

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

PRESCRIPTION ADVISORY SYSTEMS &  
TECHNOLOGY, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 18-12601 (BLS)

*Ap: Docket No. 5*

**INTERIM ORDER (I) AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING, (II) AUTHORIZING THE USE OF CASH COLLATERAL, (III) GRANTING LIENS AND SUPERPRIORITY CLAIMS, (IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “**DIP Motion**”)<sup>2</sup> of the above-captioned debtor and debtor in possession (the “**Debtor**”) for entry of an interim order (this “**Interim Order**”), pursuant to sections 105, 361, 362, 363, 364, 506, 507, and 552 of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), that, among other things:

- i. authorizes Prescription Advisory Systems & Technology, Inc. (the “**Debtor**”) to obtain and to unconditionally guaranty, jointly and severally, the Debtor’s obligations in respect of, a senior secured superpriority loan facility, which if approved on a final basis would consist of post-petition financing in a total amount of \$125,000, inclusive of the Roll-Up Loan (defined below) (the “**DIP Facility**”) provided pursuant to the terms of (w) this Interim Order and, on a final basis, the Final Order (defined below), (x) that certain Summary of Terms and Conditions for Debtor-In-Possession Financing, dated as of November 13, 2018 (the “**DIP Term Sheet**” and together with any definitive documentation in form and substance acceptable to the DIP Lender, and each as may be amended, restated, supplemented, or otherwise modified from time to time in accordance with their respective terms), a true and correct copy of which is attached hereto as

<sup>1</sup> The last four numbers of the Debtor’s tax identification number are 2743. The Debtor’s corporate address is 312 Summit Avenue, Jenkintown, Pennsylvania 19046.

<sup>2</sup> Unless otherwise specified in this Interim Order, all capitalized terms used but not defined herein shall have the meanings given to such terms in the DIP Motion and DIP Term Sheet (as defined herein), as applicable.

Exhibit A, by and among the Debtor and William Bast as lender under the DIP Term Sheet (in such capacity, the “**DIP Lender**”), (y) with respect to the Roll-Up Loan, that certain Prepetition Senior Secured Promissory Note, dated November 7, 2018, by and among the Debtor and William Bast, as pre-petition lender (in such capacity, “**Bast**”) (collectively with any other agreements and documents executed or delivered in connection therewith (each as may be amended, restated, supplemented, or otherwise modified from time to time), the “**Prepetition Secured Promissory Note**”);

- ii. authorizes the use of the proceeds of the DIP Facility to, among other things, make payments as permitted by the Initial Budget (defined below), a copy of which is attached hereto as Exhibit B, and each subsequent Authorized Budget (defined below) for operating expenses, general and ordinary purposes of the Debtor, the satisfaction of interest, fees, and costs due under the DIP Term Sheet, and for other administrative expenses, including budgeted professional fees, all subject to the conditions set forth in the DIP Term Sheet and in this Interim Order;
- iii. approves borrowings between the entry of this Interim Order and the entry of the Final Order (as defined below) in an aggregate principal amount not more than \$80,000 (the “**Interim Advance**”);
- iv. approves the conversion, concurrently with the entry hereof, of the outstanding senior prepetition indebtedness (the “**Senior Prepetition Indebtedness**”) in an amount equal to \$20,000, borrowed pursuant to Prepetition Secured Promissory Note (the “**Roll-Up Loan**”), such that automatically upon the entry of the Interim Order, (a) the Senior Prepetition Indebtedness shall be deemed to have been incurred under the DIP Facility, (b) the Prepetition Collateral (defined below) shall be deemed to be DIP Collateral (defined below), and (c) the Prepetition Liens (defined below) shall be deemed to be DIP Liens (defined below);
- v. approves the terms of, and authorizes the Debtor to execute and deliver and perform under, the DIP Term Sheet and authorizes and directs the Debtor to perform such other and further acts as may be required in connection with the DIP Term Sheet (including, without limitation, the negotiation thereof) and this Interim Order;
- vi. grants to the DIP Lender, (x) the DIP Liens on all of the DIP Collateral pursuant to sections 364(c)(1), 364(c)(2), and 364(d)(1) of the Bankruptcy Code, which DIP Liens are senior to all other liens and (y) pursuant to section 364(c)(1) of the Bankruptcy Code, superpriority administrative claims having recourse to all pre-petition and post-petition property of the Debtor’s estate, now owned or hereafter acquired and the proceeds of each of the foregoing, including,<sup>3</sup> upon entry of this

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<sup>3</sup> As used herein, the words “including” or “include” and variations thereof shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words “without limitation.”

Interim Order, any Debtor's rights under section 549 of the Bankruptcy Code and the proceeds thereof, and upon entry of the Final Order, the proceeds of Avoidance Actions (as defined below);

- vii. authorizes the Debtor to use "cash collateral," as such term is defined in section 363 of the Bankruptcy Code (the "**Cash Collateral**"), including Cash Collateral in which the DIP Lender has a lien or other interest, in each case whether existing on the Petition Date, arising pursuant to this Interim Order or otherwise;
- viii. vacates the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Interim Order;
- ix. schedules a final hearing on the DIP Motion (the "**Final Hearing**") to be held no later than 21 calendar days after the entry of this Interim Order to consider entry of a final order that grants all of the relief requested in the DIP Motion on a final basis and which final order shall be in form and substance (including with respect to any subsequent modifications to the form or substance made in response to objections of other creditors or this Court) acceptable to the DIP Lender (the "**Final Order**" and together with this Interim Order, the "**Financing Orders**");
- x. waives, upon entry of the Final Order, certain rights of the Debtor to surcharge against collateral pursuant to section 506(c) of the Bankruptcy Code; and
- xi. provides for the immediate effectiveness of this Interim Order and waives any applicable stay (including under Bankruptcy Rule 6004) to permit such immediate effectiveness.

Having considered the DIP Motion, the DIP Term Sheet, and the Declaration of Richard G. Bunker, Jr. in Support of the Debtor's Chapter 11 Petition and Requests for First Day Relief (the "**First Day Declaration**"), and the evidence submitted or proffered at the hearing on this Interim Order (the "**Interim Hearing**"); and in accordance with Bankruptcy Rules 2002, 4001(b), 4001(c), and 4001(d), 6004(c), and 9014 and all applicable Local Rules, due and sufficient notice of the DIP Motion and the Interim Hearing having been provided pursuant to Bankruptcy Rule 4001(b)(1)(C); the Interim Hearing having been held and concluded on November [●], 2018; this Court having considered all the pleadings, motions and other papers filed in connection therewith; this Court having overruled all unresolved objections to the interim relief requested in the Motion; this Court having considered the record made by the Debtor at the

Interim Hearing; and it appearing that approval of the interim relief requested in the DIP Motion is necessary to avoid immediate and irreparable harm to the Debtor pending the Final Hearing and otherwise is fair and reasonable and in the best interests of the Debtor, its creditors, its estate and all parties in interest, and is essential for the continued operation of the Debtor's business and the preservation of the value of the Debtor's assets; and it appearing that the Debtor's entry into the DIP Term Sheet is a sound and prudent exercise of the Debtor's business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

**THIS COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>4</sup>**

- A. **Petition Date.** On November 13, 2018 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (this "**Court**") commencing this chapter 11 case (the "**Chapter 11 Case**"). The Debtor has continued in the management and operation of its business and property as Debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No statutory committee of unsecured creditors (to the extent such committee is appointed, the "**Committee**"), trustee, or examiner has been appointed in this Chapter 11 Case.
- B. **Jurisdiction and Venue.** This Court has core jurisdiction over the Chapter 11 Case, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334 and the Amended Standing Order of Reference from the United States District Court for the

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<sup>4</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, as appropriate, pursuant to Bankruptcy Rule 7052.

District of Delaware dated as of February 29, 2012. Venue for the Chapter 11 Case and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and other predicates for the relief sought herein are sections 105, 361, 362, 363, 364, 506, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014, and Local Rule 4001-2.

- C. **Notice.** The Interim Hearing is being held pursuant to the authorization of Bankruptcy Rule 4001. Notice of the Interim Hearing and the emergency relief requested in the DIP Motion has been provided by the Debtor, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties in interest, including: (i) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”), (ii) those entities or individuals included on the Debtor’s List of Creditors Holding 20 Largest Unsecured Claims on a Consolidated Basis, (iii) counsel to the DIP Lender, (iv) all other known lienholders, and (v) any party that has requested notice pursuant to Bankruptcy Rule 2002. Under the circumstances, such notice of the DIP Motion, the relief requested therein and the Interim Hearing complies with Bankruptcy Rules 4001(b), (c) and (d), and the Local Rules, and no other notice need be provided for entry of this Interim Order.
- D. **Debtor’s Stipulations Regarding the Senior Prepetition Indebtedness.** Subject only to the rights of parties in interest that are specifically set forth in Paragraph 6 below, the Debtor, on its behalf and on behalf of its estate,

admits, stipulates, acknowledges, and agrees (collectively, the “Debtor”  
**Stipulations**”) as follows:

- i. Senior Prepetition Indebtedness. As of the Petition Date, the Debtor was truly and justly indebted to Bast in the aggregate principal amount of \$20,000 pursuant to the Prepetition Secured Promissory Note, plus accrued and unpaid interest and any additional fees, costs and expenses without defense, counterclaim, reduction or offset of any kind.
- ii. Prepetition Collateral and Liens. The first priority liens and security interests granted to Bast in all of the Debtor’s assets pursuant to the Prepetition Secured Promissory Note (the “**Prepetition Collateral**” and the liens securing the Prepetition Collateral, the “**Prepetition Liens**”) (a) are legal, valid, binding, enforceable, and perfected liens, (b) were granted to, or for the benefit of, Bast for fair consideration and reasonably equivalent value, and (c) are not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.
- iii. Cash Collateral. All of the Debtor’s cash, including any cash in deposit accounts of the Borrower, wherever located, constitutes Cash Collateral of Bast.

E. **Findings Regarding the DIP Facility.**

- (i) Need for Post-petition Financing. The Debtor has an immediate need to obtain the DIP Facility and use Cash Collateral to, among other things, permit the orderly continuation of their businesses, to make payroll, to satisfy other working capital and operational needs, and to otherwise preserve the value of the Debtor’s estate. If immediate financing is not obtained and permission to use Cash Collateral is not granted, in each case in accordance with the terms of this Interim Order and the DIP Term Sheet, the Debtor will have no alternative other than liquidation under chapter 7 of the

Bankruptcy Code, and its estate will incur immediate and irreparable harm.

- (ii) No Credit Available on More Favorable Terms. The Debtor has been and continues to be unable to obtain financing on more favorable terms from sources other than the DIP Lender under the DIP Term Sheet and this Interim Order. The Debtor is unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense or secured credit allowable only under sections 364(c)(1), 364(c)(2), or 364(c)(3) of the Bankruptcy Code. The Debtor is unable to obtain secured credit under section 364(d)(1) of the Bankruptcy Code without (a) granting to the DIP Lender the rights, remedies, privileges, benefits, and protections provided herein and in the DIP Loan Documents, including the DIP Liens and the DIP Superpriority Claims (as defined below), (b) allowing the DIP Lender to provide the loans and other financial accommodations under the DIP Facility, and (c) the conversion of the Prepetition Senior Indebtedness into the Roll-Up Loan under the DIP Facility on the terms set forth herein and in the DIP Loan Documents (all of the foregoing described in clauses (a), (b), and (c) above, collectively, the “**DIP Protections**”).

- F. Interim Financing. During the Interim Period (as defined below), the DIP Lender is willing to provide the Interim Advance to the Debtor and/or

consent to the use of Cash Collateral by the Debtor, subject to (i) the entry of this Interim Order and the terms and conditions set forth herein, and (ii) the terms and conditions of the DIP Term Sheet; provided, however, that the consent of the DIP Lender is limited to the present DIP Facility and shall not be applicable to any other debtor-in-possession loan facility even if such debtor-in-possession loan facility contains economic terms which are substantially similar to the economic terms of the DIP Facility.

- G. **Consent to Use Cash Collateral.** The terms of the DIP Facility contemplated hereby are fair and reasonable, reflect the Debtor's prudent exercise of business judgment consistent with its fiduciary duties, constitute reasonably equivalent value and fair consideration.
- H. **Initial Budget.** Attached hereto as **Exhibit B** is an initial twelve (12) week budget (the "**Initial Budget**"). The Initial Budget is an integral part of this Interim Order and has been relied upon by the DIP Lender in consenting to this Interim Order, to provide the DIP Facility, and to permit the use of the Cash Collateral.
- I. **Business Judgment and Good Faith Pursuant to Section 364(e).** Based on the DIP Motion and on the record presented to this Court at the Interim Hearing:
- (i) The terms and conditions of the use of the Cash Collateral and the DIP Facility (including the conversion of the Prepetition Senior Indebtedness into the Roll-Up Loan under the DIP Facility) as set forth in the DIP Term Sheet and this Interim Order, and the fees, expenses, and other charges paid and to be paid thereunder or in connection therewith, are



fair, reasonable, consistent with the Bankruptcy Code, including section 506(b) thereof, and the best available under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

(ii) The DIP Facility was negotiated in good faith and at arms' length among the Debtor and the DIP Lender.

(iii) Use of the proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses, as a consequence of which the DIP Lender is entitled to the protection and benefits of section 364(e) of the Bankruptcy Code. The DIP Liens, DIP Superpriority Claims, and other DIP Protections are reasonable to protect the interests of the DIP Lender and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code.

J. **Relief Essential; Best Interest.** For the reasons stated above, the Debtor has requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), and the Local Rules. Absent granting the relief set forth in this Interim Order, the Debtor's estate, its business and property, and its ability to successfully reorganize or otherwise preserve the value of its estate will be immediately and irreparably harmed. The Court concludes that immediate entry of this Interim Order is therefore in the best interests of the Debtor's estate and creditors and will allow for the continued operation of the Debtor's business and preserve the value of their assets pending the pursuit of a chapter 11 plan or reorganization.

**NOW, THEREFORE**, based on the DIP Motion and the record before this Court with respect to the DIP Motion, and with the consent of the Debtor and the DIP Lender to the form and entry of this Interim Order, and good and sufficient cause appearing therefor:

**IT IS ORDERED** that:

1. **Motion Granted.** The DIP Motion is hereby granted in accordance with the terms and conditions set forth in this Interim Order and the DIP Term Sheet. Any objections to the DIP Motion with respect to the entry of this Interim Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled. This Interim Order shall become effective immediately upon its entry.

2. **DIP Loan Documents and DIP Protections.**

(a) **Approval of DIP Term Sheet.** The Debtor is expressly and immediately authorized to establish the DIP Facility, to execute, deliver, and perform under the DIP Term Sheet and this Interim Order, to incur the DIP Obligations<sup>5</sup> (including to automatically and immediately convert the Prepetition Senior Indebtedness into the Roll-Up Loan under the DIP Facility and to draw the Interim Advance), in accordance with, and subject to, the terms of this Interim Order and the DIP Term Sheet, and to execute, deliver, and perform under all other instruments, certificates, agreements, and documents that may be required or necessary for the performance by the Debtor under the Term Sheet and the creation and perfection of the DIP Liens described in, and provided for by, this Interim Order and the DIP Term Sheet. Upon its execution and delivery, the DIP Term Sheet shall represent the legal, valid and binding obligations of the Debtor enforceable against the Debtor in accordance with their terms. No

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<sup>5</sup> For purposes of this Interim Order, the term “**DIP Obligations**” shall mean all amounts and other obligations and liabilities owing by the respective Debtor to the DIP Lender under the DIP Term Sheet (including, without limitation, all “DIP Obligations” as defined and described in the DIP Credit Agreement and including the Roll-Up Loan) under this Interim Order.

obligation, payment, transfer or grant of security under the DIP Term Sheet or this Interim Order shall be stayed, restrained, voided, voidable, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

(b) Authorization to Incur DIP Obligations and Use Cash Collateral.

To enable the Debtor to continue to operate its business and preserve and maximize the value of its estate, during the period from the entry of this Interim Order through and including the earliest to occur of (i) the entry of the Final Order, or (ii) a Termination Event (as defined below), in each case unless extended by written agreement of the DIP Lender (the period from the entry of this Interim Order through and including such earliest date, the “**Interim Period**”), the Debtor is hereby authorized (x) to use Cash Collateral and (y) subject to the DIP Term Sheet, to borrow under the DIP Facility; provided that (i) during the Interim Period, the aggregate outstanding amount for all such borrowings (other than the Roll-Up Loan) shall not exceed the Interim Advance; and (ii) any proposed use of the proceeds of the DIP Facility or use of Cash Collateral shall be consistent with the terms and conditions of this Interim Order and the DIP Term Sheet, including the Authorized Budget (defined below).

(c) Roll-Up Loans. The Senior Prepetition Indebtedness shall immediately, automatically, and, subject to Paragraph 6 of this Interim Order, irrevocably be deemed to have been converted into the Roll-Up Loan and shall be entitled to all the priorities, privileges, rights, and other benefits afforded to the other DIP Obligations under this Interim Order and the other DIP Term Sheet.

(d) Interest, Fees, Costs and Expenses. The DIP Obligations shall bear interest at the rates, and be due and payable (and paid), as set forth in, and in accordance with the terms and conditions of, this Interim Order and the DIP Term Sheet, in each case without further notice, motion, or application to, order of, or hearing before, this Court. The Debtor shall accrue all fees, costs, indemnities, expenses (including reasonable out-of-pocket legal and other professional fees and expenses of the DIP Lender) and other charges payable under the terms of the DIP Term Sheet and the foregoing shall be deemed DIP Obligations as they accrue, however, such amounts shall be only payable upon the Termination Date (defined below). All such fees, costs, indemnities, expenses and disbursements, whether incurred, paid or required to be paid pre-petition or post-petition and whether or not budgeted in the Authorized Budget, are hereby affirmed, ratified, authorized and payable as contemplated in this Interim Order and the DIP Term Sheet, and shall be non-refundable. All such unpaid fees, costs, expenses, indemnities and disbursements that are payable under the terms of the DIP Term Sheet shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under this Interim Order.

(e) Use of DIP Facility and Proceeds of DIP Collateral. The Debtor shall only incur DIP Obligations and expend Cash Collateral and other DIP Collateral proceeds solely in accordance with this Interim Order and the Term Sheet, and for the specific purposes, and at the specific time periods, set forth in the Authorized Budget, subject to variances permitted in the DIP Term Sheet (and in the case of the costs and expenses of the DIP Lender, in accordance with the DIP Term Sheet and this Interim Order without being limited by the Authorized Budget). Without limiting the foregoing, the Debtor shall not be permitted to make any payments (from the DIP Collateral, the proceeds of the DIP Facility, Cash Collateral, or

otherwise) on account of any pre-petition debt or obligation prior to the effective date of a confirmed chapter 11 plan or plans with respect to any of the Debtor, except (i) as provided in the “first day orders” (as such term is used in the DIP Term Sheet) and as expressly agreed to by the DIP Lender; or (ii) as expressly provided in other motions, orders, and requests for relief, each in form and substance acceptable to the DIP Lender prior to such motion, order, or request for such relief being filed.

(f) DIP Liens. As security for the DIP Obligations, effective as of the Petition Date, the following security interests and liens, which shall immediately and without any further action by any Person be valid, binding, permanent, perfected, continuing, enforceable, and non-avoidable upon the entry of this Interim Order, are hereby granted by each Debtor to the DIP Lender (all such security interests and liens granted to the DIP Lender pursuant to this Interim Order and the DIP Loan Documents, including the Prepetition Liens, the “**DIP Liens**”), on all of its right, title and interest in, to and under all property of the estate of the Debtor as provided for in section 541 of the Bankruptcy Code whether existing prior to the Petition Date or arising thereafter, including property of the Debtor’s estate as of the Petition Date, and all of the Debtor’s rights in property acquired post-petition whether now existing or hereafter acquired or arising and all proceeds thereof and recoveries related thereto, including the categories of property, rights, and interests enumerated in the DIP Term Sheet (all of the foregoing collateral collectively referred to as the “**DIP Collateral**”):

- (I) pursuant to section 364(c)(2) of the Bankruptcy Code, a fully perfected, binding, continuing, enforceable, and non-avoidable first priority lien on all unencumbered DIP Collateral, including, the proceeds of the Debtor’ claims and causes of action under sections 502(d), 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state or municipal

law (collectively, the “**Avoidance Actions**) and subject to the entry of the Final Order, the Debtor’s Avoidance Actions;

- (II) pursuant to section 364(d)(1) of the Bankruptcy Code, a fully perfected, binding, continuing, enforceable and non-avoidable first priority lien on all other DIP Collateral (including Cash Collateral), which DIP Lien (x) shall be senior to any adequate protection liens and (y) shall be senior to any and all valid, perfected, enforceable and non-avoidable pre-petition and post-petition liens, tax liens or other non-consensual liens in existence as of the Petition Date and properly perfected prior to the Petition Date.

(g) Superpriority Administrative Claim Status. In addition to the DIP Liens granted herein, effective immediately upon entry of this Interim Order, all of the DIP Obligations shall constitute allowed superpriority administrative claims pursuant to section 364(c)(1) of the Bankruptcy Code, which shall have priority, subject only to the Carve-Out in accordance with this Interim Order, over all administrative expense claims, adequate protection and other diminution claims, priority claims, and other unsecured claims, and all other claims against the Debtor or its estate, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses or other claims of the kinds specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, and 1114 or any other provision of the Bankruptcy Code or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment (the “**DIP Superpriority Claims**”). The DIP Superpriority Claims shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and shall be payable from and have recourse to all pre-petition and post-petition property of the Debtor and all proceeds thereof, including, subject to the entry of the Final Order, Avoidance Actions and the proceeds thereof. Other than as expressly provided in the DIP Credit Agreement and/or this

Interim Order with respect to the Carve-Out, no costs or expenses of administration, including professional fees allowed and payable under sections 328, 330, or 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings, and no priority claims are, or will be, senior to, prior to, or on a parity with the DIP Superpriority Claims or the DIP Obligations, or with any other claims of the DIP Lender arising under the DIP Term Sheet and/or this Interim Order.

(h) Priority of DIP Liens and DIP Superpriority Claims. The DIP Liens and the DIP Superpriority Claims: (A) subject to the entry of the Final Order, shall not be subject to sections 506, 510, 549, 550, or 551 of the Bankruptcy Code or the “equities of the case” exception of section 552 of the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with, (x) any lien that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code or otherwise or (y) any liens or claims of the Debtor or any direct or indirect subsidiary thereof against the Debtor or any of the Debtor’s property, and (C) shall be valid and enforceable against any trustee or any other estate representative elected or appointed in the Chapter 11 Case, upon the conversion of any of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing, and/or upon the dismissal of any of the Chapter 11 Case.

3. Automatic Post-Petition Lien Perfection. This Interim Order shall be sufficient and conclusive evidence of the validity, enforceability, perfection, and priority of the DIP Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document that may otherwise be required under the law of any jurisdiction, or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable law)

such liens, or to entitle the DIP Lender to the priorities granted herein. Notwithstanding the foregoing, the DIP Lender may, in its sole discretion, enter into and file, as applicable, financing statements, mortgages, security agreements, notices of Liens, and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices, and other agreements or documents shall be deemed to have been entered into, filed or recorded as of the Petition Date. The Debtor shall execute and deliver to the DIP Lender all such financing statements, mortgages, notices, and other documents as such parties may reasonably request to evidence and confirm the contemplated validity, perfection and priority of the DIP Liens granted pursuant hereto (including, for the avoidance of doubt, in respect to any DIP Collateral located outside the United States). Without limiting the foregoing, the DIP Lender may, in its discretion, file a photocopy of this Interim Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which the Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized and hereby is directed to file or record such copy of this Interim Order.

4. **Automatic Stay.** The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby vacated and/or modified pursuant to the terms of this Interim Order and the DIP Term Sheet as necessary to (i) permit the Debtor to grant the DIP Liens and to incur all liabilities and obligations to the DIP Lender, under the DIP Term Sheet, the DIP Facility, and this Interim Order, (ii) to permit the DIP Lender to perform any act authorized under this Interim Order and the DIP Term Sheet, and (iii) otherwise to the extent necessary to implement and effectuate the provisions of this Interim Order and the DIP Term Sheet.



5. **Reservation of Certain Third Party Rights and Bar of Challenges and**

**Claims.** The Debtor Stipulations shall be binding upon the Debtor and its estate in all circumstances upon entry of this Interim Order. Nothing in this Interim Order or the DIP Term Sheet shall prejudice whatever rights any official committee(s) or any other party in interest (other than the Debtor), including any trustee subsequently appointed under chapter 7 or chapter 11 of the Bankruptcy Code, may have (a) to object to or challenge the findings herein in relation to (i) the validity, extent, perfection or priority of the mortgages, security interests and liens of Bast in and to the Prepetition Collateral or (ii) the validity, allowability, priority, status or amount of the Senior Prepetition Indebtedness or (b) to bring suit against Bast in connection with or related to the Senior Prepetition Indebtedness, or the actions or inactions of Bast arising out of or related to the Senior Prepetition Indebtedness, or otherwise; provided, however, that, unless any official committee(s) or any other party in interest obtains the requisite standing to commence, and commences, a contested matter or adversary proceeding raising such objection or challenge, including without limitation any claim against Bast in the nature of a setoff, counterclaim or defense to the Senior Prepetition Indebtedness (including but not limited to, those under sections 506, 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code or by way of suit against Bast), by the later of (a) with respect to any Committee, sixty (60) calendar days following the appointment of any Committee, or (b) if no Committee is appointed, with respect to other parties in interest with requisite standing other than the Debtor or any Committee, seventy-five (75) calendar days following entry of the Interim Order (collectively, (a) and (b) shall be referred to as the “**Challenge Period**,” and the date that is the next calendar day after the termination of the Challenge Period, in the event that no objection or challenge is raised during the Challenge Period, shall be referred to as the “**Challenge Period Termination Date**”), upon

the Challenge Period Termination Date, any and all such challenges and objections by any party (including, without limitation, any official creditors' committee(s), any chapter 11 or chapter 7 trustee appointed herein or in any successor case, and any other party in interest) shall be deemed to be forever waived and barred, and the Senior Prepetition Indebtedness shall be deemed to be DIP Obligations for all purposes in connection with the Chapter 11 Case and the Debtor Stipulations shall be binding on all creditors, interest holders and parties in interest. To the extent any such objection or complaint is filed, the findings herein shall nonetheless remain binding and preclusive on the Committee, any other official committee, and on any other person or entity, except to the extent that such assertions were expressly challenged in such objection or complaint. In the event of a timely and successful challenge, this Court shall fashion the appropriate remedy with respect to Bast after hearing from all parties.

6. **Carve-Out**. Subject to the terms and conditions contained in this paragraph, each of the DIP Liens, the DIP Superpriority Claims, and any adequate protection liens and claims shall be subject to payment of the Carve-Out in accordance with the terms of this Interim Order:

(a) **Carve-Out**. For purposes of this Interim Order, "**Carve-Out**" means the sum of (i) the aggregate amount of any reasonable and unpaid fees, costs and expenses that were accrued or incurred prior to the Termination Date (defined below) by the professionals retained by the Debtor (collectively, the "**Professionals**") to the extent allowed by an order of the Bankruptcy Court pursuant to sections 330 and 331 of the Bankruptcy Code but, in all cases, subject to the Authorized Budget, plus (ii) those reasonable fees, costs and expenses incurred by Professionals on or after the Termination Date and subsequently allowed by order of the Bankruptcy Court pursuant to sections 330 and 331 of the Bankruptcy Code and, in all cases,

subject to the Authorized Budget, in an aggregate amount not to exceed \$10,000, plus (iii) fees required to be paid to the Clerk of the Bankruptcy Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930; provided that the amounts described in items (i) and (ii) of this paragraph shall not exceed \$65,000 in the aggregate (the “**Carve-Out Cap**”). Following the Termination Date, the fees, costs, and expenses incurred by Professionals shall be applied first to any amounts remaining under any retainer funded by the DIP Lender prior to the Petition Date (a “**Prepetition Retainer**”) until such Prepetition Retainer is exhausted and any amounts paid to Professionals by any means, including but not limited to a Prepetition Retainer, will reduce the Carve-Out and the Carve-Out Cap on a dollar-for-dollar basis. For the avoidance of doubt, to the extent a Professional holds a Prepetition Retainer, it must first use the retainer to reduce the amounts owed to it under items (i) and (ii). To the extent the reasonable fees, costs, and expenses incurred by Professionals under items (i) and (ii) exceed the amount of the Prepetition Retainer, but are otherwise included in the Authorized Budget, such excess shall be paid pursuant to the Carve-Out described herein but subject to (a) the cap established in subsection (ii) hereof; (b) the Carve-Out Cap and (c) the Authorized Budget.

(b) No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees. The DIP Lender shall not be responsible for the direct payment or reimbursement of any fees, costs, expenses or disbursements of any of the Professionals. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtor, the Professionals, any other official or unofficial committee in this Chapter 11 Case or shall affect the right of the DIP Lender to object to the allowance and payment of such fees.

(c) Payment of Allowed Professional Fees and Expenses Prior to a Termination Event. Prior to the occurrence of a Termination Event (defined below), the Debtor shall be permitted to pay allowed fees and expenses of the Professionals (only to the extent such fees and expenses were incurred in accordance with the Authorized Budget), subject to this Interim Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim compensation procedures order entered by this Court.

7. Waiver of 506(c) Claims/Marshalling. Upon entry of a Final Order: (i) no costs or expenses of administration of the Chapter 11 Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral or the Cash Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law without the prior written consent of the DIP Lender and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender; and (ii) in no event shall the DIP Lender be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Cash Collateral.

8. After-Acquired Property. Except as otherwise expressly provided in this Interim Order, pursuant to section 552(a) of the Bankruptcy Code, all property acquired by the Debtor on or after the Petition Date is not, and shall not be, subject to any lien of any person or entity resulting from any security agreement entered into by the Debtor prior to the Petition Date, except to the extent that such property constitutes proceeds of property of the Debtor that is subject to a valid, enforceable, perfected, and unavoidable lien as of the Petition Date (or a valid, enforceable and unavoidable lien that is perfected subsequent to the Petition Date solely to the

extent permitted by section 546(b) of the Bankruptcy Code) that is not subject to subordination or avoidance under the Bankruptcy Code or other provisions or principles of applicable law.

9. **Protection of DIP Lender's Rights.** Unless the DIP Lender shall have provided its prior written consent, or all DIP Obligations have been paid in full in cash, there shall not be entered in this Chapter 11 Case any order (including any order confirming any plan of reorganization or liquidation) that authorizes any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral, and/or that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, and/or the other DIP Protections; (ii) the use of Cash Collateral for any purpose other than to pay in full the DIP Obligations, or as otherwise permitted in the DIP Loan Documents and this Interim Order, or (iii) any modification of the DIP Lender's rights under this Interim Order or the DIP Loan Documents.

10. **Disposition of DIP Collateral; Credit Bid.**

(a) Unless the DIP Obligations are paid in full in cash upon the closing of a sale or other disposition of the DIP Collateral, the Debtor shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral (or enter into any binding agreement to do so) without the prior written consent of the DIP Lender (and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender, or any order of this Court), except as permitted in the DIP Term Sheet and this Interim Order. Except to the extent otherwise expressly provided in the DIP Term Sheet or consented to the DIP Lender, all proceeds from the sale, transfer, lease, encumbrance, or other disposition of any DIP Collateral shall be remitted to the DIP Lender for application to repayment of the DIP Obligations, in accordance with the terms of this Interim Order and the DIP Term Sheet.

(b) The DIP Lender (or one or more of its designees, affiliates or assignees) shall have the ~~unqualified~~ right to perform due diligence and credit bid up to the full amount of any DIP Obligations (including for the avoidance of doubt, any Senior Prepetition Indebtedness that has not been converted to the Roll-Up Loan) as a bidder (including, for the avoidance of doubt, in connection with any Auction), in any sale of any portion of the DIP Collateral, under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for the Debtor under section 725 of the Bankruptcy Code. The Debtor, on behalf of itself and its estate, stipulates and agrees that any sale of all or part of the DIP Collateral that does not include an ~~unqualified~~ right to credit bid up to the full amount of the DIP Obligations by the DIP Lender as provided by the DIP Term Sheet would not result in the DIP Lender receiving the indubitable equivalent of its claims and interests.

*subject to § 363(k) of the Bankruptcy Code*

11. **Termination; Rights and Remedies Upon Termination Event.**

(a) The DIP Facility and the Borrower's right to use proceeds of the DIP Facility and Cash Collateral shall automatically terminate without further notice or Court proceedings, unless extended with the prior written consent of the DIP Lender, upon the earlier of (i) six (6) months following the Petition Date (the "**Scheduled Termination Date**"); (ii) the date of acceleration of any outstanding borrowings under the DIP Facility pursuant to an Event of Default; (iii) the date a plan of reorganization or plan of liquidation for the Debtor becomes effective; (iv) the date on which the Debtor agrees to a sale of all or substantially all of its assets in one or more sales that the DIP Lender does not consent to (each a "**Termination Date**"). The Termination Date herein supersedes any termination or maturity date in any documentation governing the Senior Prepetition Indebtedness.

(b) The occurrence of an “Event of Default”, as set forth in the DIP Term Sheet and as set forth below, or any other material breach, default or other violation by the Debtor of the terms and provisions of this Interim Order shall constitute a termination event under this Interim Order and the DIP Loan Documents (each, a “**Termination Event**”) unless waived in writing by the DIP Lender. Upon the occurrence of a Termination Event, but subject to the DIP Term Sheet, any automatic stay otherwise applicable to the DIP Lender is hereby modified, without requiring prior notice to or authorization of this Court, to the extent necessary to permit the DIP Lender to exercise any and all rights and remedies available to it under the DIP Term Sheet and applicable law.

(c) “**Events of Default**” shall include the occurrence of any of the following:

- (i) this Interim Order is not entered within three (3) days after the motion seeking authority to enter into the DIP Facility is filed with the Bankruptcy Court, or at any time ceases to be in full force and effect (unless superseded by the Final Order), or is vacated, reversed or stayed, or modified or amended without the prior written consent of the DIP Lender;
- (ii) the Final Order is not entered within twenty-one (21) days after the Petition Date or at any time ceases to be in full force and effect, or is vacated, reversed or stayed, or modified or amended without the prior written consent of the DIP Lender;
- (iii) breach by the Debtor (or its subsidiaries or affiliates, as applicable) of (a) compliance with the Authorized Budget, (b) any case milestone, (c) the Variance Covenant, (d) any payment obligations under the DIP Term Sheet or in the Financing Orders or (e) any other covenant or agreement contained in the DIP Term Sheet or in the Financing Orders, subject, in the case of the foregoing clauses (d) and (e) (in respect of affirmative covenants only), to a grace period to be as provided for in the definitive documentation;
- (iv) the Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; a Chapter 11 Trustee or an examiner with enlarged powers relating to the operation of the business of any Debtor (powers beyond those expressly set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) is appointed in any of the Cases; or any other superpriority claim (other than the Carve-Out (as defined below)) or grant of any other lien (including any adequate protection lien) which

is *pari passu* with or senior to the DIP Obligations and liens securing the DIP Obligations is granted or allowed in any of the Cases;

- (v) the filing of any pleading by the Debtor seeking, or otherwise consenting to or supporting, any of the matters set forth in clause (iv) above unless otherwise consented to by the DIP Lender;
- (vi) payment of principal or interest on any pre-petition claim, if any, other than pursuant to an order of the Bankruptcy Court;
- (vii) the grant of any adequate protection rights to any holder of a pre-petition claim or interest unless otherwise consented to by the DIP Lender;
- (viii) the Bankruptcy Court enters an order granting relief from the automatic stay to any person asserting a claim or other right against the Debtor relating to any alleged pre-petition actions or omissions unless otherwise consented to by the DIP Lender;
- (ix) the Termination Date occurs;
- (x) an “Event of Default” under the DIP Loan Documents occurs which is not otherwise cured as provided for in the Financing Orders, the DIP Term Sheet or waived;
- (xi) the waiver, loss or lapse of the exclusivity period as provided for in section 1122 of the Bankruptcy Code without the prior written consent of DIP Lender;
- (xii) the filing of any plan of reorganization or a plan of liquidation without the prior written consent of the DIP Lender or the Debtor seek or support confirmation of a plan of reorganization or liquidation that is not acceptable to the DIP Lender;
- (xiii) the Debtor or any other party (including, without limitation, the Committee, if any) (a) engage in or support any challenge to the validity, perfection, priority, extent or enforceability of the DIP Facility or the Prepetition Secured Promissory Note or the liens on or security interest in the assets of the Debtor securing the DIP Obligations, including the Roll-Up Loan, or (b) commence any actions or proceedings against the DIP Lender or any of its affiliates;
- (xiv) upon entry of a Final Order, the allowance of any claim or claims under section 506(c) or 552(b) of the Bankruptcy Code against or with respect to any of the DIP Collateral;
- (xv) the filing by the Debtor of any motion or proceeding, or the entry by the Bankruptcy Court of any order, which could reasonably be expected to result in material impairment of the DIP Lender’s rights under the DIP Term Sheet or Financing Orders;



- (xvi) the Debtor moves the Bankruptcy Court to enter, modify or amend a Financing Order without receipt of prior written consent to the form of the proposed order from the DIP Lender;
- (xvii) the Debtor fails or is unable to operate in the ordinary course of business or gives notice that it does not believe it can operate in the ordinary course of business at any time prior to the sale of all or substantially all of its assets;
- (xviii) the entry by the Bankruptcy Court of a debtor-in-possession financing order or amendment thereto, the form and substance of which is not consented to by the DIP Lender;
- (xix) the entry by the Bankruptcy Court of a debtor-in-possession financing order or amendment thereto that does not expressly provide for the entirety of the Senior Prepetition Indebtedness being converted to Roll-Up Loan;
- (xx) the Debtor seeks or proposes to sell all or substantially all of its assets and such sale does not provide for the payment in full in cash of the Debtor' obligation under the DIP Facility and the DIP Lender has not otherwise consented to such sale; or

(d) Subject to the provisions of Paragraph 6 hereof, all proceeds realized in connection with the exercise of the rights and remedies of the DIP Lender shall be turned over first to the DIP Lender for application to the DIP Obligations under, and in accordance with the provisions of, the DIP Term Sheet and this Interim Order until payment in full of all of the DIP Obligations.

12. **Proofs of Claim.** Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of these Chapter 11 Cases or Successor Cases to the contrary, the DIP Lender will not be required (but is authorized) to file proofs of claim in the Case for any claim allowed herein.

13. **Preservation of Rights Granted Under the Interim Order.**

(a) **No Non-Consensual Modification or Extension of Interim Order.**

The Debtor irrevocably waives any right to seek any amendment, modification, or extension of this Interim Order (including through any chapter 11 plan of reorganization) without the prior

written consent of the DIP Lender, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Lender. In the event any or all of the provisions of this Interim Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court, such modification, amendment, or vacatur shall not affect the validity, perfection, priority, allowability, enforceability, or non-avoidability of any advances, payments, or use of cash authorized or made hereby or pursuant to the DIP Term Sheet, or lien, claim, priority or other DIP Protections authorized or created hereby or pursuant to the DIP Loan Documents. Based on the findings set forth in this Interim Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility, in the event any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed by a subsequent order of this Court or any other court, the DIP Lender shall be entitled to the protections provided in section 364(e) of the Bankruptcy Code, and notwithstanding any such reversal, modification, vacatur, or stay, any use of Cash Collateral or any DIP Obligations or any DIP Protections incurred or granted by the Debtor prior to the actual receipt of written notice by the DIP Lender of the effective date of such reversal, modification, vacatur, or stay shall remain in full force and effect and be binding on all parties in interest and be governed in all respects by the original provisions of this Interim Order (and shall maintain their respective priorities as provided by this Interim Order), and the DIP Lender shall be entitled to all of the DIP Protections and all other rights, remedies, Liens, priorities, privileges, protections, and benefits granted pursuant to section 364(e) of the Bankruptcy Code, this Interim Order, or the DIP Term Sheet.

(b) Survival of Interim Order. The provisions of this Interim Order and the DIP Term Sheet, any actions taken pursuant hereto or thereto, and all of the DIP Protections, and all other rights, remedies, liens, priorities, privileges, protections, and benefits

granted to any or all of the DIP Lender, or Bast (in its capacity as prepetition lender) shall, in each case, survive, and shall not be modified, impaired, or discharged by, the entry of any order confirming any plan of reorganization or liquidation in the Chapter 11 Case, converting the Chapter 11 Case to a case under chapter 7, dismissing the Chapter 11 Case, withdrawing of the reference of the Chapter 11 Case, providing for abstention from handling or retaining of jurisdiction of any the Chapter 11 Case in this Court, or terminating the joint administration of the Chapter 11 Case or by any other act or omission.

14. **Other Rights and Obligations.**

(a) **Expenses.** As provided in the DIP Term Sheet (and without limiting the Debtor's obligations thereunder), on the Termination Date the Debtor will pay all reasonable expenses incurred by the DIP Lender (including the reasonable fees and disbursements of the DIP Lender's professionals, including professionals engaged by counsel to the DIP Lender) in connection with the preparation, execution, delivery, and administration of the DIP Term Sheet, this Interim Order, the Final Order, and any other agreements, instruments, pleadings, or other documents prepared or reviewed in connection with any of the foregoing, whether or not any or all of the transactions contemplated hereby or by the DIP Term Sheet are consummated.

(b) **Binding Effect.** The provisions of this Interim Order, including all findings herein, and the DIP Term Sheet shall be binding upon all parties in interest in this Chapter 11 Case, or upon dismissal of any such Chapter 11 Case, including the DIP Lender, any Committee, and the Debtor and their respective estates, successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtor, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary or responsible person appointed as a legal representative of any of the Debtor or with

respect to the property of the estate of the Debtor); provided, however, that the DIP Lender shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 or chapter 11 trustee or other responsible person appointed for the estates of the Debtor in any Chapter 11 Case.

(c) Amendments. The Debtor and the DIP Lender are authorized and empowered, without further notice and hearing or approval of this Court, to make any non-material modifications to the DIP Term Sheet, in accordance with the DIP Credit Agreement.

(d) Inconsistency. In the event of any inconsistency between the terms and conditions of the DIP Term Sheet and of this Interim Order, the provisions of this Interim Order shall govern and control.

(e) Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order.

15. Final Hearing

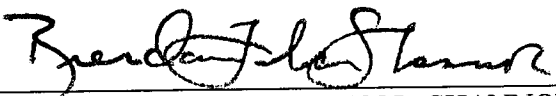
(a) The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for December 10, 2018, at 10:30 a.m. (ET) at the United States Bankruptcy Court for the District of Delaware. The proposed Final Order shall be substantially the same as the Interim Order except that (i) those provisions in the Interim Order that are subject to the entry of the Final Order shall be included in the Final Order without such

qualification, and (ii) where appropriate, references to this Interim Order shall be changed to references to the Final Order. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtor and entered by this Court.

(b) On or before November 19, 2018, the Debtor shall serve, by United States mail, first-class postage prepaid (such service constituting adequate notice of the Final Hearing), (i) notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice") and (ii) a copy of this Interim Order on the parties having been given notice of the Interim Hearing and to any other party that has filed a request for notices with this Court and to any Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Bankruptcy Court by no later than December 3, 2018 at 4:00 p.m. (ET), which objections shall be served so that the same are actually received on or before such date by: the Debtor, counsel to the DIP Lender, and the U.S. Trustee.

16. **Retention of Jurisdiction.** This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: Nov. 15, 2018  
Wilmington, Delaware

  
THE HONORABLE BRENDAN L. SHANNON  
UNITED STATES BANKRUPTCY JUDGE

17. For the avoidance of doubt,  
if an event of default occurs, then the DIP Lender  
shall not be entitled to take any action with respect  
to its rights and remedies as set out 30  
in this Interim Order unless and until it has given the Debtor, a committee of  
unsecured creditors, and the U.S. Trustee three (3) business days' notice of the event of  
default.