

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

PLACE FOR ACHIEVING TOTAL  
HEALTH MEDICAL, P.C.,

Case No. 17-13478 (MKV)

Chapter 11

Debtor.

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NOTICE OF MOTION

**PLEASE TAKE NOTICE** that the undersigned, attorneys for the Debtor, shall move the Hon. Mary Kay Vyscosil, U.S.B.J., United States Bankruptcy Court, at the Court House at One Bowling Green, New York, New York, on February 28, 2018 at 10:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, for an Order allowing use of cash collateral and approving stipulation for same, and for any related relief that the Court considers to be just and proper.

**PLEASE TAKE FURTHER NOTICE** that the plaintiffs shall rely on the annexed Agreed Motion. No novel issues of law are raised by this motion, and therefore no brief or legal memorandum is required. A proposed form of Order is annexed hereto.

PLEASE TAKE FURTHER NOTICE that objections must be served on the undersigned, with a copy to the Court and filed on the Court's ECF system by February 25, 2018.

Dated: New York, New York  
February 6, 2018

SIEGEL & SIEGEL, P.C.  
Attorneys for Defendant  
One Penn Plaza  
Suite 2414  
New York, New York 10119  
(212) 721-5300

By: s/Michael D. Siegel  
Michael D. Siegel

HEARING DATE: February 28, 2018  
OBJECTION DATE: February 25, 2018

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

PLACE FOR ACHIEVING  
TOTAL HEALTH MEDICAL, P.C.

Debtor.

Chapter 11 Case

Case No. 17-13478 (mkv)

**AGREED MOTION TO ALLOW PATH'S USE OF CASH COLLATERAL AND  
PAYMENT OF ADEQUATE PROTECTION FOR ITRIA VENTURES, LLC  
PURSUANT TO TERMS OF STIPULATION AND AGREED ORDER**

Itria Ventures LLC ("Itria"), a secured creditor in this Chapter 11 case filed by Place for Achieving Total Health Medical, P.C. ("PATH"), by its counsel, as and for its Motion ("Motion") to Allow PATH's use of cash collateral and authorize adequate protection for Itria pursuant to the terms of the Stipulation and Agreed Order attached hereto as "Exhibit A" ("Stipulation"), respectfully represents as follows:

**BACKGROUND**

1. On December 4, 2017 (the "Petition Date"), PATH commenced this case by filing a petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Court"). Since the Petition Date, PATH has remained in possession of its assets and is operating its business as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

2. To date, no Trustee has been appointed, and no Committee has been formed or appointed. There is an issue as to whether the receiver appointed with respect to the Chapter 11 bankruptcy case of *In re Eric Braverman*, Case No. 17-10524, filed by the principal of PATH, has authority as receiver for PATH.

3. Prior to the Petition Date, Itria and PATH entered into a series of Future Receiver Sale Agreements (the “Sale Agreements”) whereby Itria purchased a percentage of PATH’s future receivables (the details of which are outlined in the Stipulation), and receivables of related non-debtor parties to PATH including, Total Health Nutrients, Inc. (“THNI”), Total Health Nutrients, LLC (“THNLLC”) and David Investment Holdings Corporation of Delaware, Inc. (“DIH” and together with THNI and THNLLC, the “Related Entities”).

4. Pursuant to the terms of the Sale Agreements, PATH and the Related Entities granted to Itria a first priority continuing security interest in (i) the amount sold of future receivables of PATH and of related entities; (ii) all personal business property of PATH and Related Entities (including all present and future accounts, chattel paper, deposit accounts, documents, personal property, general intangibles, instruments, equipment (including assets and fixtures), inventory and proceeds, each as defined in Article 9 of the Uniform Commercial Code, whether now or hereafter owned or acquired by Debtor and/or the Related Entities and wherever located, and all proceeds of any such property (collectively, the “Collateral”) and (iii) all proceeds of such property until the amount sold has been fully paid.

5. Itria filed UCC-1 financing statements in the State of New York perfecting its security interest in PATH’s Collateral as follows: (a) UCC-1 filed on April 4, 2014 against Debtor as Document No. 201404045342309; (b) UCC-1 filed on April 30, 2015 against Debtor as Document No. 201504305456105; and (c) UCC-1 filed on November 16, 2017 against Debtor as Document No. 201711166402277, in addition to the UCC-1 statements filed against the Related Entities.

6. As of the Petition Date, Itria claims to be owed not less than \$1,103,547.65 under the Sale Agreements plus additional fees and interest (the “Pre-Petition Claim”).

7. Pursuant to the terms of the Sale Agreements, Eric Braverman (also a Chapter 11 debtor) (“Braverman”) has guaranteed payment of the Pre-Petition Claim.

8. Since the Petition Date, Itria has been paid the approximately \$1,200.00 per business day from the Related Entities, consistent with the terms of the Sale Agreements in the manner done prior to the bankruptcy.

9. The Related Entities and/or Debtor have ceased making said payments on or about January 10, 2018 and have advised Itria that they cannot afford to continue to make payments in the amount of \$1,200.00 per business day. PATH has further advised Itria that it has no accounting of sums paid to by the Related Entities, including from credit card sales and other sources.

10. Itria is unwilling to consent to PATH’s use of cash collateral unless adequate protection payments are made to Itria.

11. PATH and Related Entities wish to formalize their arrangement and have the Stipulation entered and approved which provides for, among other things, authority for PATH to use cash collateral to support its ongoing business operations and to make adequate protection payments to Itria in the reduced amount of \$700.00 per business day for a period of sixty (60) days and then to resume payments consistent with the terms of the Sales Agreements (or approximately \$1,200.00 per business day).

#### **USE OF CASH COLLATERAL**

12. In accordance with the Sale Agreements, Itria has a valid and perfected first lien position against the Collateral, which includes cash collateral.

13. Section 363(a) of the Code defines cash collateral broadly as “cash . . . . or cash equivalents . . . .” subject to a [creditor’s pre-petition] security interest . . .”

14. PATH cannot operate its business without the use of cash collateral. Itria consents to PATH's use of cash collateral but only pursuant to the terms of the Stipulation, which provides for adequate protection of Itria's interests and PATH's use of cash collateral limited to payment of reasonable and ordinary course expenses of its business.

15. The interests of PATH and its creditors are best served by this Court's approval of the Stipulation, which allows for the continued operation of PATH for the benefit of all creditors.

16. For the reasons stated above and as set forth in the Stipulation, this Court should enter the Stipulation and Agreed Order authorizing PATH's use of cash collateral and grant Itria adequate protection as set forth therein.

**WHEREFORE**, Itria Ventures, LLC respectfully requests this Court enter the Stipulation and Agreed Order Authorizing PATH's Use of Cash Collateral and Providing for Adequate Protection to Itria; and grant Itria such other and further relief as is appropriate under the circumstances.

Dated: New York, New York  
February 5, 2018

Respectfully submitted,  
**CHUHAK & TECSON, P.C.**  
*Attorneys for Itria Ventures, LLC*

By: s/MICHAEL L. MOSKOWITZ  
**MICHAEL L. MOSKOWITZ, Of Counsel**  
270 Madison Avenue, Suite 1400  
New York, New York  
212.684.7800

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X

In re:

Chapter 11

**PLACE FOR ACHIEVING TOTAL HEALTH  
MEDICAL, P.C.**

Case No: 17-13478-mkv

Debtor.

-----X

**STIPULATION AND AGREED ORDER AUTHORIZING PATH'S USE OF  
CASH COLLATERAL AND PROVIDING FOR PAYMENT OF ADEQUATE  
PROTECTION TO ITRIA VENTURES, LLC**

This Stipulation and Agreed Order (the "Stipulation and Agreed Order") is made by and between Place for Achieving Total Health Medical, P.C. ("PATH") and Itria Ventures LLC ("Itria" and collectively with PATH, the "Parties"), and the Parties hereby Stipulate, Agree and Consent that:

**WHEREAS**, on December 4, 2017 (the "Petition Date"), PATH commenced this case by filing a petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Court"). Since the Petition Date, PATH has remained in possession of its assets and is operating its business as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code; and

**WHEREAS**, to date, no Trustee has been appointed, and no Committee has been formed or appointed; and

**WHEREAS**, prior to the Petition Date, Itria and PATH entered into a series of Future Receiver Sale Agreements (the "Sale Agreements") whereby Itria purchased a percentage of PATH's future receivables as follows:

- a) On May 21, 2015, PATH entered into a Sale Agreement with Itria pursuant to which Itria purchased receivables from PATH for the purchase

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price of \$50,000.00.

- b) On October 30, 2015, PATH entered into three Sale Agreements with Itria pursuant to which Itria purchased receivables from PATH for the purchase prices of \$405,547.32, \$188,920.08 and 500,640.50, respectively.
- c) On January 14, 2016, PATH entered into a Sale Agreement with Itria pursuant to which Itria purchased receivables from PATH for the purchase price of \$250,000.00.
- d) On January 22, 2016, PATH entered into a Sale Agreement with Itria pursuant to which Itria purchased receivables from PATH for the purchase price of \$200,000.00.
- e) On April 14, 2016, PATH and Total Health Nutrients, Inc. (a related non-debtor entity) ("THNI") entered into a Sale Agreement with Itria pursuant to which Itria purchased receivables from PATH and THNI for the purchase price of \$75,000.00.
- f) On June 23, 2016, PATH and THNI entered into a Sale Agreement with Itria pursuant to which Itria purchased receivables from PATH and THNI for the purchase price of \$50,000.00.
- g) On August 17, 2016, PATH, THNI and Total Health Nutrients, LLC (a related non-debtor entity) ("THNLLC") entered into a Sale Agreement with Itria pursuant to which Itria purchased receivables from PATH for the purchase price of \$120,000.00.
- h) On August 31, 2016, PATH, THNI, THNLLC and David Investment Holdings Corporation of Delaware, Inc. (a related non-debtor entity) ("DIH") and together with THNI and THNLLC, the "Related Entities") entered into a Sale Agreement with Itria pursuant to which Itria purchased receivables from those entities for the purchase price of \$50,000.00.
- i) On September 27, 2016, PATH and the Related Entities entered into a Sale Agreement with Itria pursuant to which Itria purchased receivables from those entities for the purchase price of \$25,000.00.
- j) On October 28, 2016, PATH and the Related Entities entered into a Sale Agreement with Itria pursuant to which Itria purchased receivables from PATH and the Related Entities for the purchase price of \$35,000.00.
- k) On November 17, 2016, PATH and the Related Entities entered into a Sale Agreement with Itria pursuant to which Itria purchased receivables from PATH and the Related Entities for the purchase price of \$15,000.00.

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- l) On December 23, 2016, PATH and the Related Entities entered into a Sale Agreement with Itria pursuant to which Itria purchased receivables from PATH and the Related Entities for the purchase price of \$50,000.00.

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**WHEREAS**, pursuant to the terms of the Sale Agreements, PATH and the Related Entities granted to Itria a first priority continuing security interest in (i) the amount sold of future receivables of PATH and of related entities; (ii) all personal business property of PATH and Related Entities (including all present and future accounts, chattel paper, deposit accounts, documents, personal property, general intangibles, instruments, equipment (including assets and fixtures), inventory and proceeds, each as defined in Article 9 of the Uniform Commercial Code, whether now or hereafter owned or acquired by Debtor and/or the Related Entities and wherever located, and all proceeds of any such property (collectively, the “Collateral”)) and (iii) all proceeds of such property until the amount sold has been fully paid; and

**WHEREAS**, Itria filed UCC-1 financing statements in the State of New York perfecting its security interest in PATH’s Collateral as follows: (a) UCC-1 filed on April 4, 2014 against Debtor as Document No. 201404045342309; (b) UCC-1 filed on April 30, 2015 against Debtor as Document No. 201504305456105; and (c) UCC-1 filed on November 16, 2017 against Debtor as Document No. 201711166402277, in addition to the UCC-1 statements filed against the Related Entities; and

**WHEREAS**, as of the Petition Date, Itria claims to be owed not less than \$1,103,547.65 under the Sale Agreements plus additional fees and interest (the “Pre-Petition Claim”); and



**WHEREAS**, pursuant to the terms of the Sale Agreements, Eric Braverman (also a Chapter 11 debtor) (“Braverman”) has guaranteed payment of the Pre-Petition Claim; and

**WHEREAS**, since the Petition Date, Itria has been paid the approximately \$1,200.00 per business day from the Related Entities, consistent with the terms of the Sale Agreements in the manner done prior to the bankruptcy; and

**WHEREAS**, the Related Entities and/or Debtor have ceased making said payments on or about January 10, 2018 and have advised Itria that they cannot afford to continue to make payments in the amount of \$1,200.00 per business day. PATH has further advised Itria that it has no accounting of sums paid to by the Related Entities, including from credit card sales and other sources; and

**WHEREAS**, Itria is unwilling to consent to PATH’s use of cash collateral unless adequate protection payments are made to Itria; and

**WHEREAS**, PATH and Related Entities have raised issues concerning the manner in which Itria is taking money from the Related Entities, but PATH and Related Entities wish to formalize their arrangement; and

**WHEREAS**, Itria maintains that the manner in which Itria received funds from the Related Entities and/or PATH post-petition was consistent with the terms of the Sale Agreements and relevant law; and

**WHEREAS**, to avoid immediate and expensive litigation over cash collateral issues, the parties have agreed that it is in all parties’ best interests for Itria to consent to PATH’s use of cash collateral and for PATH to make adequate protection payments to Itria in the reduced amount of \$700.00 per business day for a period of sixty (60) days

and then to resume payments in the amount of \$1,200.00 per business day consistent with the terms of the Sale Agreements.

**FURTHER APPEARING THAT** PATH agrees that all Pre-Petition Claim was incurred pursuant to the terms and conditions of the Sale Agreements and is secured by PATH's Collateral including future accounts receivable, subject to an accounting of same; and it

**FURTHER APPEARING that** PATH agrees that Itria has valid, non-avoidable, perfected, and enforceable lien and security interests pursuant to the Sale Agreements, which secure the Pre-Petition Claim, upon and in the Collateral; and it

**FURTHER APPEARING that** the orderly continuation of PATH's business is dependent upon Debtor's ability to use the Collateral in which Itria holds an interest pursuant to 11 U.S.C. §363, and that PATH is without sufficient funds to continue operations without the use of the Collateral. The relief set forth is necessary, essential and appropriate for the preservation of PATH's business and the management and preservation of its property.

**IT IS HEREBY FOUND, DETERMINED AND ORDERED, AND THE PARTIES STIPULATE** as follows:

1. Jurisdiction. This Court has core jurisdiction over the Case, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b)(2)(A), (M) and (O) and 1334. The statutory predicates for the relief sought herein are *Sections* 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code, and Bankruptcy Rules 4001(b), (c) and (d). Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

2. Notice. The notice given of this Stipulation and Agreed Order to all

principals, lienholders, governmental and taxing authorities, the Patient Ombudsman, creditors and parties-in-interest pursuant to Bankruptcy Rules 2002, 4001(d)(1) and 9006(c)(1) and all applicable rules pursuant to 11 U.S.C. §102(a) constitutes due and sufficient notice thereof.

3. Debtor's Stipulations. PATH admits, stipulates and agrees that:

(a) (i) as of the Petition Date, PATH was, under the Sale Agreements to which it is a party, truly and justly indebted and liable to Itria without defense, counterclaim or offset of any kind, except as an accounting might show, in the approximate aggregate principal amount of \$1,103,547.65 in respect of purchase of future accounts receivable made by Itria pursuant to and in accordance with the terms of the Sale Agreements, and (ii) no portion of the Pre-Petition Claim is subject to avoidance, subordination, recharacterization, attack or challenge pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and

(b) the liens and security interests granted to Itria pursuant to the Sale Agreements executed by PATH are valid, perfected, enforceable first priority liens and security interests in the property referred to and described in the Sale Agreements and UCC-1 Statements (the "Pre-Petition Collateral"); and

(c) any obligation of Itria to provide financing to PATH pursuant to the terms of the Sale Agreements terminated prior to the Petition Date; and any obligation of Itria to provide financing to PATH pursuant to the terms of the Sale Agreements terminated prior to the Petition Date; and

(d) PATH's use of the Collateral and the post-petition liens for use of Collateral have been agreed upon by and between PATH and Itria in good faith; and

(e) good and sufficient cause has been shown to justify the granting of the relief requested herein; and

(f) the Sale Agreements, including perfection of security interest, are hereby incorporated by reference and are ratified, reaffirmed and confirmed by PATH.

4. *Findings Regarding the Use of Collateral and Grant of Adequate Protection.*

(a) Good and sufficient cause has been shown for the entry of this Order. PATH is hereby authorized to execute and deliver and perform its obligations under this Order; and

(b) The ability of PATH to continue to use Itria's collateral in operations is vital to preserve and maintain the going concern value of PATH in order to maximize the value of PATH's estate; and

(c) Absent the Itria's consent to PATH's use of Collateral pursuant to the terms and conditions set forth in this Order, PATH would not be able to continue in business and the value of its business and assets would be substantially diminished. Due to the circumstances of this Case, Itria faces a high degree of risk that PATH's use of the Pre-Petition Collateral could result in a diminution and loss of the value of the Itria's interest in such Collateral. Itria is also at risk that the claims and liens of certain governmental taxing authorities or other parties or creditors may impair the value of the Itria's interest in the Pre-Petition Collateral, and that because of the nature of PATH's business, the collateral itself is subject to rapid diminution; and

(d) PATH is not able to obtain any other form of post-petition financing to maintain its operations and the value of its business and assets during the pendency of

this Case other than the use of Collateral pursuant to the terms of this Order. PATH is unable to obtain adequate unsecured or secured credit under *Section 364* of the Bankruptcy Code; and

(e) The terms of the use of Collateral reflect PATH's exercise of prudent business judgment consistent with its fiduciary duties and have been negotiated at arms'-length among PATH and Itria; and

(f) PATH has requested entry of this Order pursuant to Bankruptcy Rules 4001(b), 4001(c) and 4001(d). Absent entry of this Order, PATH's estate will be immediately and irreparably harmed; and

(g) The Court finds that the grants herein are appropriate in this Case and should be granted for the following reasons: the complete absence of any other possible source of financing for PATH to maintain the operations of its business during the Chapter 11 administrative period, the high degree of risk faced by Itria in consenting to the use of the Collateral, including the risk of substantial diminution and loss of the value of Itria's interest in the Pre-Petition Collateral, such risks deriving from, among other things, the perishable nature of certain of PATH's inventory and collateral, the uncertainty as to PATH's viability as a going-concern enterprise, the uncertainty as to certain aspects of PATH's books, records and accounting systems and accounting practices, and the risk that the value of Itria's interest in the Pre-Petition Collateral could be impaired by the claims and liens of certain governmental taxing authorities or other creditors.

5. Use of Collateral. Subject to the provisions of this paragraph and any valid existing security agreements and the other provisions of this Order, PATH is hereby

authorized to use Collateral of Itria in the reasonable and ordinary course of business until the occurrence of any of the Events of Default set forth herein (the "Termination Date"). PATH's right to use the Collateral shall terminate automatically on the Termination Date. The Termination Date may be extended by agreement of PATH and Itria in writing without further approval of the Court.

6. Adequate Protection. Itria is entitled, pursuant to *Sections* 361, 363(e) and 364(d) of the Bankruptcy Code, to adequate protection of its interest in the Pre-Petition Collateral, for and equal in amount to the aggregate diminution in value of the Itria's interests in the Pre-Petition Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by PATH of the Pre-Petition Collateral including any decline in value from depreciation or decline in market price and the imposition of the automatic stay pursuant to *Section* 362 of the Bankruptcy Code. Accordingly, as adequate protection, Itria is hereby granted the following protections (collectively, the "Adequate Protection Obligations"). As used in this Order, the term Adequate Protection Obligations shall mean all of the obligations of PATH set forth herein:

(a) Replacement Liens: Itria is hereby granted replacement liens and security interests in such property of PATH as is described as Collateral in the Loan Documents whether coming into existence or acquired prior to, on, or after the Petition Date, and the proceeds thereof (the "Replacement Lien"), but not including any avoidance action commenced by or on behalf of PATH, including, but not limited to, those commenced pursuant to Bankruptcy Code §§544, 547, 548, 549, and 550 and the proceeds thereof, and which Replacement Lien shall be of the same nature, and have the same extent, validity and order of priority, as the liens and security interests of Itria that existed on the

Petition Date. The Replacement Lien is subject to a carve-out for (a) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the U.S. Trustee pursuant to 28 U.S.C. §1930(a)(6) and 31 U.S.C. 3717; and (b) the reasonable fees and expenses of a chapter 7 trustee and his or her professionals not to exceed \$10,000.00, provided that such fees and expenses were not incurred for the purpose of or in connection to contesting the extent, validity and priority of the liens of and security interests of Itria (the “Carevout”). ; and

(b) Adequate Protection Payment. PATH shall continue to and be authorized to perform on a daily basis pursuant to the terms of the pre-petition Sale Agreements, including without limitation, payments to Itria (“Adequate Protection Payments”). Notwithstanding the foregoing, PATH and Related Entities’ payments to Itria shall be capped at \$700.00 per business day (in the aggregate) for a period of sixty (60) days from the entry of this Stipulation and Order. After the initial sixty (60) day period, PATH and/or the Related Entities, as the case may be, are authorized to make payments to Itria consistent with the terms of the pre-petition Sale Agreements (in the approximate aggregate amount of \$1,200.00 per business day) until further Order of this Court. These payments shall be the sole payments to be charged by Itria as against both PATH and the Related Entities while this Order is in effect and provided that there is no payment default by PATH and/or the Related Entities pursuant to the terms herein. Notwithstanding the foregoing, this Order does not impair or prevent Itria from enforcing its claim or collecting payment on its claim in the Braverman bankruptcy case. Itria agrees to use its best efforts to assist PATH to seek release of PATH funds held by third party sources

(including insurance companies and/or credit card processors) on account of Itria's claims or liens.

7. No waiver: PATH's failure to timely and completely comply with the terms of this Agreement, shall constitute an Event of Default hereunder and under the Sale Agreements.

8. Monitoring. PATH shall provide or cause to be provided to Itria copies of such reports, information, materials and the like as may be reasonably requested by Itria within five (5) business days of request, and the failure to so provide will be deemed an Event of Default under the within. In the event of Default, upon three (3) days' notice to PATH, during regular business hours, PATH shall permit Itria and any of its agents or representatives reasonable and free access to PATH's assets, records and place of business during normal business hours to verify the existence, condition and location of collateral in which Itria holds an interest and to review PATH's books and records including, without limitation, cash receipts and such other information reasonably requested by Itria. PATH's failure to timely and completely comply with this obligation, shall constitute an Event of Termination hereunder; and

9. Documentation. PATH is authorized and directed to produce, execute and comply with all such documents as may be necessary or appropriate to evidence and effectuate the terms and conditions of PATH's continued use of the Collateral. Itria understands that PATH has been run by a Receiver since 2015, and that PATH has limited access to pre-petition records.

10. Reservation of Rights of Itria. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, the Court



finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of Itria subject to the rights of Itria to request further or different adequate protection.

11. Perfection of Replacement Liens. Itria is hereby authorized, but not required, to file or record financing statements or similar instruments in any jurisdiction or take any other action in order to validate and perfect the security interests granted to it hereunder. Whether or not Itria shall, in its sole discretion, choose to file such financing statements or similar instruments or otherwise confirm perfection of the security interests granted to it hereunder, such security interests shall be deemed valid and perfected at the time and on the date of entry of this Order without the necessity of any other or further act or instrument. This Order is evidence of the perfected security interests in and to PATH's property as granted herein.

12. Preservation of Rights Granted Under the Order.

(a) The rights granted under this Order, including any lien granted herein, shall survive the expiration of this Order. The Adequate Protection Obligations and security interests granted to Itria pursuant to this Order shall continue in full force and effect and shall maintain their priorities as provided in this Order and that security interests and claims shall, notwithstanding expiration of this Order, remain binding on all parties in interest. From and after the Petition Date, no act committed or action taken by Itria under this Order shall be used, construed, or deemed to hold Itria or any its employees, agents, representatives or attorneys, to be in control of or participating in the governance, management or operations of PATH for any purpose, without limitation, or to be acting as a responsible person or owner or operator or person in control with respect

to the governance, management or operation of PATH or its business (as such terms, or any similar terms, may be used in any federal or state statute or case law, or in equity or otherwise) by virtue of the interests, rights and remedies as may be exercisable by Itria in connection with this Order.

(b) If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect the validity of any adequate protection obligations incurred prior to the actual receipt of written notice by Itria of the effective date of such reversal, stay, modification or vacation or the validity or enforceability of any lien or priority authorized or created hereby. Notwithstanding any such reversal, stay, modification or vacation, any adequate protection obligations incurred by PATH to Itria prior to the actual receipt of written notice by Itria of the effective date of such reversal, stay, modification or vacation shall be governed in all respects by the original provisions of this Order and Itria shall be entitled to all the rights, remedies, privileges and benefits granted in this Order and all adequate protection obligations.

13. Non-Debtor Guarantees. Nothing contained in this Order shall be deemed to terminate, modify or release any obligations of any non-debtor guarantors to Itria with respect to the post-petition defaults of PATH occurring subsequent to the Court Order Approving this Agreement, except the payment received by Itria hereunder shall be on account of all Related Entities and PATH.

14. Effect of Stipulations on Third Parties. The stipulations and admissions contained in this Agreement shall be binding upon PATH in all circumstances. (i) the Pre-Petition Claim shall constitute allowed claims, not subject to counterclaim, setoff,

subordination, recharacterization, defense or avoidance, for all purposes in this Case and (ii) Itria's security interests in the Pre-Petition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding and perfected, not subject to recharacterization, subordination, avoidance or other defense.

15. Binding Effect; Successors and Assigns. The provisions of this Order shall be binding upon all parties in interest in this Case, including, without limitation, Itria, PATH, the Committee (if any), the holders of claims and interests against PATH and their respective successors and assigns and shall inure to the benefit of such parties and any of their respective successors and assigns.

16. Headings. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Order.

17. Nunc Pro Tunc Relief. This Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to *effective as of* the Petition Date immediately upon entry hereof.

18. Maintenance of Collateral. PATH agrees to maintain the Collateral including documents and electronic information supporting the collateral in the same condition as on the Filing Date.

19. Non-Modification. Nothing contained herein modifies the liability of any person or entity under the Pre-Petition Sale Agreements as to any act or event occurring subsequent to Court approval of this Agreement.

20. While this Stipulation is in effect, Itria agrees not to seek conversion of PATH's case or the case of any Related Entity, agrees not to support any motion for

conversion of any Related Entity, and agrees not to sit on any Committee that may be formed in any case of PATH or any Related Entity.

21. As the money paid to Itria has only been accounted by Receiver and not the Related Entities, as soon as possible but not later than 30 days, Itria shall provide PATH's counsel with an accounting of all payments made under any Sale Agreement by any Related Entity since the inception of the relationship between the parties, and such accounting shall show all payments received the current account balances as a result thereof and the source of payments made to Itria..

This *Stipulation and Agreed Order* shall be effective immediately upon entry by the Bankruptcy Court.

**IT IS FURTHER ORDERED** that PATH serve a copy of this Order by first class mail within three (3) business days from the hereof on (1) the United States Trustee, (2) the District Director of the Internal Revenue Service, (3) the Taxation Entities, (4) to the “top 20” unsecured creditors as scheduled by PATH, and the Patient Ombudsman, and PATH shall immediately file with the Clerk a Certificate of Service of said mailing.

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Dated: New York, New York  
February 5, 2018

Dated: Chicago, Illinois  
February 1, 2018

Siegel & Siegel P.C.

Chuhak & Tecson P.C.

By: /s/ Michael D. Siegel  
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mstein@chuhak.com  
*Attorneys for Itria*

*SO ORDERED:*

DATED: New York, New York  
February \_\_\_\_, 2018

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Hon. Mary Kay Vyskocil  
United States Bankruptcy Judge