility study, consuming 11.4% of Trios' annual net patient revenue (compared
11 to original forecast of 7%). As a result, despite other operating projections
12 trending below original projections, total cash flows from Trios' operations
13 between 2011 and 2016 totaled \$54 million less than originally forecast.

14 19. Over the course of 2016, the District's limited liquidity position,
15 which arose as a result of its high debt service, became increasingly constrained.
16 Trios began funding negative operational cash flows by deferring payment to its
17 vendors, with vendor payables growing to \$18.9 million outstanding, and
18 increasingly past-due, by the end of 2016. In response, vendors cut payment terms,
19 demanding payment in advance or cash on delivery, adding further stress to an
20 already stretched cash situation. The District ceased making payments on its
21 obligations under certain of the Equipment Financings and under the Facility
22 Financings as of January 2017.

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1 **ii. Restructuring Options and Attempts to Negotiate with Creditors**

2 20. In October 2016, as a result of the above factors, the Board engaged
3 Quorum Health Resources (“Quorum”) to perform an operational assessment and
4 review of Trios. Quorum analyzed all aspects of Trios’ business and identified
5 areas where improvements would benefit Trios’ operational and financial
6 performance. Trios began implementation of Quorum’s proposed measures, which
7 will be phased in over the course of 2017 and are expected, in aggregate, to
8 increase annual cash flows from operations by approximately \$12.22 million, of
9 which \$6.9 million would be realized during 2017. In conjunction with and based
10 on Quorum’s analysis, the Board also began considering various financial
11 restructuring alternatives.

12 21. In March 2017, the District provided a summary of its efforts to its
13 largest creditors in order to solicit interest and open negotiations regarding
14 potential restructuring options. The District’s efforts were met with a general
15 unwillingness on the part of key creditors to provide the District with financial
16 accommodations necessary to restructure the District’s debt obligations and
17 stabilize its finances. The lack of creditor interest in an out-of-court restructuring,
18 coupled with the District’s unsustainable and increasing debt service, convinced
19 the District that an out-of-court restructuring was impracticable. In addition,
20 several of the District’s creditors are attempting and may obtain a preferential
21 transfer from the District through pending and threatened litigation proceedings.
22 First, on May 11, 2017, the University of Puget Sound sought to enforce payment

1 on a promissory note by filing a confession of judgment in the Superior Court of
2 Washington in and for Benton County (the “Benton Court”). Second, on May 18,
3 2017, Everbank Commercial Finance, Inc. commenced an action by filing a
4 complaint in the Superior Court of Washington in and for Benton County, Case.
5 No. 17-2-01360-6, seeking a money judgment against the District for alleged
6 breaches of contract under certain equipment lease agreements. Third, on June 1,
7 and June 14, 2017, respectively, Philips Medical Capital LLC and Key
8 Government Finance, Inc. sent letters to the District’s counsel alleging defaults,
9 demanding payment, and threatening to exercise contractual remedies under
10 certain equipment leasing agreements. Fourth, on June 2, 2017, Physicians Realty
11 Trust, which owns the District’s obligations under the Medical Office Building
12 Financing, sent a letter demanding mediation regarding the District’s alleged
13 defaults—a condition precedent to exercising its remedies—under the Medical
14 Office Building Financing.

15 22. Consequently, after considering all available options, the District
16 determined that its burdensome long-term debt obligations are impeding its ability
17 to implement and continue making the financial and operational improvements
18 identified by Quorum. On June 29, 2017, the Board held a public meeting and
19 unanimously passed Resolution No. 2017-7, a true and correct copy of which is
20 attached to this Declaration as Exhibit A, authorizing the District to file the
21 Petition. On June 30, 2017 (the “Petition Date”), the District filed the Petition
22 commencing the Chapter 9 Case in order to obtain relief from creditor collection

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1 actions to provide the District with time to effect a plan of adjustment (a “Plan”) of
2 the District’s debts. The District is assessing whether it is more feasible to use the
3 Chapter 9 Case to effect a Plan that will rationalize the District’s debt structure so
4 that it can satisfy, to the extent possible, its obligations to creditors and that will
5 enable it to continue its operations benefiting the health, safety, and welfare of its
6 patients and residents, or seek to sell its assets to an appropriate third-party
7 purchaser under a Plan.

8 **II. DISTRICT’S QUALIFICATIONS TO BE A CHAPTER 9 DEBTOR**

9 23. The District is a “municipality” as defined in section 101(40) of the
10 Bankruptcy Code. The District is a “public hospital district,” a form of municipal
11 corporation authorized under Washington’s Public Hospital Districts Act. *See*
12 Wash. Rev. Code § 70.44.010 (authorizing establishment of “[m]unicipal
13 corporations, to be known as public hospital districts”).

14 24. The District is specifically authorized by Washington law to be a
15 Chapter 9 debtor. RCW 39.64.040 provides that any “taxing district” may file a
16 petition under Chapter 9 of the Bankruptcy Code. The term “taxing district”
17 includes any “municipality” or “district,” such as the District. *See* Wash. Rev.
18 Code § 39.64.020.

19 25. As set forth in Section I.C. above, the District is clearly insolvent.
20 The District is not paying its debts as they come due. Moreover, the District is
21 unable to pay its future debts according to their terms.
22

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1 26. The District desires to effect a Plan. As stated above, the District
2 commenced this Chapter 9 Case to obtain relief from creditor collection actions to
3 provide the District with time to effect a Plan. The District is assessing whether it
4 is more feasible to use the Chapter 9 Case to effect a Plan that will rationalize the
5 District's debt structure so that it can satisfy, to the extent possible, its obligations
6 to creditors and that will enable it to continue its operations benefiting the health,
7 safety, and welfare of its patients and residents, or seek to sell its assets to an
8 appropriate third-party purchaser under a Plan.

9 27. The District has over 3,000 creditors holding more than \$220 million
10 in claims. These creditors include bondholders, real and personal property lessors
11 and lenders, current or former employees and retirees, political subdivisions or
12 state or federal agencies, and others who may be unknown, each with varying
13 interests.

14 28. The District has attempted, without success, to interest its creditors
15 and negotiate with them regarding an out-of-court restructuring. Such negotiations
16 have proven and will continue to be futile and impracticable due to the number of
17 the District's creditors, their divergent interests, and the need to commence the
18 Chapter 9 Case quickly given the District's deteriorating cash position.

19 29. The District urgently needs relief under the Bankruptcy Code given its
20 cash position. Given the exigent circumstances, engaging in further protracted
21 multiparty creditor negotiations is impracticable. Moreover, as described above,
22 certain of the District's creditors are attempting to obtain payment from and

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1 exercise contractual remedies against the District through threatened and actual
2 litigation proceedings, which would result in an avoidable preference. The District
3 has legitimate concerns and a reasonable belief that, absent entry of an order for
4 relief under Chapter 9, such creditors will obtain or are attempting to obtain
5 preferential transfers of the District's property. I am advised and believe that such
6 preferential transfers are avoidable under section 547 of the Bankruptcy Code.

7 **III. SUMMARY OF RELIEF SOUGHT IN FIRST DAY PLEADINGS**

8 30. In addition to the Petition and Certification, I have read and reviewed
9 the following First Day Pleadings (including the exhibits attached thereto) and the
10 allegations contained in each are true and correct to the best of my knowledge,
11 information, and belief:

- 12 a. Motion for Entry of Interim and Final Orders (a) Determining
13 Adequate Assurance of Payment for Future Utility Services, (b) Approving Adequate Assurance Procedures, (c) Prohibiting
14 Utilities From Altering, Refusing, or Discontinuing Services, and (d) Determining That Debtor is Not Required to Provide Additional
15 Adequate Assurance (the "Utilities Motion");
- 16 b. Motion for Order Establishing Case Management Procedures (the
17 "Case Procedures Motion");
- 18 c. Motion for Order (a) Directing and Approving Form of Notice, (b) Setting Deadline for Filing Objections to Petition, (c) Setting
19 Deadline for Filing List of Creditors, and (d) Setting Deadline for
20 Filing Proofs of Claim (the "Case Notice and Deadlines Motion");
- 21 d. Motion for Entry of Order Appointing Garden City Group, LLC as
22 Claims and Noticing Agent (the "Claims and Noticing Agent Motion");
- e. Motion for Entry of Order Confirming Debtor's Authority to Pay and Honor Employee Wages, Obligations, Payroll Taxes, and Benefits (the "Employee Wages Motion");

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- 1 f. Motion for Entry of Order Authorizing Procedures to Maintain
2 Confidentiality of Patient Information as Required by Privacy Rules
(the “Patient Confidentiality Motion”)
- 3 g. Motion for Entry of Order Confirming Protections of Sections 362,
4 365, and 922 of Bankruptcy Code (the “Stay and Contract Protections
Motion”); and
- 5 h. Motion for Entry of Order (a) Shortening Time to Object and (b)
6 Scheduling Hearing Regarding Debtor’s Initial Motions (the “Initial
Hearing Motion”).

7 31. I believe that the relief sought in each of the First Day Pleadings is
8 (a) in the best interests of the District, its patients and creditors, and other parties in
9 interest, (b) vital to enable to the District to conserve value and operate during the
10 Chapter 9 Case with minimum disruption to its provision of medical care to the
11 residents of Kennewick, Pasco, Richland, and surrounding communities, and
12 (c) critical to achieving the District’s successful restructuring of its debts and
13 confirmation of a Plan.

14 **A. Utilities Motion**

15 32. The District is requesting relief to prohibit its utility providers (the
16 “Utility Providers”), identified on Exhibit A of the Utilities Motion, from altering,
17 refusing, or discontinuing utility services to the District as a result of the
18 commencement of the Chapter 9 Case, or the existence of any unpaid prepetition
19 invoices, including the making of demands for security deposits or accelerated
20 payment terms. The District has proposed adequate assurance for the Utility
21 Providers and to establish procedures for resolving Utility Providers’ objections to
22 the proposed adequate assurance.

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1 33. The District incurs utility expenses for electricity, gas,
2 telecommunications, waste disposal, and water services in the ordinary course of
3 its business from the Utility Providers. On average, the District spent, in the
4 aggregate, approximately \$176,000 per month for utilities through the Utility
5 Providers over the past twelve months. The amounts paid for utilities during 2016
6 (January through December) totaled approximately \$2,365,180.

7 34. I believe that preserving utility services on an uninterrupted basis is
8 essential to the District's ongoing operations and, therefore, to the success of its
9 reorganization. Moreover, replacement Utility Providers would be difficult or, in
10 some cases, impossible to identify, given that many utilities enjoy a virtual
11 monopoly in the District's region. Any interruption in utility services, even for a
12 brief period of time, would disrupt the District's ability to continue operations.
13 This disruption would adversely impact not only the District, but also the health of
14 its patients and could result in a decline in the District's revenues and profits. Such
15 a result could seriously jeopardize the District's reorganization efforts and,
16 ultimately, its value and creditor recoveries. I therefore believe it is critical that
17 utility services continue uninterrupted during the Chapter 9 Case.

18 35. The District intends to pay all postpetition obligations owed to the
19 Utility Providers in a timely manner. In addition, the District expects that cash
20 flows from operations will be sufficient to pay postpetition obligations related to its
21 utility services.
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1 36. I believe that the District's ability and authority to pay all of its utility
2 obligations arising postpetition (together, the "Proposed Adequate Assurance")
3 constitutes sufficient adequate assurance to the Utility Providers. Notwithstanding
4 the Proposed Adequate Assurance, if any Utility Provider believes that additional
5 adequate assurance is required, it may request such assurance pursuant to the
6 procedures described in the Utilities Motion (the "Adequate Assurance
7 Procedures").

8 37. The relief requested ensures that the District's operations will not be
9 disrupted by the lack of critical utility services. Absent approval of the Proposed
10 Adequate Assurance and the Adequate Assurance Procedures, the District could be
11 forced to negotiate with each Utility Provider individually, in a disorganized
12 manner, with the attendant risk that a Utility Provider will delay until they have the
13 ability to unilaterally terminate service. During this critical postpetition period, I
14 believe the District's efforts and resources would be more productive if focused on
15 the continuation of its operations.

16 38. The District requests that a hearing be held within 40 days of the
17 Petition Date to ensure that, if a Utility Provider argues that it can unilaterally
18 refuse service to the District on the 41st day after the Petition Date, the District
19 will have had the opportunity to request modifications to the proposed Adequate
20 Assurance Procedures to avoid any potential termination of utility services.
21
22

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1 **B. Case Procedures Motion**

2 39. There are over 3,000 potential creditors and parties in interest related
3 to the Chapter 9 Case. Providing notice of all documents filed in the Chapter 9
4 Case to each creditor and party in interest would be extremely burdensome and
5 costly to the District.

6 40. I believe that limiting service of notice for such other documents and
7 pleadings and establishing specific notice, hearing, and case management
8 procedures, including setting omnibus hearing dates, all as set forth in the Case
9 Procedures Motion, will provide sufficient notice to enable parties in interest to
10 monitor and participate in the Chapter 9 Case, save the Court and the District
11 considerable expense, time, and resources, and, therefore, be in the best interests of
12 the District and its creditors.

13 **C. Case Notice and Deadlines Motion**

14 41. In addition to notice of commencement of the Chapter 9 Case as
15 otherwise required, I believe that publication in the *Tri-City Herald* will provide
16 sufficient notice to relevant parties in interest for purposes of 11 U.S.C. § 923. The
17 *Tri-City Herald* is a newspaper of general circulation in the Eastern District of
18 Washington generally and the region in which the District, specifically, is situated.
19 I further believe that *The Bond Buyer* has a general circulation among bond dealers
20 and bondholders.

21 42. I believe that fixing deadlines for the filing of objections to the
22 District's eligibility to be a debtor and proofs of claim, as set forth in the Case

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1 Notice and Deadlines Motion, will provide sufficient notice and enable parties in
2 interest to monitor and participate in the Chapter 9 Case and therefore be in the
3 best interests of the District and its creditors.

4 **D. Claims and Noticing Agent Motion**

5 43. I believe that the number of parties interested in the Chapter 9 Case
6 and the size of the District's creditor body will impose heavy administrative and
7 other burdens on the Court, the Office of the Clerk of the Court (the "Clerk's
8 Office"), and the District. To relieve the Clerk's Office and the District of those
9 burdens, the District has retained and seeks appointment of Garden City Group,
10 LLC ("GCG") as an independent third-party agent to provide noticing, claims, and
11 plan solicitation administration services in connection with the Chapter 9 Case, as
12 set forth more fully in the Claims and Noticing Agent Motion, which I believe is in
13 the best interests of the District, its creditors, and all parties interested in the
14 Chapter 9 Case.

15 **E. Employee Wages Motion**

16 44. The District plans to pay, maintain, continue, and honor the Employee
17 Obligations (as defined below) that were outstanding as of the Petition Date and as
18 they are incurred during this Chapter 9 Case in the ordinary course of business,
19 consistent with the District's existing prepetition personnel policies, as described
20 below. The District is therefore requesting an order confirming that it is authorized
21 to pay, maintain, continue, and honor in the ordinary course of business all
22 Employee Obligations.

DECLARATION OF CRAIG CUDWORTH
IN SUPPORT OF FIRST DAY
PLEADINGS - 19

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1 **i. Employee Obligations**

2 45. As discussed above, the District maintains a workforce of
3 approximately 1,104 employees, including medical staff comprising over 89
4 providers. The District pays its employees' wages (the "Employee Wages") every
5 two weeks in arrears, with each payday falling on the final day of the applicable
6 pay period.

7 46. The District's aggregate gross payroll for each pay period for all
8 employees is approximately \$3.23 million. The District estimates that as of the
9 Petition Date, the aggregate value of accrued unpaid wage and salary claims was
10 approximately \$3.00 million (the "Prepetition Wages").

11 47. The District provides paid time off ("PTO") for vacation, holidays,
12 and short-term sick leave to eligible employees. The District's eligible union and
13 full-time employees accrue PTO, which carries over from year to year (the
14 "Accruable PTO"). The aggregate value of the Accruable PTO fluctuates over
15 time, but it does not fluctuate dramatically. The District estimates the average
16 value of unused Accruable PTO as of the Petition Date to be approximately \$2,600
17 per employee (the "Accrued Prepetition PTO").

18 **ii. Payroll Taxes**

19 48. As required by law, in the ordinary course of business the District
20 withholds payroll-related taxes from the wages and salaries of their employees and
21 also incurs certain employee-related taxes and pays such amounts to governmental
22 authorities. These payroll-related taxes include federal income withholding taxes,

1 FICA taxes, Medicare payments, and federal and state unemployment taxes
2 (collectively, the “Payroll Taxes”). The District estimates that, as of the Petition
3 Date, no prepetition Payroll Taxes were outstanding (any such amounts, the
4 “Prepetition Payroll Taxes”).

5 **iii. Employee Benefits**

6 49. In the ordinary course of its business, the District also provides its
7 employees with various employee benefits, including medical, prescription drug,
8 dental, and vision insurance plans, parental and other long-term leave, flexible
9 spending accounts, basic life and personal accident insurance policies, voluntary
10 group universal life, personal accident, long term care, and disability insurance
11 policies, employee retirement savings and deferred compensation plans, tuition
12 assistance, and workers’ compensation insurance plans (collectively, the
13 “Employee Benefits” and, together with the Employee Wages, the Accruable PTO,
14 and the Payroll Taxes, the “Employee Obligations”).

15 50. The District believes that there are no amounts outstanding as of the
16 Petition Date related to the Employee Benefits (any such prepetition amounts,
17 together with the Prepetition Wages, the Accrued Prepetition PTO, and the
18 Prepetition Payroll Taxes, the “Prepetition Employee Obligations”).

19 **iv. Relief Sought**

20 51. I believe that payment and maintenance of the Employee Obligations
21 is essential for the District’s effective readjustment of its debts. The District’s
22 employees are critical to its continued ability to provide safe, reliable, efficient,

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1 high-quality care to patients. I therefore believe that it is critical for employee
2 productivity and stability that the Employee Obligations remain current and are
3 continued throughout the Chapter 9 Case. Any cloud of uncertainty as to whether
4 transfers of the District's property in connection with the Employee Obligations
5 might later be subject to potential avoidance litigation will cause employee morale
6 to deteriorate, which, in turn, will substantially and adversely impact the District's
7 ability to successfully complete an adjustment of its debts in this Chapter 9 Case.

8 52. I believe the relief requested will avoid any uncertainty or subsequent
9 controversy regarding the District's authority to pay and administer the Employee
10 Obligations in the ordinary course of business, maximize employee retention and
11 morale, and minimize the need for costly future court intervention to address these
12 issues.

13 **F. Patient Confidentiality Motion**

14 53. The District is requesting an order establishing certain procedures to
15 maintain the confidentiality of patient information as required by the Health
16 Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat.
17 1936 ("HIPAA").

18 54. I believe that certain current and past patients of the District may hold
19 or assert claims against the District. I am advised that, under the Bankruptcy Code
20 and the Federal Rules of Bankruptcy Procedure, the District must list information
21 about these patients, including their names and addresses, in the creditor matrix
22

1 and in the list of creditors that the District must file pursuant to section 924 of the
2 Bankruptcy Code.

3 55. I am advised that listing any patient's name or address in the District's
4 matrices, the List of Creditors, disclosure statement, or any notice or certificate of
5 service may violate certain privacy rules promulgated under HIPAA, unless an
6 exception permitting such distribution is satisfied. I am further advised that, to the
7 extent the District or GCG, as the District's noticing agent, discloses protected
8 health information pursuant to an order of this Court, such disclosure would not
9 violate HIPAA.

10 56. Accordingly, I believe an order establishing procedures authorizing
11 and directing how and in what circumstances the District must or must not disclose
12 patient information in connection with the Chapter 9 Case is in the best interests of
13 the District and its creditors, patients, and other parties in interest.

14 **G. Stay and Contract Protections Motion**

15 57. The District is requesting an order confirming application of key
16 protections under sections 362, 365, and 922 of the Bankruptcy Code.

17 58. I am advised that these sections of the Bankruptcy Code operate,
18 among other things, to (a) stay certain actions by non-debtor third parties (the
19 "Chapter 9 Stay") and (b) prohibit all counterparties to executory contracts or
20 unexpired leases with the District from modifying or terminating such contract or
21 lease based on the District's insolvency or commencement of this Chapter 9 Case
22 (the "Contract Protections").

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1 59. Notwithstanding the self-executing nature of the Chapter 9 Stay and
2 the Contract Protections, I believe that creditors or other parties in interest may not
3 appreciate their full significance and impact or may attempt to circumvent their
4 protections by asserting claims against the District's officers acting in other
5 capacities.

6 60. For the District to obtain the full benefit of the "breathing spell"
7 afforded by bankruptcy, I believe that it is necessary and appropriate to advise third
8 parties of the existence and effect of the Chapter 9 Stay and the Contract
9 Protections through a separate court order. I believe this will promote prompt
10 compliance with the Chapter 9 Stay and the Contract Protections, maximize the
11 protections afforded by these provisions, and minimize the need for future court
12 intervention to address these issues.

13 **H. Initial Hearing Motion**

14 61. Due to the urgency of the circumstances surrounding the relief sought
15 by the foregoing First Day Pleadings, I believe that scheduling an expedited
16 hearing and shortening the period for permitting objections to such First Day
17 Pleadings is in the best interests of the District, its creditors, and all parties
18 interested in the Chapter 9 Case.

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DECLARATION OF CRAIG CUDWORTH
IN SUPPORT OF FIRST DAY
PLEADINGS - 24

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1 **IV. CONCLUSION**

2 62. The District's goal is to quickly restructure its debts under a
3 confirmed Plan. In furtherance of that goal, and to minimize any loss of value, the
4 District seeks to maintain and continue its normal operations with as little
5 disruption as possible during the pendency of the Chapter 9 Case. I believe that
6 the relief sought by the Petition and requested in the First Day Pleadings is in the
7 best interests of the District and all of its stakeholders, including its creditors and
8 patients, and will substantially enhance the District's likelihood of achieving a
9 successful reorganization.

10 *[Remainder of page intentionally left blank.]*
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1 I certify under penalty of perjury under the laws of the State of Washington
2 that the foregoing is true and correct.

3 DATED this 30th day of June, 2017.
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6

7 By: 

Craig Cudworth
Chief Executive Officer
Kennewick Public Hospital District
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DECLARATION OF CRAIG CUDWORTH
IN SUPPORT OF FIRST DAY
PLEADINGS - 26

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Exhibit A

Board Resolution Authorizing Filing of Petition

EXHIBIT A – BOARD RESOLUTION
AUTHORIZING FILING OF PETITION

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**KENNEWICK PUBLIC HOSPITAL DISTRICT
BENTON COUNTY, WASHINGTON**

RESOLUTION NO. 2017-7

**A RESOLUTION of the Commission of Kennewick Public Hospital District,
Benton County, Washington, approving and authorizing
the District to commence a case under Chapter 9 of the United States
Bankruptcy Code.**

WHEREAS, Kennewick Public Hospital District, Benton County, Washington (the “District”) is a public hospital district and a municipal corporation duly organized and existing under the laws of the State of Washington; and

WHEREAS, the District is a “taxing district” that is authorized pursuant to RCW 39.64.040 to file a petition under Chapter 9 of the Bankruptcy Code; and

WHEREAS, the District does business under the name Trios Health; and

WHEREAS, the District is not paying its debts as they come due and is unable to pay its future debts according to their terms; and

WHEREAS, the District desires to effect a Plan of Adjustment that will rationalize the District’s debt structure so that it can satisfy, to the extent possible, its obligations to creditors and enable the District to continue its operations benefitting the health, safety, and welfare of its patients and residents; and

WHEREAS, the District’s financial obligations are complex and its creditors are numerous and diverse; and

WHEREAS, the District has participated in meetings and negotiations with certain of its largest creditors in an effort to restructure the District’s debts on mutually agreeable terms, but such negotiations were unsuccessful and it is not feasible or practicable for the District to negotiate with all of its creditors individually; and

WHEREAS, certain of the District’s creditors have served notice of default upon and commenced legal proceedings against the District, and the District believes that such creditors will obtain or are attempting to obtain a preferential transfer if the District does not commence a case under Chapter 9 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”); and

WHEREAS, the Commission of the District finds that the only reasonable and prudent course of action to effect the aforesaid Plan of Adjustment is the filing of a voluntary petition in bankruptcy; and

WHEREAS, the Commission of the District finds it is in the best interests of the District and all of its stakeholders, including its creditors and patients, and will substantially enhance the District's likelihood of achieving a successful reorganization; and

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSION OF KENNEWICK PUBLIC HOSPITAL DISTRICT, BENTON COUNTY, WASHINGTON, AS FOLLOWS:

Section 1. Authorization to Execute Documents. Craig Cudworth and Tony Sudduth, as officers of the District (the "Authorized Officers"), are each authorized, and each acting alone, to prepare the necessary petition and execute all necessary documents on behalf of the District associated with the Chapter 9 proceedings.

Section 2. Authorization to Commence Chapter 9 Proceedings. The Authorized Officers are each authorized and directed, and each acting alone, to cause the District to file a petition commencing a case under Chapter 9 of the Bankruptcy Code as soon as is practicable.

Section 3. Authorization of All Required Acts. The Authorized Officers are each authorized and directed, and each acting alone, to take such steps and execute such documentation as is required in order to effectuate any and all of the foregoing.

Section 4. Ratification of Prior Actions. All other prior actions of the District not inconsistent with the provisions of this resolution are hereby ratified and confirmed in all respects.

[Remainder of Page Intentionally Left Blank.]

ADOPTED and APPROVED by the Commission of Kennewick Public Hospital District, Benton County, Washington, at a meeting thereof this 29th day of June 2017, the following Commissioners being present and voting.

**KENNEWICK PUBLIC HOSPITAL DISTRICT,
BENTON COUNTY, WASHINGTON**




Marvin Kinney
President and Commissioner

Mike McWhorter
Vice President and Commissioner




Gary G. Long
Secretary and Commissioner




Richard Reil
Commissioner



Wanda Briggs
Commissioner



Don Campbell
Commissioner



Leonard Dreisbach, MD
Commissioner

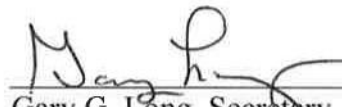
CERTIFICATION

I, the undersigned, Gary G. Long, Secretary of the Commission of Kennewick Public Hospital District, Benton County, Washington (the "District"), hereby certify as follows:

1. The attached copy of Resolution No. 2017-7 (the "Resolution") is a full, true and correct copy of a resolution duly adopted at a regular meeting of the Commission of the District held at the meeting place thereof on June 29, 2017, as that resolution appears on the minute book of the District; and
2. A quorum of the members of the Commission was present throughout the meeting and a majority of those members present voted in the proper manner for the adoption of the Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of June 2017.

**KENNEWICK PUBLIC HOSPITAL DISTRICT,
BENTON COUNTY, WASHINGTON**



Gary G. Long, Secretary
Board of Commissioners