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 12 HEALTH CARE DISTRICT

13 **UNITED STATES BANKRUPTCY COURT**
 14 **EASTERN DISTRICT OF CALIFORNIA**
 15 **SACRAMENTO DIVISION**

16 In re:
 17 SURPRISE VALLEY HEALTH CARE
 18 DISTRICT
 19 Debtor.

CASE NO. 18-20070
 Chapter 9

DCN: SVH-8

DATE: TBD
 TIME: TBD
 CTRM: 32

Judge: Hon. Christopher Jaime

20 **DEBTOR'S MOTION FOR ORDER**
 21 **(I) GRANTING SENIOR SECURED STATUS TO THE DEBTOR'S**
 22 **POSTPETITION LENDER; (II) AUTHORIZING SUPERPRIORITY ADMINISTRATIVE**
 23 **EXPENSE STATUS FOR THE POSTPETITION LENDER; (III) FINDING**
 24 **THAT PREPETITION LIENHOLDERS ARE ADEQUATELY PROTECTED;**
 25 **(IV) MODIFYING THE AUTOMATIC STAY; (V) SCHEDULING A FINAL HEARING**
 26 **PURSUANT TO BANKRUPTCY RULE 4001; AND (VI) GRANTING RELATED RELIEF**

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1 TO THE HONORABLE CHRISTOPHER D. JAIME, UNITED STATES BANKRUPTCY
2 JUDGE:

3 Surprise Valley Health Care District (the “Debtor” or “District”), the Debtor in the above-
4 captioned Chapter 9 case (the “Chapter 9 Case”), hereby moves (the “Motion”) for entry of an
5 order substantially in the form attached hereto as Exhibit “A” (the “Interim Order”) and, following
6 a final hearing, a final order, requesting the following relief:

7 (a) granting Cadira Group Holdings, LLC (the “Lender” or “Cadira”): (i) a first
8 priority, priming, valid, perfected, and enforceable Lien (as defined below), subject only to the
9 Carve Out (as defined below), on substantially all of the Debtor’s real and personal property as
10 provided in and as contemplated by the Interim Order and the *Superpriority Senior Secured Credit*
11 *Agreement* (as may be amended, modified, or supplemented, the “Credit Agreement”),
12 substantially in the form attached as Exhibit “B” to the Interim Order; and (ii) a superpriority
13 administrative claim status in respect of all obligations under the Credit Agreement (collectively,
14 the “Obligations”), subject to the Carve Out (defined below and in the Credit Agreement) as
15 provided herein.

16 (b) modifying the automatic stay imposed by Bankruptcy Code Section 362 to the
17 extent necessary to implement and effectuate the terms and provisions of the Credit Agreement
18 and this Interim Order;

19 (c) finding that the Prepetition Secured Creditors (as defined below) are adequately
20 protected as described in this Interim Order, to the extent of any diminution in the value of the
21 Prepetition Secured Creditors’ interests in the prepetition Collateral (as defined below), as a result
22 of the granting of the Lien to the Lender and for the imposition of the automatic stay; and

23 (d) scheduling a final hearing (the “Final Hearing”) to consider entry of an order (the
24 “Final Order”) granting the relief requested in the Motion on a final basis and approve the form of
25 notice with respect to the Final Hearing.

26 **I. JURISDICTION AND VENUE**

27 1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and
28 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

1 2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2 3. The statutory predicates for the relief sought herein are sections 105, 364(c)(1),
3 364(d)(1) and 901 of Title 11 of the Bankruptcy Code , Rule 2002, 4001, and 9014 of the
4 Bankruptcy Rules, and Rule 2002-1, 4001-1, and 9014-1 of the Local Rules of Practice for the
5 United States Bankruptcy Court for the Eastern District of California (the “Local Rules”).

6 **II. MOTION**

7 1. As more fully set forth herein and in the *Declaration Of Jennifer R. Hanor in*
8 *Support of Debtor’s Motion For An Order (I) Granting Senior Secured Status To The Debtor’s*
9 *Postpetition Lender, (II) Authorizing Superpriority Administrative Expense Status For The*
10 *Postpetition Lender; (III) Finding That Prepetition Lienholders Are Adequately Protected; (IV)*
11 *Modifying The Automatic Stay; (V) Scheduling A Final Hearing Pursuant To Bankruptcy Rule*
12 *4001; And (VI) Granting Related Relief, (the “Hanor Declaration”), the District has entered into a*
13 *Credit Agreement with the Lender in the principal amount not to exceed \$4,000,000.00 (the*
14 *“Facility”). Of that amount, \$1,500,000 may be used to fund the ongoing operations of the*
15 *Hospital and fund professional fees and expenses, and \$2,500,000 has been utilized to purchase a*
16 *lab facility that will expand the Debtor’s ability to serve the community and increase revenue by*
17 *augmenting services currently offered by the District through alternate providers. The District*
18 *seeks to use the Facility in accordance with the terms and conditions of the Credit Agreement and*
19 *the budget attached to the Appendix of Exhibits (“Appendix”)¹ as Exhibit “N” (the “Budget”).*
20 *The Lender has agreed to provide this Facility on the condition that it is granted a senior lien on*
21 *the District’s property and superpriority administrative expense status in the Chapter 9 Case.*
22 *Credit Agreement at page 2.*

23 2. The Lender has provided the District with an initial advance in the amount of
24 \$304,000, without which the District would likely have had to close operations. The District has
25 an urgent and immediate need for further advances to remain open and operating. Without the
26 Facility, the District will lack necessary liquidity to operate its business, and therefore will be

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¹ The Appendix is filed concurrently with the Motion in accordance with Local Rules.

1 unable to fund its ordinary course expenditures or pay the expenses necessary to administer the
 2 Chapter 9 Case. Consequently, the District will be required to cease operations, causing
 3 irreparable harm to the District, its creditors, and most importantly, the patients the District serves.
 4 By contrast, and as set forth in the Hanor Declaration, the District intends to promptly file a
 5 readjustment plan that will preserve the business as a going concern, and the financing made
 6 available through the Credit Agreement is necessary to achieve a successful reorganization. Hanor
 7 Decl. ¶¶ 12; 18-20.

8 3. Accordingly, the District has an urgent and immediate need for the borrowings
 9 under the Credit Agreement and respectfully requests that the Court grant this Motion.

10 **III. SUMMARY OF MATERIAL PROVISIONS AND COMPLIANCE WITH LOCAL**
 11 **RULE 4001-1(C)(3)²**

12 The salient terms of the Credit Agreement are summarized in the following table:³

Term	Description	Location in Credit Agreement
Borrower	Surprise Valley Health Care District	Page 2.
Lender	Cadira Group Holdings, LLC	Page 2.
Borrowing Limits	Credit facility in an aggregate principal amount not to exceed \$4,000,000.00, consisting of \$2,804,000.00 on an interim basis (\$2,500,000 of which shall be used to finance the Lab Purchase Transaction) and an additional \$1,196,000.00 on a final basis.	Page 2.
Interest Rate	Loans shall bear interest at a fixed rate per annum of five percent (5%). The rate hereunder for Loans shall be calculated based on a 365-day year. Upon the	§1 (page 4); §8.

25 ² Capitalized terms used herein that are undefined shall have the meaning ascribed to them in the Credit Agreement.

26 ³ The following chart summarizes the material terms and conditions of the Credit Agreement. In
 27 the event of any inconsistency with the Credit Agreement, the terms and conditions of the Credit
 28 Agreement shall control.

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	<p>occurrence and during the continuance of an Event of Default and the giving of any required notice by the Lender in accordance with the provisions of Section 10, Paragraph 10.2 of the Credit Agreement, all Loan Obligations shall bear interest at the Default Rate of Interest, which is a fixed rate of interest per annum on any Loan Obligations hereunder, equal to ten percent (10%), which the Lender shall be entitled to charge the Debtor on all Loan Obligations due the Lender by the Debtor, as further set forth in Paragraph 10.2 of Section 10 of the Credit Agreement.</p> <p>Notwithstanding any provision herein or in any other Loan Document to the contrary, interest on the Loans and all Out-of-Pocket Expenses shall be payable in kind by capitalizing the outstanding principal amount of the Loans. All interest accrued and capitalized on the outstanding principal amount of the Loans shall be cancelled and deemed paid, and, for the avoidance of doubt, shall no longer constitute part of the Loan Obligations if and to the extent Lender cancels such Loan Obligations as a component of the purchase price payable to complete the Sale Transaction in accordance with the Asset Purchase Agreement.</p>	
<p>Fees</p>	<p>Loan Obligations includes out-of-pocket expenses of Cadira up to a cap of \$25,000 (except for out-of-pocket expenses incurred by Cadira in connection with enforcing rights and remedies upon the occurrence of an Event of Default, which are not subject to such limits).</p> <p>If the voters of Modoc County do not approve the sale of substantially all of the District’s assets to Cadira for a purchase price of \$4,000,000 (the “Sale Transaction”) by June 5, 2018, then the District is also obligated to pay to Cadira an Election Termination Fee equal to twenty percent (20%) of the cumulative Net Monthly Profits (defined herein) received by the District following the completion of the Lab Purchase Transaction.</p>	<p>§1 (page 5, 7); §8.</p>

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<p>Maturity Date</p>	<p>The Maturity Date is the earlier of (i) July 31, 2018, (ii) the effective date of any plan of adjustment of the Debtor, (iii) dismissal of any of the Chapter 9 Case, (iv) closing of any sale of substantially all the assets of the Debtor or (v) vote against the Sale Transaction by the citizens of the County in a duly held election.</p>	<p>§1 (page 7).</p>
<p>Use of Proceeds of Postpetition Loan</p>	<p>The proceeds of the Loans shall be used strictly in accordance with the Budget to: (i) finance the Lab Purchase Transaction; (ii) provide working capital to the Debtor in the Chapter 9 Case in order to maintain operations of the Hospital and Clinic and in order to facilitate a Sale Transaction; and (iii) to fund the professional fees and the US Trustee fees set forth in the Budget. The proceeds of the Loans shall not be used to fund the operations of, or the administration of the Chapter 9 Case of, any subsidiary or affiliate of the Debtor without the prior written consent of the Lender, except as set forth above.</p>	<p>§3.8 (page 11).</p>
<p>Security and Priority</p>	<p>The parties will enter into the Credit Agreement prior to the entry of a bankruptcy court order authorizing the financing on the terms and conditions set forth in the Credit Agreement and granting Cadira a senior secured security interest which primes all other liens and security interests on the Collateral (a “Financing Order”). Until the entry of a Financing Order, Cadira’s security interest shall be subject to certain permitted liens (defined as “Prepetition Liens”), including the four federal tax liens reflected on title search reports conducted against the real property owned and leased by the district, the abstract of support judgment in favor of Mediant, and the purchase money deed of trust and assignment of rents granted in favor of Gary L. Odgers and Ann Wylie Odgers, Trustees of The Odgers Family Trust. However, upon the entry of a Financing Order, the security interest granted to Cadira shall be senior to such liens.</p> <p>The Interim Order will also grant Cadira a superpriority administrative expense claim</p>	<p>§6 (page 13-16).</p>

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	<p>that has priority over any or all other administrative expenses of any kind specified in Section 503(b) of the Bankruptcy Code, except for the Carve-Out (which is defined as “(i) U.S. Trustee fees, pursuant to 28 U.S.C. § 1930 and (ii) a total of \$655,000.00 for all professional expenses incurred by all Debtor professionals at any time, whether or not then allowed or paid (but subject to ultimate allowance) payable out of the Collateral, including all expenses of counsel permitted under the Budget”).</p>	
<p>Collateral</p>	<p>The Loans will be secured by a security interest in and lien on substantially all assets of the District, including all real property owned and leased by the District, as described in Section 6.5 of the Credit Agreement (the “Collateral”).</p>	<p>§6 (13-16).</p>
<p>Carve-Out</p>	<p>Shall mean: (A) unless and until the Loans and all other Loan Obligations are repaid in full (i) U.S. Trustee fees, pursuant to 28 U.S.C. § 1930 (the “U.S. Trustee Fees”) and (ii) a total of \$655,000.00 for all professional expenses incurred by all Debtor professionals at any time, whether or not then allowed or paid (but subject to ultimate allowance) payable out of the Collateral, including all expenses of counsel permitted under the Budget. Notwithstanding anything contained in this paragraph to the contrary nothing in this paragraph shall be construed to impair the ability of any interested party to object to any professional expenses sought by any professional person.</p>	<p>§1 (page 3).</p>
<p>Plan and Sale Process Milestones</p>	<ul style="list-style-type: none"> (i) The Debtor shall have filed a motion seeking approval of the Loans on or before ten (10) days following the Closing Date, and a Financing Order shall be entered by the Bankruptcy Court in the Chapter 9 Case no later than thirty (30) days thereafter. (ii) The Debtor shall have filed a motion seeking approval of the Asset Purchase Agreement and the Sale Transaction) on or before March 31, 2018; (iii) The Bankruptcy Court shall enter an order in form and substance acceptable 	<p>§10.1(j) (page 23-24).</p>

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	<p>to Lender approving the sale of substantially all the assets of the Debtor to Lender (“Sale Order”) on or before April 30, 2018, and such Sale Order shall not be stayed;</p> <p>(iv) The Debtor shall submit to the County the election ballot for the approval of the Sale Transaction on or before March 9, 2018;</p> <p>(v) The approval of the Sale Transaction in a duly held election by the County shall occur on or before June 5, 2018; or</p> <p>(vi) Any sale of substantially all the assets of the Debtor shall close and be effective no later than June 30, 2018.</p>	
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In accordance with Local Rule 4001-1(c)(3), the following table identifies whether certain material provisions are included in the Credit Agreement.

Material Provision	Description	Location in Credit Agreement
Cross-collateralization and/or “roll-ups”	None.	
Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection, or amount of a secured party’s lien or debt	<p>The Loans will be secured by a security interest in and lien on substantially all assets of the District, including all real property owned and leased by the District, as described in Section 6.5 of the Credit Agreement.</p> <p>The parties will enter into the Credit Agreement prior to the entry of a bankruptcy court order authorizing the financing on the terms and conditions set forth in the Credit Agreement and granting Cadira a senior secured security interest which primes all other liens and security interests on the. Until the entry of a Financing Order, Cadira’s security interest shall be subject to certain permitted liens (defined as “Prepetition Liens”), including the</p>	§6 (page 13-16).

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	<p>four federal tax liens reflected on title search reports conducted against the real property owned and leased by the district, an abstract of support judgment in favor of Medliant, and the purchase money deed of trust and assignment of rents granted in favor of Gary L. Odgers and Ann Wylie Odgers, Trustees of The Odgers Family Trust. However, upon the entry of a Financing Order, the security interest granted to Cadira shall be senior to such liens.</p>	
<p>Provisions or findings of fact that bind the estate or all parties in interest with respect to the relative priorities of the secured party's lien and liens held by persons who are not party to the stipulation</p>	<p>The Interim Order will also grant Cadira a superpriority administrative expense claim that has priority over any or all other administrative expenses of any kind specified in Section 503(b) of the Bankruptcy Code, except for the Carve-Out (which is defined as "(i) U.S. Trustee fees, pursuant to 28 U.S.C. § 1930 and (ii) a total of \$655,000.00 for all professional expenses incurred by all Debtor professionals at any time, whether or not then allowed or paid (but subject to ultimate allowance) payable out of the Collateral, including all expenses of counsel permitted under the Budget").</p>	<p>§6.1 (page 13); §6.12 (page 16).</p>
<p>Waivers of 11 U.S.C, § 506(c), unless the waiver is effective only during the period which the debtor is authorized to use cash collateral or borrow funds</p>	<p>The Credit Agreement provides: "Except for the Carve-Out, no costs or expenses of administration shall be imposed against the Lender or any of the Collateral under Sections 105 or 506(c) of the Bankruptcy Code, or otherwise, and the Debtor hereby waive for itself and on behalf of its estate in bankruptcy, any and all rights under Sections 105 or 506(c) of the Bankruptcy Code, or otherwise, to assert or impose to assert or impose, any such costs or expenses of administration against the Lender."</p>	<p>§6.11 (page 15).</p>
<p>Provisions that operate to divest the debtor of any</p>	<p>None</p>	

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<p>discretion in the formulation of a plan or administration of the estate or to limit access to the court to seek any relief under other applicable provisions of law</p>		
<p>Releases of liability for the creditor's alleged prepetition torts or breaches of contract</p>	<p>None</p>	
<p>Waivers of avoidance actions arising under the Bankruptcy Code</p>	<p>The Credit Agreement includes as Collateral "all present and future claims, rights, interests, assets and properties recovered by or on behalf of the Debtor or any trustee of the Debtor including, without limitation, all such property recovered as a result of transfers or obligations avoided or actions maintained or taken pursuant to, <i>inter alia</i>, Sections 542, 545, 547, 548, 549, 550, 552 and 553 of the Bankruptcy Code."</p>	<p>§ 6.5(l) (page 14).</p>
<p>Automatic relief from the automatic stay upon default, conversion to chapter 7, or appointment of a trustee</p>	<p>The Credit Agreement provides that subject to the provisions of any Financing Orders, during the period that any Loan Obligations remain outstanding, the automatic stay imposed under Section 362(a) of the Bankruptcy Code by the filing of the Chapter 9 Case shall not apply to the Lender, or any actions that may be taken by Lender, to enforce the rights and remedies granted the Lender by the Loan, the Loan Documents or any Financing Orders.</p>	<p>§10.5 (page 27).</p>
<p>Waivers of procedural requirements for foreclosure mandated under applicable nonbankruptcy law</p>	<p>None</p>	
<p>Adequate protection provisions that create liens on claims for relief arising under the Bankruptcy Code</p>	<p>None</p>	

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<p>Waivers, effective on default or expiration, of the debtor’s right to move for a court order pursuant to 11 U.S.C. § 363(c)(2)(B) authorizing the use of cash collateral in the absence of the secured party’s consent.</p>	<p>None</p>	
<p>Findings of fact on matters extraneous to the approval process</p>	<p>None</p>	

IV. WAIVER OF BANKRUPTCY RULES 6004(A) AND (H)

The District believes an efficient and expeditious approval and implementation of the Facility is in the best interests of its creditors and other parties in interest, including its patients and residents. Accordingly, should the Court grant the Motion and enter the Order, the District seeks waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of orders authorizing the use of property under Bankruptcy Rule 6004(h).

V. INTERIM ORDER AND FINAL HEARING

As set forth above, and pursuant to Bankruptcy Rule 4001(c)(2), the District requests that the Court enter the Interim Order to prevent immediate and irreparable harm to the District pending the Final Hearing, and set a date for a Final Hearing within fourteen (14) days after service of this Motion. Subject to the Court’s approval, the Final Order will be in substantially the same form as the Interim Order and will be filed by the District no later than seven (7) days prior to the Final Hearing.

VI. NOTICE

No trustee, examiner, or statutory committee of unsecured creditors has been appointed in this Chapter 9 case. Notice of this Motion will be provided to: (i) the Office of the United States Trustee; (ii) counsel to Caira Group Holdings LLC, as Lender; (iii) the parties included on the District’s list of 20 largest unsecured creditors; (iv) the Prepetition Secured Creditors; and (iv) all

///

1 parties requesting notice pursuant to Bankruptcy Rule 2002. The District submits that no other or
2 further notice need be provided.

3 No previous motion for the relief sought herein has been made to this or any other court.

4 WHEREFORE, the District respectfully requests entry of the Order under sections 105,
5 364, and 901 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, and 9014, and Local Rules
6 2002-1, 4001-1, and 9014-1 (i) granting the relief requested herein and (ii) granting the District
7 such other and further relief as the Court deems just and proper.

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9 DATED: March 5, 2018

Respectfully submitted,

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BROWN RUDNICK LLP

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By: 

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CATHRINE M. CASTALDI
Attorneys for SURPRISE VALLEY HEALTH
CARE DISTRICT

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