

9

1 WALTER WILHELM LAW GROUP  
2 A Professional Corporation  
3 Riley C. Walter #91839  
4 Kathleen D. DeVaney #156444  
5 205 East River Park Circle, Ste. 410  
6 Fresno, CA 93720  
7 Telephone: (559) 435-9800  
8 Facsimile: (559) 435-9868  
9 E-mail: [rileywalter@W2LG.com](mailto:rileywalter@W2LG.com)

7 Chapter 9 Counsel for Tulare Local Healthcare District, dba  
8 Tulare Regional Medical Center  
9 IN THE UNITED STATES BANKRUPTCY COURT

10 EASTERN DISTRICT OF CALIFORNIA

11 FRESNO DIVISION

12 In re

CASE NO. 17-13797

13 TULARE LOCAL HEALTHCARE  
14 DISTRICT, dba TULARE  
15 REGIONAL MEDICAL CENTER,

DC No.: WW-60

Chapter 9

16 Debtor.

Date: February 7, 2019

Time: 10:30 a.m.

17 Tax ID #: 94-6002897  
18 Address: 869 N. Cherry Street  
19 Tulare, CA 93274

Place: 510 19<sup>th</sup> Street

Bakersfield, CA

Courtroom 13

Judge: Honorable René Lastreto II

20 **INTERIM ORDER APPROVING AND GRANTING MOTION FOR AUTHORITY**  
21 **TO BORROW AND GIVE SECURITY**

22 At Fresno, in the Eastern District of California.

23 Pursuant to the Motion for Authority to Borrow and Give Security filed by the  
24 District, and at the hearing held on February 7, 2019 at 10:30 a.m. in Bakersfield, the  
25 District moved the Court for an order:

26 1. Authorizing the District ("District" or "Borrower") to borrow up to \$9,000,000  
27 from the City of Tulare ("Lender") on the terms set forth in the documents and terms set  
28 forth more fully below (the "Loan").

2. Granting the Lender a first priority lien on all of District's real property other

1 than the hospital facility (“Collateral”) in accordance with 11 U.S.C. § 364(d); and

2 3. For a finding that the Lender acted in good faith for the purposes of 11 U.S.C.  
3 § 364(e).

4 The Court, having considered the Motion, the Declaration of Richard Gianello filed  
5 in support of the Motion on January 25, 2019 (Docket No. 1038), and in accordance with  
6 FRBP 4001(c), due and proper notice of the Motion having been provided; and an interim  
7 hearing having been held before this Court, and upon all the pleadings filed with the Court  
8 in connection with the hearing and all of the proceedings held before the Court, the  
9 arguments made at the hearing, if any, and upon the record made at the hearing; and the  
10 Court having noted the appearances of all parties having appeared; and having  
11 concluded the Borrower is unable to obtain the needed credit on more favorable terms,  
12 that certain affected creditors have consented to the relief described below and that the  
13 interests of all other creditors with existing liens are adequately protected, the borrowing  
14 request has been made in good faith and is necessary for the continued operations of the  
15 District; and objections, if any, to the relief requested in the Motion having been  
16 withdrawn, compromised, resolved or overruled by the Court; and after due deliberation  
17 and consideration and good and sufficient cause appearing therefore:

18 IT IS HEREBY FOUND that:

19 1. This Court has jurisdiction over this case (the “Chapter 9 Case”) pursuant  
20 to 28 U.S.C. §§ 157(b) and 1334. Consideration of this interim order (“Order”) constitutes  
21 a core proceeding as defined under 28 U.S.C. § 157(b)(2)(A), (D), and (O). The statutory  
22 predicates for the relief requested herein are Sections 901 and 364(d) of the Bankruptcy  
23 Code and FRBP 4001(c). Venue of the Chapter 9 case is proper pursuant to 28 U.S.C.  
24 §§ 1408 and 1409. Capitalized terms not defined in this Order have the meanings  
25 provided in the Motion.

26 2. Based on the record, the Court finds that the terms of the Loan have been  
27 negotiated in good faith, at arm's-length and without collusion among the Borrower and  
28 the Lender, and are fair and reasonable under the circumstances and are fully

1 enforceable against the Borrower.

2 3. Any credit extended to the Borrower under the terms of this Order shall be  
3 deemed extended in good faith as such term is used in Section 364(e) of the Bankruptcy  
4 Code. The Lender is granted all the protections provided by Section 364(e) of the  
5 Bankruptcy Code.

6 4. The Borrower and Lender also will be acting in good faith within the meaning  
7 of Section 364(e) of the Bankruptcy Code in closing the Loan and thereafter performing  
8 its obligations and exercising its rights as contemplated by the documents that evidence  
9 and secure the Loan.

10 5. Entry of this Order approving the Loan will benefit the Borrower and the  
11 creditors and the Loan is necessary for the continued operations of the District.

12 6. Based on the record, the Court finds that appropriate notice of the interim  
13 hearing has been given in accordance with FRBP 4001(c)(2) and 9006(c).

14 7. The terms of the Loan are fair and reasonable under the circumstances,  
15 reflect the Borrower's exercise of prudent business judgment consistent with its duties,  
16 and are supported by reasonably equivalent value and fair consideration.

17 8. The Borrower's request for an interim borrowing pending a final hearing is  
18 necessary to avoid immediate and irreparable harm to the District.

19 9. Based upon the foregoing findings and conclusions, and upon the record  
20 made by the Borrower at the hearing on the Motion for this Order, and any objections to  
21 this Order having been withdrawn, compromised, resolved or overruled, and good and  
22 sufficient cause appearing:

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

24 1. Disposition. The Motion is granted in accordance with the terms of this  
25 Order, and any objections thereto that have not previously been withdrawn or resolved  
26 under the terms of this Order are overruled. This Order is valid immediately and is fully  
27 effective upon its entry.

1           2.     Authorization; Power to Execute Necessary Documents. The Borrower is  
2 expressly authorized, directed and empowered to enter into and deliver the Debtor in  
3 Possession Credit Agreement and Deed of Trust in the forms attached hereto as Exhibits  
4 A and B, and to enter into and deliver appropriate documents to the extent consistent with  
5 those materials and this Order.

6           3.     Grant of Post Petition Security Interest and Lien. As security, the Lender is  
7 hereby granted (effective immediately and without the necessity of the execution or filing  
8 of a security agreement, or financing statements), pursuant to Sections 364(d) of the  
9 Bankruptcy Code, a first priority senior lien on and security interest in the Collateral. The  
10 consents to this Loan given by Healthcare Conglomerate Associates, LLC and  
11 Wilmington Trust as Trustee/Paying Agent are reflected below.

12          4.     Borrowing. District is authorized to borrow up to \$9,000,000 from the City  
13 of Tulare.

14          5.     Bond Treatment. The following bond treatment shall be and hereby is  
15 approved as adequate protection for the District's Revenue Bonds and General Obligation  
16 Bonds, and on these terms, Wilmington Trust, National Association, as trustee and paying  
17 agent for the Revenue Bonds and/or paying agent for the General Obligation Bonds (the  
18 "Trustee/Paying Agent") consents to the Motion:

19           a.     The rights granted to Trustee/Paying Agent and Syncora Guaranty  
20 Inc. ("Syncora") in that Order entered in this Chapter 9 Case on August 7, 2018 (Docket  
21 No. 702) (the "Prior Financing Order") shall be and are hereby reaffirmed in all respects.  
22 Without limiting the foregoing, (i) any plan confirmed in this Chapter 9 Case shall reinstate  
23 the Revenue Bonds and General Obligation Bonds in their then existing principal amount;  
24 (ii) any plan confirmed in this Chapter 9 Case shall ratify and otherwise reinstate the  
25 Revenue Bond Documents on terms acceptable to the District and Trustee/Paying Agent;  
26 (iii) the District shall continue to comply with its obligations under the documents  
27 evidencing and otherwise securing the General Obligation Bonds; and (iv) any plan  
28 confirmed in this Chapter 9 Case shall ratify and otherwise reinstate the General

1 Obligation Bond Documents without any change or modification to the terms of the  
2 General Obligation Bonds or the insurance policy issued by Syncora in connection with  
3 the District's Series A General Obligation Bonds;

4 b. the District shall continue to cooperate in the payment of scheduled  
5 debt service on the General Obligation Bonds from the sources, in the amounts, and at  
6 the times specified in the documents that evidence and otherwise secure the General  
7 Obligation Bonds. The parties shall maintain the existing cash management system used  
8 with respect to the collection of ad valorem taxes and subsidy payments and the  
9 distribution of payments to the Trustee/Paying Agent.

10 c. The Trustee/Paying Agent shall retain, and is otherwise hereby  
11 granted a junior lien in the Collateral for the benefit of the Revenue Bonds, subject and  
12 subordinate to: (a) the Loan; (b) any valid, unavoidable District expenses incurred during,  
13 and prior to the effective date of any plan in, the Chapter 9 Case; and (c) any Permitted  
14 Real Property Encumbrance that is entitled to prime existing liens under applicable law.  
15 This supplemental lien shall be deemed perfected without any requirement for the filing  
16 or recordation of any further documents and shall be fully released upon the earlier of (i)  
17 the District's full compliance with its obligations under the Revenue Bond Documents for  
18 24 consecutive months and (ii) so long as there are no existing defaults under the  
19 Revenue Bond Documents, full and final payment and termination of the Loan and the  
20 loan described in the Prior Financing Order;

21 d. The Trustee/Paying Agent shall receive the following with respect to  
22 the District's Revenue Bonds: (i) monthly payments to the Trustee/Paying Agent on the  
23 Revenue Bonds in the amount of \$103,000 in February 2019, and thereafter \$125,000  
24 through the effective date of any plan of adjustment in these proceedings; and (ii) a lump  
25 sum payment of \$[100,000] from the District's initial draw under the Loan to be applied  
26 under the bond documents. The Trustee/Paying Agent shall also receive reimbursement  
27 of the Trustee/Paying Agent's reasonable expenses (including professional fees)

1 commencing March 2019 and continuing through the effective date of any Plan, upon  
2 presentment of summary invoices prior to approval and payment;

3 e. For the avoidance of doubt, (i) the City of Tulare is not acquiring any  
4 right, title or interest in any Revenues or Gross Revenues (as defined in the bond  
5 documents associated with the Revenue Bonds), *ad valorem* or other tax revenues of the  
6 District, any subsidy payments to the District under the federal recovery act with respect  
7 to the General Obligation Bonds, any funds held by the Trustee/Paying Agent, any rights  
8 to receive the foregoing, or any proceeds thereof; (ii) among other District uses, proceeds  
9 from the Loan may be used to pay obligations relating to the District's Revenue Bonds  
10 and General Obligation Bonds, including the Trustee/Paying Agent's expenses (including  
11 professional fees), and (iii) the District's grant and maintenance of the foregoing bond  
12 treatment is authorized by and shall not constitute a default under the Loan documents.  
13 Any event of default under the Loan documents will be an event of default under the bond  
14 documents. No proceeds from the Loans may be used for the purpose of challenging the  
15 Existing Bonds, or the rights of the Trustee/Paying Agent or Syncora under the  
16 documents that evidence or otherwise secure the Existing Bonds.

17 f. The District shall continue to consult with the Trustee/Paying Agent  
18 and Syncora regarding matters affecting the District and provide the Trustee/Paying  
19 Agent and Syncora any financial reporting it is required to provide the City of Tulare under  
20 the Loan documents. The District shall not amend any Loan documents in a manner that  
21 is materially adverse to the Revenue Bonds or the General Obligation Bonds without prior  
22 consent of the Trustee/Paying Agent (and if any amendments are proposed to the Series  
23 A General Obligation Bonds, prior consent of Syncora) or further approval of the  
24 Bankruptcy Court, after notice to the Trustee/Paying Agent and Syncora.

25 g. The District, Trustee/Paying Agent and Syncora are each authorized  
26 to take such other actions and execute and file such other documents, as either party  
27 may reasonably request to implement, evidence or perfect the bond treatment or that are  
28 reasonably necessary in connection with these matters. The District and Trustee/Paying

1 Agent shall consult with Syncora prior to taking any such actions and in any event shall  
2 provide reasonable notice in advance of any action to be taken or the execution of any  
3 documents in connection with the Series A General Obligation Bond Documents. The  
4 automatic stay is modified to the extent necessary to permit the foregoing matters.

5 h. Any plan confirmed in this Chapter 9 Case shall contain treatment  
6 for the Revenue Bonds and General Obligation Bonds consistent with the foregoing. If  
7 any such plan purports to treat the Revenue Bonds or General Obligation Bonds in a  
8 manner inconsistent with the treatment provided for by this Order or otherwise provide  
9 treatment that attempts to modify the underlying Bond Documents in any way, this Order  
10 shall control; and

11 i. In accordance with Section 364(e), in the event any provisions of this  
12 Order are modified, amended or vacated, no such modification, amendment or vacation  
13 shall affect the validity and enforceability of any lien or priority authorized or created  
14 hereby for the benefit of Existing Bonds and such lien or priority shall be governed by the  
15 original provisions of this Order. The Trustee/Paying Agent and Syncora have reserved  
16 all rights to seek further adequate protection if the Trustee/Paying Agent or Syncora  
17 determines the adequate protection set forth herein is not sufficient.

18 6. Consent by Healthcare Conglomerate Associates LLC Consent. The  
19 consent of Healthcare Conglomerate Associates LLC (“HCCA”) to this borrowing is  
20 expressly conditioned on HCCA receiving adequate protection of its interest by having  
21 the District perform under the terms of that certain Settlement Agreement and General  
22 Release entered into on or around November 14, 2018.

23 7. Enabling Clause. The District is authorized to perform all acts, to make,  
24 execute and deliver all instruments and documents, that are consistent with this Order,  
25 and which may be required or necessary for performance of the Loan.

26 8. Binding Nature of Agreement. The rights, remedies, powers, privileges,  
27 liens and priorities of Lender provided for in this Order and Loan shall not be modified,  
28 altered or impaired in any manner by any subsequent order (including a confirmation

1 order) or by any plan, or in any subsequent, converted, or related case filed under the  
2 Bankruptcy Code, unless the Loan has first been paid in full in cash and completely  
3 satisfied unless otherwise agreed by Lender.

4 9. Subsequent Reversal or Modification. The Lender has acted in good faith  
5 and is entitled to all of the protections afforded by Section 364(e) of the Bankruptcy Code.

6 10. Order Controls. This Order controls to the extent of any inconsistency  
7 between this Order and any Loan document.

8 11. Pursuant to FRBP 4001(c)(2), the Borrower is authorized to borrow up to  
9 \$6,000,000 on an interim basis on the terms and conditions of the Loan pending a final  
10 hearing to be held February 14, 2019 at 9:30 a.m. in Fresno. A conformed copy of this  
11 interim Order shall be noticed on or before February 8, 2019 to all persons given notice  
12 of the Motion.

13 Submitted:

14 WALTER WILHELM LAW GROUP  
15 a Professional Corporation

16 By: \_\_\_\_\_

17 Riley C. Walter, Attorneys for  
18 Tulare Local Healthcare District, dba  
19 Tulare Regional Medical Center  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Approved as to Form and Content:

2 KLEIN, DENATALE, GOLDNER, COOPER,  
3 ROSENLIEB & KEMBALL LLP

4 By: \_\_\_\_\_  
5 Hagop Bedoyan, Attorneys for  
6 Healthcare Conglomerate Associates, LLC

7 MINTZ LEVIN COHN FERRIS  
8 GLOVSKY AND POPEO PC

9 By: \_\_\_\_\_  
10 Ian Hammel, Attorneys for  
11 Wilmington Trust as Trustee and  
12 Paying Agent

13 GRISWOLD LASALLE COBB DOWD & GINN LLP

14 By: \_\_\_\_\_  
15 Mario U. Zamora, Attorneys for  
16 City of Tulare

17  
18  
19  
20  
21 IT IS SO ORDERED.

22 Dated: \_\_\_\_\_, 2019

23 \_\_\_\_\_  
24 René Lastreto II  
25 United States Bankruptcy Judge  
26  
27  
28