

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
VALERITAS HOLDINGS, Inc., <u>et al.</u> ,	:	Case No. 20-10290 (LSS)
	:	
Debtors. ¹	:	(Joint Administration Requested)
	:	
	x	Ref. No. 16, 65

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO
OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING
THE DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS
AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV)
GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY,
(VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

Upon the motion, dated February 9, 2020 (the “Motion”) of Valeritas Holdings, Inc. and its subsidiaries (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”), seeking entry of an interim order (this “Interim Order”) and a final order (the “Final Order”) pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), 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”), the Local Rules for the District of Delaware (the “Local Bankruptcy Rules”), *inter alia*:

(i) authorizing the Debtors to obtain senior secured postpetition financing on a superpriority basis under a multi-draw term loan facility of up to \$5.5 million in the aggregate on an interim basis and up to \$12 million in the aggregate upon entry of the Final Order (the “DIP Facility”) pursuant to the terms and conditions of that certain Senior Secured Superpriority Priming Debtor-in-Possession Credit Facility Term Sheet (as the same may be amended, restated,

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.

supplemented, or otherwise modified from time to time, the (“DIP Term Sheet”), to be entered into by and among Valeritas Holdings, Inc., as borrower, each other Debtor as guarantor, and HB Fund LLC as the “DIP Lender,” and consented to by CRG Servicing LLC (the “Prepetition Agent”), as agent for the Prepetition Secured Parties (as hereinafter defined) in the form attached to the Motion as **Exhibit A**;

(ii) approving the terms of and authorizing the Debtors party thereto to execute and deliver the DIP Term Sheet and any other agreements, instruments and documents related thereto (collectively with the DIP Term Sheet, the “DIP Documents”) and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iii) approving the DIP Facility and granting all obligations owing thereunder and under the DIP Documents to the DIP Lender (collectively, and including all “Obligations” as described in the DIP Documents, the “DIP Obligations”) allowed superpriority administrative expense claim status in each of the Chapter 11 Cases and any Successor Cases (as defined below);

(iv) granting to the DIP Lender automatically perfected security interests in and superpriority liens on all of the DIP Collateral (as defined below), including, without limitation, all property constituting “Cash Collateral” as defined in section 363(a) of the Bankruptcy Code (“Cash Collateral”),² which liens shall be subject to the priorities set forth herein;

(v) authorizing and directing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become due, including, without limitation, commitment fees and the fees and disbursements of the DIP Professionals’ respective attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with, this Interim Order and the applicable DIP Documents;

² Capitalized terms used in this Interim Order but not defined herein shall have the meanings given to them in the Motion or the DIP Term Sheet, as applicable.

(vi) authorizing the Debtors to use the Prepetition Collateral, including the Cash Collateral (each as defined below) of the Prepetition Secured Parties under the Prepetition Loan Documents (each as defined below) on an interim basis, and providing, among other things, adequate protection to the Prepetition Secured Parties for any Diminution (as defined below) of their interests in the Prepetition Collateral, including the Cash Collateral, and/or in exchange for their consent to the priming of the Prepetition Liens by the Priming DIP Liens;

(vii) approving the stipulations by the Debtors herein with respect to the Prepetition Loan Documents and the liens and security interests arising therefrom;

(viii) authorizing the Debtors to use Cash Collateral and the proceeds of the DIP Facility in accordance with both the Approved Budget and the DIP Documents on an interim basis;

(ix) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Interim Order; and

(x) scheduling a final hearing (the "Final Hearing") to consider the relief requested in the Motion and approving the form of notice with respect to the Final Hearing.

The Bankruptcy Court having considered the Motion, the exhibits attached thereto, the First Day Declaration, the DIP Documents, and the evidence submitted and argument made at the interim hearing (the "Interim Hearing"); and notice of the Interim Hearing having been provided in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Bankruptcy Rules; and the Interim Hearing having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Bankruptcy Court; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the

Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates and all parties-in-interest, and is essential for the continued operation of the Debtors' business and the preservation of the value of the Debtors' assets; and the Bankruptcy Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the Debtors' entry into the DIP Term Sheet is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE BANKRUPTCY COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:³

A. **Disposition.** The relief requested in the Motion is granted on an interim basis in accordance with the terms of this Interim Order. Any objections to the 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 on the merits. This Interim Order shall

³ The findings and conclusions set forth herein constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

become effective immediately upon its entry and any applicable stay (including under Bankruptcy Rule 6004) is waived to permit such effectiveness.

B. **Petition Date.** On February 9, 2020 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court.

C. **Debtors in Possession.** The Debtors are operating their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. As of the date hereof, no trustee or examiner has been appointed.

D. **Jurisdiction and Venue.** This Bankruptcy Court has jurisdiction over the Chapter 11 Cases, the 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 District of Delaware*, dated February 29, 2012. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for the Chapter 11 Cases and the proceedings on the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for the relief sought in the Motion are sections 105, 361, 362, 363, 364, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, and the Local Bankruptcy Rules.

E. **Committee Formation.** As of the date hereof, no statutory committee has been appointed in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (a "Committee").

F. **Notice.** Upon the record presented to the Court at the Interim Hearing, and under the exigent circumstances set forth therein, notice of the Motion and the relief requested thereby and this Interim Order has been provided in accordance with Bankruptcy Rules 4001(b) and 4001(c)(1) to (a) the United States Trustee for Region 3 (the "U.S. Trustee"); (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to

Bankruptcy Rule 1007(d); (c) counsel to the DIP Lender; (d) counsel for the Prepetition Agent; (e) the United States Attorney's Office for the District of Delaware; (f) the Internal Revenue Service; (g) all parties known to the Debtors who hold any liens or security interests in the Debtors' assets who have filed UCC-1 financing statements against the Debtors; (h) the United States Securities and Exchange Commission; (i) the state attorneys general for states in which the Debtors conduct business; (j) the U.S. Food and Drug Administration; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"), which notice was appropriate under the circumstances and sufficient for the Motion, and the entry of this Interim Order; and no further notice of, or hearing on, the entry of this Interim Order and the relief set forth therein is necessary or required. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending a Final Hearing.

G. **Debtors' Stipulations.** Subject to Paragraph 45 hereof, each stipulation, admission, and agreement contained in this Interim Order, including, without limitation, the Debtors' Stipulations, shall be binding upon the Debtors, their Estates and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors) under all circumstances and for all purposes, and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (as defined herein) as of the date of the Petition Date. After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in paragraph 45 herein, the Debtors, on behalf of themselves, admit, stipulate, acknowledge, and agree as follows (paragraphs G(i) through G(xi) below are referred to herein, collectively, as the "Debtors' Stipulations"):

(i) *Prepetition Term Loan Facility.* Pursuant to that certain Second Amended and Restated Term Loan Agreement, dated as May 3, 2016 (as amended, restated, supplemented,

or otherwise modified from time to time, the “Prepetition Credit Agreement,” and collectively with all other agreements, instruments and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified from time to time, the “Prepetition Loan Documents”), among (a) Valeritas, Inc (the “Prepetition Borrower”) (b) Valeritas Holdings, Inc., Valeritas Security Corporation, and the other guarantors party thereto (the “Prepetition Guarantors,”), (c) CRG Servicing LLC as control agent (in such capacity, the “Prepetition Agent”), and (d) the term loan lenders party thereto (the “Prepetition Lenders,” and together with the Prepetition Agent, collectively, the “Prepetition Secured Parties”), the Prepetition Lenders provided secured term loans to the Debtors (the “Prepetition Term Loan Facility”).

(ii) *Prepetition Obligations.* The Debtors represent that as of December 31, 2019, the aggregate principal amount outstanding under the Prepetition Term Loan Facility was \$19,349,732.00 (together with accrued and unpaid interest, any fees, expenses and disbursements (including, without limitation, attorneys’ fees, accountants’ fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition Borrower’s and Prepetition Guarantors’ obligations in connection with the Prepetition Term Loan Facility pursuant to the Prepetition Loan Documents, including all “Obligations” as defined in the Prepetition Credit Agreement, the “Prepetition Obligations”).

(iii) *Prepetition Liens and Prepetition Collateral.* As more fully set forth in the Prepetition Loan Documents, prior to the Petition Date, the Prepetition Borrower and the Prepetition Guarantors granted to the Prepetition Agent for the benefit of the Prepetition Secured

Parties, a security interest in and continuing lien (the “Prepetition Liens”) on substantially all of the assets of the Prepetition Borrower and the Prepetition Guarantors (the “Prepetition Collateral”).

(iv) *Validity, Extent, Perfection and Priority of Prepetition Liens and Prepetition Obligations.* As of the Petition Date: (a) the Prepetition Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to certain liens senior by operation of law or otherwise permitted by the Prepetition Loan Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable and senior in priority to the Prepetition Liens as of the Petition Date, the “Prepetition Priority Liens”); (c) the Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Loan Parties enforceable in accordance with the terms of the applicable Prepetition Loan Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors,

professionals, officers, directors and employees arising out of, based upon or related to the Prepetition Term Loan Facility; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition Obligations, the priority of the Prepetition Secured Parties' obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition Obligations; and (g) the Prepetition Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(v) Cash Collateral. All of the Debtors' cash and cash equivalents, including cash on deposit or held as collateral for any letter of credit in any account or accounts as of the Petition Date, securities or other property, wherever located, whether subject to control agreements or otherwise, whether as original collateral or proceeds of other Prepetition Collateral, constitutes Cash Collateral of the Prepetition Secured Parties.

H. **Releases**. Subject to entry of the Final Order and paragraph 45 hereof, the Debtors, on behalf of themselves, hereby absolutely and unconditionally release and forever and irrevocably discharge and acquit the Prepetition Secured Parties and their respective affiliates and each of their respective former or current officers, partners, directors, managers, owners, members, principals, employees, agents, related funds, investors, financing sources, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (collectively, the "**Released Parties**") from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, debts, accounts, contracts, disputes, liabilities, allegations, suits, controversies, proceedings, actions and causes of action arising prior to the Petition Date (collectively, the "**Released Claims**") of any kind, nature or description, whether known or unknown, foreseen or unforeseen or liquidated or

unliquidated, arising in law or equity or upon contract or tort or under any state or federal law or regulation or otherwise, arising out of or related to (as applicable) the Prepetition Loan Documents, the obligations owing and the financial obligations made thereunder, the negotiation thereof and of the transactions reflected thereby and the obligations and financial obligations made thereunder, in each case that the Debtors at any time had, now have or may have, or that their successors or assigns hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of this Interim Order.

I. Findings Regarding Postpetition Financing

(i) *Request for Postpetition Financing.* The Debtors seek authority to (a) enter into the DIP Facility on the terms described herein and in the DIP Documents, and (b) use Cash Collateral on the terms described herein to administer their Chapter 11 Cases and fund their operations. At the Final Hearing, the Debtors will seek final approval of the proposed postpetition financing and use of Cash Collateral arrangements pursuant to a proposed Final Order. Notice of the Final Hearing and Final Order will be provided in accordance with this Interim Order.

(ii) *Priming of the Prepetition Liens.* The priming of the Prepetition Liens on the Prepetition Collateral under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Term Sheet and as further described below, will enable the Debtors to obtain the DIP Facility and to continue to operate their businesses to the benefit of their estates and creditors. The Prepetition Secured Parties are entitled to receive adequate protection as set forth in this Interim Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, for any diminution in

value (“Diminution”) of their respective interests in the Prepetition Collateral (including Cash Collateral).

(iii) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtors have an immediate and critical need to obtain the financing pursuant to the DIP Facility and to continue to use the Prepetition Collateral (including Cash Collateral) in order to, among other things, (i) pay the fees, costs and expenses incurred in connection with the Cases, (ii) fund any obligations benefitting from the Carve-Out, (iii) permit the orderly continuation of the operation of their businesses, (iv) maintain business relationships with customers, vendors and suppliers, (v) make payroll, and (vi) satisfy other working capital and operational needs. The incurrence of new debt under the DIP Documents and use of Cash Collateral is necessary and vital to the preservation and maintenance of the going concern value of the Debtors. Immediate and irreparable harm will be caused to the Debtors and their estates if immediate financing is not obtained and permission to use Cash Collateral is not granted. The terms of the proposed financing are fair and reasonable, reflect the Debtors’ exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration. The adequate protection provided in this Interim Order and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code.

(iv) *No Credit Available on More Favorable Terms.* The DIP Facility is the best source of debtor in possession financing available to the Debtors. Given their current financial condition, financing arrangements, capital structure, and the circumstances of these Cases, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP Lender on terms more favorable than the DIP Facility. Further, the Prepetition Secured Parties have consented to the Debtors incurring debtor-in-possession financing, the priming of their

Prepetition Liens and the use of their Cash Collateral, on the terms and subject to the conditions set forth in the DIP Documents and this Interim Order. The Debtors are unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors have also been unable to obtain: (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis is not otherwise available without granting the DIP Lender: (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth herein, (2) superpriority claims and liens, and (3) the other protections set forth in this Interim Order.

(v) *Use of Proceeds of the DIP Facility.* As a condition to entry into the DIP Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the DIP Lender, and the Prepetition Secured Parties require, and the Debtors have agreed, that Cash Collateral and the proceeds of the DIP Facility shall be used solely in accordance with the terms and conditions of this Interim Order and the DIP Documents and in accordance with the Approved Budget (as defined herein).

(vi) *Application of Proceeds of Collateral.* As a condition to entry into the DIP Term Sheet, the extension of credit under the DIP Facility and authorization to use Cash Collateral, the Debtors, the DIP Lender, and the Prepetition Secured Parties have agreed that, as of and commencing on the date of entry of this Interim Order, the Debtors shall apply the proceeds of DIP Collateral in accordance with this Interim Order and the DIP Documents.

J. **Adequate Protection.** The Prepetition Secured Parties are entitled to receive adequate protection to the extent of any Diminution of their interests in the Prepetition Collateral, in exchange for their consent to the priming of the Prepetition Liens by the Priming DIP Liens and their consent to the use of Cash Collateral to the extent set forth in this Interim Order.

K. **Sections 506(c) and 552(b).** In light of (i) the DIP Lender's agreement that its liens and superpriority claims shall be subject to the Carve-Out and (ii) the Prepetition Secured Parties' agreement that, with respect to the Prepetition Collateral, their liens shall be subject to the Carve-Out and subordinate to the Priming DIP Liens, (a) the DIP Lender, and subject to entry of the Final Order, the Prepetition Secured Parties are each entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code, and (b) the DIP Lender, and subject to entry of a Final Order, the Prepetition Secured Parties are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

L. **Good Faith of the DIP Lender.**

(i) *Willingness to Provide Financing.* The DIP Lender has committed to provide financing to the Debtors subject to: (a) entry of this Interim Order and the Final Order; (b) approval of the terms and conditions of the DIP Facility and those set forth in the DIP Documents; (c) satisfaction of the closing conditions set forth in the DIP Documents; and (d) findings by this Bankruptcy Court that the DIP Facility is essential to the Debtors' estates, that the DIP Lender is extending credit to the Debtors pursuant to the DIP Documents in good faith, and that the DIP Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order and the DIP Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

(ii) *Business Judgment.* Based on the Motion, the declarations filed in support of the Motion, and the record presented to the Bankruptcy Court at the Interim Hearing, (i) the terms of the financing embodied in the DIP Facility, including the fees, expenses and other charges paid and to be paid thereunder or in connection therewith, (ii) the adequate protection authorized by the Interim Order and DIP Documents and (iii) the terms on which the Debtors may continue to use the Prepetition Collateral (including Cash Collateral), in each case pursuant to this Interim Order and the DIP Documents, are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, constitute reasonably equivalent value and fair consideration, and represent the best financing (and terms) available under the circumstances.

(iii) *Good Faith Pursuant to Section 364(e).* The terms and conditions of the DIP Facility and the use of Cash Collateral were negotiated in good faith and at arm's length among the Debtors, the DIP Lender, and the Prepetition Secured Parties with the assistance and counsel of their respective advisors. Use of Cash Collateral and credit to be extended under the DIP Facility shall be deemed to have been allowed, advanced, made, or extended in good faith by the DIP Lender and the Prepetition Secured Parties within the meaning of section 364(e) of the Bankruptcy Code.

M. **Good Cause.** Good cause has been shown for immediate entry of this Interim Order, and the entry of this Interim Order is in the best interests of the Debtors, the Estates and their stakeholders. Among other things, the relief granted herein will minimize disruption of the Debtors' business and permit the Debtors to meet payroll and other expenses necessary to maximize the value of the Estates. The terms of the Debtors' DIP Facility, use of Cash Collateral and proposed adequate protection arrangements, as set forth in this Interim Order, are fair and

reasonable under the circumstances, and reflect the Debtors' exercise of prudent business judgment.

N. **Immediate Entry.** Sufficient cause exists for immediate entry of this Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the applicable Local Rules.

Based upon the foregoing findings and conclusions, the Motion and the record before the Bankruptcy Court with respect to the Motion, and after due consideration and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. **DIP Financing Approved.** On an interim basis, the Motion is granted, entry into the DIP Facility is authorized and approved, and the use of Cash Collateral is authorized, in each case, subject to the terms and conditions set forth in this Interim Order. All objections to this Interim Order to the extent not withdrawn, waived, settled or resolved, and all reservations of rights included therein, are hereby denied and overruled on the merits. This Interim Order shall become effective immediately upon its entry.

DIP Facility Authorization

2. **Authorization of the DIP Financing.** The Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Documents, and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Documents, and to execute, deliver and perform under all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Documents and the creation and perfection of the Priming DIP Liens (as defined below) described in and provided for by this Interim Order and the DIP Documents.

Upon execution and delivery, the DIP Documents shall represent legal, valid and binding⁴ obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms. Each officer of a Debtor acting individually is hereby authorized to execute and deliver each of the DIP Documents, such execution and delivery to be conclusive evidence of such officer's respective authority to act in the name of and on behalf of the Debtors. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations or otherwise, will be deposited and applied as required by this Interim Order and the DIP Documents.

3. Authorization to Borrow. In order to prevent immediate and irreparable harm to the Debtors' estates, subject to the terms, conditions, limitations on availability and reserves set forth in the DIP Documents and this Interim Order, the Debtors are hereby authorized to borrow money pursuant to the DIP Documents in an aggregate principal or face amount not to exceed \$5.5 million on an interim basis and together with applicable interest, expenses, fees and other charges payable in connection with the DIP Facility, subject in each case to any limitations on, or conditions to, borrowing under the DIP Documents, which borrowings shall be used solely for purposes permitted under the DIP Documents, including, without limitation, to provide working capital for the Debtors and to pay interest, fees, costs, charges and expenses, in each case, in accordance with this Interim Order, the DIP Documents and the Budget.

4. DIP Obligations. The DIP Documents and this Interim Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Obligations. All DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including without limitation, any trustee appointed in the Chapter 11 Cases, or in any case under

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Notwithstanding the DIP Term Sheet, the Debtors and DIP Lender agree that the Debtors may deliver the Notice of Borrowing for the first draw under the Interim DIP Facility by no later than February 14, 2020.

Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the “Successor Cases”). Upon entry of this Interim Order, the DIP Obligations will include all loans, reimbursement obligations, and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Lender, including, without limitation, all principal, accrued interest, costs, charges, fees, expenses and other amounts under the DIP Documents. The Debtors are hereby authorized and directed to pay in accordance with this Interim Order the DIP Obligations as such become due and without obtaining further Bankruptcy Court approval. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Documents (including any DIP Obligation or Priming DIP Liens) to the DIP Lender shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or be subject to any disgorgement, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), claim, counterclaim, charge, assessment, cross-claim, defense, or any other liability or challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity for any reason.

5. DIP Collateral. In order to secure the DIP Obligations, effective immediately upon entry of this Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Lender, is hereby granted, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the “Priming DIP Liens”) all assets, real and personal

property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors and their respective estates, of any kind or nature, now existing or hereafter acquired, arising or created, and wherever located, including without limitation: all cash, accounts, accounts receivable, goods (including inventory and equipment), documents (including, if applicable, electronic documents), fixtures, instruments, promissory notes, chattel paper (whether tangible or electronic), letters of credit, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), equity interests, securities and all other investment property, real estate, leaseholds, commercial tort claims, general intangibles (including all payment intangibles), the Debtors' rights and interests under any permits or licenses issued by any governmental entity (to the fullest extent allowed under applicable state and/or local law), money, deposit accounts (and all amounts on deposit therein from time to time), patents, trademarks, other intellectual property, licenses of any intellectual property, any other contract rights or rights to the payment of money, books and records, all supporting obligations, any insurance, indemnity, warranty or guaranty payable to any of the Debtors from time to time, any claims and causes of action of the Debtors, and all proceeds, rents, products, accessions to, replacements for and substitutions of any of the foregoing, and subject to entry of the Final Order, the causes of action pursuant to Chapter 5 of the Bankruptcy Code (and the proceeds thereof), if any (collectively, the "DIP Collateral").

6. Priming DIP Liens. The Priming DIP Liens securing the DIP Obligations are valid, automatically perfected, non-avoidable, senior in priority and superior to any security, mortgage, collateral interest, lien or claim to any of the DIP Collateral, except that the Priming DIP Liens shall be subject to the Carve-Out, and shall otherwise be junior only to the Permitted Liens (as defined in the DIP Term Sheet). Other than as set forth herein or in the DIP Documents, the Priming DIP Liens shall not be made subject to or *pari passu* with any lien or security interest

heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Cases, upon the conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The Priming DIP Liens shall not be subject to section 510, 549 or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Priming DIP Liens.

7. DIP Superpriority Claims. Subject to the Carve-Out, upon entry of this Interim Order, the DIP Lender is hereby granted, pursuant to Section 364(c)(1) of the Bankruptcy Code, allowed superpriority administrative expense claims in each of the Cases and any Successor Cases (collectively, the “DIP Superpriority Claims”) for all DIP Obligations: (a) except as set forth herein, with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Chapter 11 Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code Sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114, and any other provision of the Bankruptcy Code, as provided under Section 364(c)(1) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law. Notwithstanding the foregoing, the DIP Superpriority Claims shall be junior to the Carve-Out.

8. No Obligation to Extend Credit. The DIP Lender shall have no obligation to make any loan or advance under the DIP Documents unless all of the conditions precedent under

the DIP Documents and this Interim Order have been satisfied in full or waived by the DIP Lender in accordance with the terms of the DIP Documents.

9. Use of Proceeds of DIP Facility. From and after the Petition Date, the Debtors shall use advances of credit under the DIP Facility only for the purposes specifically set forth in this Interim Order and the DIP Documents, and in compliance with the Approved Budget and the terms and conditions in this Interim Order and the DIP Documents.

10. No Monitoring Obligation. The DIP Lender shall have no obligation nor responsibility to monitor the Debtors' use of the DIP Facility, and the DIP Lender may rely upon the Debtors' representation that the use of the DIP Facility at any time is in accordance with the requirements of this Interim Order and the DIP Documents.

Authorization to Use Cash Collateral

11. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order, the DIP Facility and the DIP Documents and in accordance with the Approved Budget. The Debtors are authorized to use Cash Collateral until the Termination Date. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted by this Interim Order, the DIP Facility, the DIP Documents, and in accordance with the Approved Budget, as applicable.

12. Adequate Protection for Prepetition Secured Parties. As adequate protection for any Diminution in the value of the Prepetition Collateral resulting from the Prepetition Lenders' agreement to subordinate its existing liens to the Priming DIP Liens and for the Prepetition Lenders' consent to the Debtors' use of Cash Collateral, the Prepetition Agent shall receive, for the benefit of the Prepetition Secured Parties, to the extent of any Diminution of the

Prepetition Secured Parties' interests in the Prepetition Collateral (i) replacement liens pursuant to sections 361, 363(e), and 364(d)(1) of the Bankruptcy Code on the DIP Collateral, which shall be subject and subordinated only to the Carve-Out, the Priming DIP Liens and Permitted Liens (the "Replacement Liens"); (ii) an administrative expense claim, junior and subordinate only to the Carve-Out and the DIP Superpriority Claim, with priority over any and all other administrative expenses (the "Adequate Protection Superpriority Claim"); (iii) cash payments in respect of reasonable fees and expenses (including reasonable attorneys' fees) incurred by the Prepetition Secured Parties in amounts not to exceed amounts set forth in the Approved Budget (provided that any such allowed amounts in excess of the amounts set forth in the Approved Budget shall be entitled to superpriority administrative expense priority and shall be subordinate only to the Priming DIP Liens and the DIP Superpriority Claims); and (iv) monthly interest, calculated at the Post-Default Rate (as defined in the Prepetition Credit Agreement) set forth in the Prepetition Credit Agreement, paid-in-kind and added to the principal amount of the Prepetition Secured Parties' allowed secured claim.

13. Adequate Protection Reservation. The receipt by the Prepetition Secured Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition Secured Parties are adequately protected; provided that until the indefeasible payment in full of the DIP Obligations and the termination of the DIP Facility in accordance with the terms hereof, the Prepetition Secured Parties shall not seek and shall not be granted any other form of adequate protection. Such adequate protection shall in all cases be subject to the Carve-Out.

**Provisions Common to DIP Financing
and Use of Cash Collateral**

14. Amendment of the DIP Documents. The Debtors irrevocably waive any right to seek any amendment, modification or extension of this Order without the prior written consent of the DIP Lender in its sole discretion, and no such consent shall be implied by any action, inaction or acquiescence of the DIP Lender. After obtaining the DIP Lender's prior written consent, the Debtors are authorized and empowered, without further notice and hearing or approval of this Court, to amend, modify, supplement, or waive any provision of the DIP Documents in accordance with the provisions thereof, in each case unless such amendment, modification, supplement, or waiver (i) increases the interest rate (other than as a result of the imposition of the default rate), (ii) increases the aggregate lending commitments of the DIP Lender in respect of the DIP Facility to an amount greater than \$5.5 million on an interim basis, (iii) shortens the Maturity Date, or (iv) adds or amends (in any respect unfavorable to the Debtors) any Event of Default.

15. Approved Budget.

(i) Attached to this Interim Order as Exhibit A is an 8-week budget approved by the DIP Lender in its sole discretion, which sets forth, among other things, the projected cash receipts, sales and cash disbursements. Commencing with the fourth week after the Petition Date, and continuing on every four (4)-week anniversary thereafter, the budget shall be updated and if such updated budget is in form and substance satisfactory to the DIP Lender in its sole discretion, it shall become the "Approved Budget" for purposes of the DIP Term Sheet and this Interim Order. Any amendment or modification of the Approved Budget or the Approved Variance Report shall be subject to the prior written approval of the DIP Lender in its sole discretion.

(ii) The Approved Budget is approved on an interim basis, and the proceeds of the DIP Facility and Cash Collateral under this Interim Order shall be used by the Debtors in accordance with the Approved Budget, this Interim Order and the DIP Documents.

(iii) Other than with respect to the Carve-Out, none of the DIP Lender's, the Prepetition Lenders', the Prepetition Agent's consent (if any) to, or acknowledgement of, the Approved Budget shall be construed as consent to use the proceeds of the DIP Facility or Cash Collateral beyond the Maturity Date (as defined in the DIP Term Sheet) or the occurrence of the Termination Date, regardless of whether the aggregate funds shown on the Approved Budget have been expended.

(iv) Notwithstanding anything to the contrary herein, the Debtors shall pay the fees, costs and expenses of the DIP Professionals in accordance with the DIP Documents and this Interim Order without reference to the Approved Budget.

16. Budget Reporting. The Debtors shall at all times comply with the Approved Budget, subject to the variances provided in this Order. By not later than three (3) business days after the end of the week following the Petition Date, the Debtors shall deliver to the DIP Lender and the Prepetition Agent a variance report in form and substance reasonably acceptable to the DIP Lender (an "Approved Variance Report") showing comparisons of actual results for each line item against such line item in the Approved Budget. Thereafter, Debtors shall deliver to the DIP Lender and the Prepetition Agent, by not later than three (3) business days after the close of each weekly period after the Petition Date, an Approved Variance Report for (a) the preceding week, and (b) the trailing four (4) week period (or, if fewer than four weeks have lapsed since the Petition Date, then for the trailing one, two or three week period, as applicable). Each Approved Variance Report shall indicate whether there are any adverse variances that exceed the Permitted Variances (as defined below). "Permitted Variances" shall mean: up to 115% of the "Net Cash Flow" (other than fees and expenses of counsel to the DIP Lender) line-item on the Approved Budget, in each case calculated weekly on a rolling 4-week basis commencing as of the Petition Date, with the first such testing to begin two (2) weeks from the Petition Date.

17. Modification of Automatic Stay. The automatic stay of section 362 of the Bankruptcy Code is hereby modified and vacated to the extent necessary to permit the Debtors, the DIP Lender and the Prepetition Secured Parties to accomplish the transactions contemplated by this Order and for the DIP Lender and the Prepetition Secured Parties to take any other action in accordance with this Order.

18. Perfection of Priming DIP Liens and Replacement Liens. This Interim Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the Carve-Out, the Priming DIP Liens and the Replacement Liens, without the necessity of filing or recording any financing statement, mortgage, deed of trust, notice, or other instrument or document which may otherwise be required under the law or regulation 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 non-bankruptcy law) the Priming DIP Liens and the Replacement Liens or to entitle the DIP Lender and the Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, the DIP Lender and the Prepetition Agent are authorized to file, as each deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the Priming DIP Liens and the Replacement Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the Priming DIP Liens or the Replacement Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Lender and the Prepetition Agent all such financing statements, mortgages,

notices and other documents as each may reasonably request. The DIP Lender and the Prepetition Agent may each file a photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office in addition to or in lieu of such financing statements, notices of lien or similar instruments. To the extent that the Prepetition Agent is the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements or any other Prepetition Loan Documents or is listed as loss payee, lenders' loss payee or additional insured under any of the Debtors' insurance policies, the DIP Lender shall also be deemed to be the secured party or mortgagee, as applicable, under such documents or to be the loss payee or additional insured, as applicable. The Prepetition Agent shall serve in a non-fiduciary representative role as gratuitous bailee for perfection for the DIP Lender solely for purposes of perfecting the DIP Lender's liens on all DIP Collateral that, without giving effect to the Bankruptcy Code and this Interim Order, is of a type such that perfection of a lien therein may be accomplished only by possession or control by a secured party (including any deposit account control agreement, stock certificates and other equity interest certificates, and corresponding stock powers and pledges), and all of the Prepetition Agent's rights in such DIP Collateral shall inure to the benefit of and be exercisable exclusively by the DIP Lender until the DIP Obligations have been indefeasibly repaid in full in cash; provided that the DIP Lender may, in its sole discretion, require the Debtors and the Prepetition Agent to (and the Debtors and the Prepetition Agent shall) use commercially reasonable efforts to provide the DIP Lender with such possession or control as is necessary to perfect the DIP Obligations and Priming DIP Liens. Subject to entry of the Final Order, notwithstanding the forgoing, in the event any of the Chapter 11 Cases or Successor Cases are dismissed prior to the indefeasible payment in full of the DIP

Obligations, such order dismissing any Chapter 11 Cases or Successor Cases shall not be effective for five (5) business days to permit the DIP Lender and the Prepetition Agent to enter into any agreements or file any documents (including financing statements, mortgages, or other notices) evidencing the perfection and priority of the Priming DIP Liens and Replacement Liens, and during such period, the Debtors shall comply with all reasonable requests of the DIP Lender and the Prepetition Agent to ensure the perfection of the Priming DIP Liens and the Replacement Liens, as applicable.

19. Application of Proceeds of Collateral. As a condition to the entry of the DIP Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the Debtors have agreed that as of and commencing on the date of entry of the Interim Order, the Debtors shall apply all proceeds of DIP Collateral: (i) *first*, to costs and expenses of the DIP Lender; (ii) *second*, to repayment of the DIP Obligations in the order and manner set forth and in accordance with the DIP Documents; (iii) *third*, after indefeasible repayment in full in cash of the DIP Obligations (including, in each case, provision in such amounts as determined by the DIP Lender in its reasonable discretion) in accordance with the DIP Documents and the termination of the DIP Documents and all commitments thereunder, to reduce the Prepetition Obligations.

20. Access to Books and Records. Provided that both the DIP Obligations and the Prepetition Secured Obligations have not yet been indefeasibly paid in full in cash, prior to the closing of a sale of substantially all of the Debtors' assets, the Debtors will, and following such closing, the Debtors will use their reasonable best efforts to, (i) maintain books, records, and accounts to the extent and as required by the DIP Documents, (ii) cooperate with, consult with, and provide to the DIP Lender and the Prepetition Agent all such information and documents that any or all of the Debtors are obligated (including upon reasonable request by the DIP Lender or

the Prepetition Agent) to provide under the DIP Documents or the provisions of this Interim Order or as otherwise reasonably requested by the DIP Lender or the Prepetition Agent, (iii) upon one (1) business day's advance notice, permit consultants, advisors and other representatives (including third party representatives) of the DIP Lender and the Prepetition Agent to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations and accounts with their respective officers, employees, independent public accountants and other professional advisors as and to the extent required by the DIP Documents or the Prepetition Loan Documents, (iv) permit the DIP Lender, and the Prepetition Agent, and their respective consultants, advisors and other representatives, to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations and assets, and (v) permit the DIP Lender, and the Prepetition Agent to conduct, at their reasonable direction and at the Debtors' cost and expense, field audits, collateral examinations, liquidation valuations and inventory appraisals in respect of any or all of the DIP Collateral and the Prepetition Collateral, in each case, in accordance with the DIP Documents and the Prepetition Loan Documents.

21. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Chapter 11 Cases or any Successor Cases, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d) or in violation of the DIP Documents at any time prior to the indefeasible repayment in full in cash of all DIP Obligations and the termination of the DIP Lender's obligation to extend credit under the DIP Facility, including subsequent to the

confirmation of any plan for any Debtor but prior to the effective date of such Debtor's plan, and such facilities are secured by any DIP Collateral, then all cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Lender to be applied in accordance with this Interim Order and the DIP Documents.

22. Cash Management. The Debtors shall maintain cash management in accordance with the DIP Documents. Unless authorized by the Interim Order or otherwise agreed to in writing by the DIP Lender and the Prepetition Agent, the Debtors shall not maintain any accounts except those identified in any interim and/or final order granting the Debtors' authorization to continue their cash management systems and certain related relief (the "Cash Management Order").

23. Maintenance of DIP Collateral. Until the indefeasible payment in full in cash of all DIP Obligations, all Prepetition Secured Obligations, and the termination of the DIP Lender's obligation to extend credit under the DIP Facility, the Debtors shall: (a) insure the DIP Collateral as required under the DIP Documents or the Prepetition Loan Documents, as applicable; and (b) maintain the cash management system consistent with the terms and conditions of the Cash Management Order, or as otherwise required by the DIP Documents.

24. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral or Prepetition Collateral other than in the ordinary course of business without the prior written consent of the DIP Lender, it being understood that no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Lender, except as otherwise provided for in the DIP Documents.

25. Termination Date. On the applicable Termination Date (defined below), (a) all applicable DIP Obligations shall be immediately due and payable, all commitments to

extend credit under the applicable DIP Facility will terminate, other than as required in paragraph 31 with respect to the Carve-Out, and (b) all authority to use Cash Collateral shall cease.

26. Events of Default. The occurrence of any of the following events, unless waived by the DIP Lender in writing and in accordance with the terms of the DIP Documents, shall constitute an event of default (collectively, the “Events of Default”): (a) the failure of the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants or obligations under this Interim Order, including, without limitation, failure to make any payment under this Interim Order when due or comply with any Milestones; or (b) the occurrence and continuation of an “Event of Default” under, and as defined in, the DIP Term Sheet or an event of default under any other DIP Documents.

27. Milestones. As a condition to the DIP Facility and the use of Cash Collateral, the Debtors shall comply with the following milestones (the “Milestones”):

- (a) No later than February 10, 2020, the Debtors shall file with the Court the following: (i) motion to approve the DIP Facility on the terms and conditions set forth herein, (ii) motion to approve a sale of substantially all of the Debtors’ assets (a “Sale”, and such motion, the “Sale Motion”), and (iii) motion to approve Zealand Pharma A/S as the stalking horse bidder in accordance with the terms of the asset purchase agreement between Zealand Pharma A/S and the Debtors (the “Stalking Horse Agreement”) and bidding procedures related to a Sale (the “Bidding Procedures”).
- (b) Not later than February 14, 2020, the Interim Order Shall have been entered by the Court;
- (c) Not later than March 4, 2020, the order approving Zealand Pharma A/S as the stalking horse bidder pursuant to the terms of the Asset Purchase Agreement and bid procedures (the “Bid Procedures”) shall have been entered by the Court;
- (d) Not later than March 13, 2020, the Final Order shall have been entered by the Court;
- (e) Not later than March 12, 2020, initial bids for the Debtors’ assets shall be due under the Bid Procedures;
- (f) Not later than March 17, 2020, if there are multiple qualified bids, the Debtors shall hold an auction for Sale in accordance with the Bid Procedures;

- (g) not later than March 20, 2020, the Court shall hold a Hearing to approve the Sale, and the Debtors shall obtain entry of an order approving the Sale, which order shall provide for the indefeasible payment in full in cash of the DIP Obligations upon the closing of the sale.
- (h) Not later than April 3, 2020, the Closing of the Sale shall occur in accordance with the terms of the Asset Purchase Agreement and receipt by the DIP Lender of the Payoff Amount (as defined in the DIP Term Sheet).

For the avoidance of doubt, the failure of the Debtors to comply with any of the Milestones shall constitute an immediate Event of Default under the DIP Documents and this Interim Order.

28. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from the Bankruptcy Court, but subject to the terms of this Interim Order: (a) the DIP Lender may declare (any such declaration shall be referred to herein as a “Termination Declaration”) (1) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (2) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, (3) the termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Lender, but without affecting any of the Priming DIP Liens or the DIP Obligations, and (4) that the application of the Carve-Out has occurred following delivery of the Carve-Out Trigger Notice to the Borrower; (b) interest, including, where applicable, default interest, shall accrue and be paid as set forth in the DIP Documents; and (c) the DIP Lender may declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral (the earliest date on which a Termination Declaration is delivered by the DIP Lender shall be referred to herein as the “Termination Date”). The Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Debtors, counsel to the Committee (if appointed), counsel to

the Prepetition Secured Parties, and the U.S. Trustee. The automatic stay in the Chapter 11 Cases otherwise applicable to the DIP Lender is hereby modified so that three (3) business days after the date a Termination Declaration is delivered (such three (3) business day period, the “Remedies Notice Period”) the DIP Lender shall be (a) entitled to exercise rights and remedies (and take any and all actions) permitted by and in accordance with the DIP Documents, this Interim Order and applicable law, and (b) permitted to apply any collections to reduce the outstanding DIP Obligations and DIP Superpriority Claims, subject to the Carve-Out. During the Remedies Notice Period, (a) the Debtors and the Committee (if any) may seek an emergency hearing and (b) neither the DIP Lender nor the Prepetition Secured Parties shall be required to consent to the use of any Cash Collateral or provide any loans or other financial accommodations under the DIP Facility. At the end of the Remedies Notice Period, the automatic stay with respect to the DIP Lender and the Prepetition Secured Parties shall automatically terminate without further notice or order and the DIP Lender and the Prepetition Secured Parties shall be permitted to exercise all remedies set forth in this Interim Order, the DIP Documents, the Prepetition Loan Documents, and as otherwise available at law without further order of or application or motion to the Bankruptcy Court unless the Court orders otherwise prior to the end of the Remedies Notice Period. The Debtors shall take all action that is reasonably necessary to cooperate with the DIP Lender in the DIP Lender’s exercise of its rights and remedies and facilitate the realization upon the DIP Collateral by the DIP Lender.

29. Certain Rights and Remedies Following Termination Date. After a Termination Date and the expiration of the Remedies Notice Period, subject to the Carve-Out, the Debtors are hereby authorized and directed to remit to the DIP Lender one-hundred percent (100%) of all collections on, and proceeds of, the DIP Collateral, all collections, remittances, and proceeds

of the DIP Collateral in accordance with the DIP Documents and this Interim Order. In furtherance of the foregoing, each bank or other financial institution with an account of any Debtor is hereby authorized and instructed to comply at all times with any instructions originated by the DIP Lender to such bank or financial institution directing the disposition of cash, securities, investment property and other items from time to time credited to such account, without further consent of any Debtor, including without limitation, any instruction to send to the DIP Lender by wire transfer or in such other manner as the DIP Lender directs, all cash, securities, investment property and other items held by such bank or financial institution.

30. [RESERVED]

31. Carve-Out. On a weekly basis, the Debtors shall fund into a separate escrow account (the "Estate Professional Fee Escrow") the amounts set forth for such week on the line-items in the Approved Budget entitled "Debtor professional fees / escrow" and "UCC professional fee escrow" (collectively, such weekly funding, the "Weekly Escrow Funding"). The Estate Professional Fee Escrow shall be used to fund the allowed fees, disbursements, costs, and expenses (the "Professional Fees") incurred prior to the delivery of the Carve-Out Trigger Notice by professionals or professional firms retained by the Debtors or their estates pursuant to sections 327, 328 or 363 of the Bankruptcy Code and any Committee appointed in the chapter 11 case pursuant to section 1103 of the Bankruptcy Code (collectively, the "Estate Professionals"). Any residual amounts in the Estate Professional Fee Escrow after payment of the Estate Professionals pursuant to this Interim Order shall be paid in accordance with paragraph 19. Each of the Priming DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Replacement Liens and the Adequate Protection Superpriority Claims shall be subject and subordinate to payment of the Carve-Out. "Carve-Out" means the sum of (i) all fees required to be paid to the Clerk of the

Bankruptcy Court and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate which shall not be limited by any budget; (ii) fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (iii) if not already paid to the Estate Professional Fee Escrow, the Weekly Escrow Funding for the week immediately preceding the delivery of the Carve-Out Trigger Notice; and (iv) allowed Professional Fees incurred after the first Business Day following delivery by the DIP Lender of the Carve-Out Trigger Notice (including transaction fees or success fees earned or payable to any Estate Professional) in an aggregate amount not to exceed \$200,000 with respect to Estate Professionals (the amount set forth in this clause (iv) being the “Post-Carve-Out Trigger Notice Cap”). For the avoidance of doubt, (a) other than the Carve-Out and the Estate Professional Fee Escrow, no other amounts owed by any of the Debtors to any party as of the date the Carve-Out Trigger Notice is delivered (including any amounts set forth in the Approved Budget) shall be payable from Cash Collateral or DIP Collateral, (b) following the delivery of a Carve-Out Trigger Notice, there shall be no further funding of the Estate Professional Fee Escrow other than as set forth in (iii) of the Carve-Out, (c) the Carve-Out shall be considered a “reserve” with respect to calculating “Availability” under the DIP Term Sheet, and (d) nothing herein shall be construed to impair the ability of any party to object to any fees, expenses, reimbursement or compensation sought by any such professionals or any other person or entity. For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Lender to the Debtors’ counsel, the U.S. Trustee and lead counsel to the Committee (if any), which notice may be delivered following the Termination Date and expiration of the Remedies Notice Period, stating that the Post-Carve-Out Trigger Notice Cap has been invoked. No portion of the Carve-Out, any Cash Collateral, any other DIP Collateral, or any

proceeds of the DIP Facility, including any disbursements set forth in the Budget or obligations benefitting from the Carve-Out, shall be used for the payment of Professional Fees, disbursements, costs or expenses incurred by any person, including, without limitation, any Committee, in connection with challenging the DIP Lender's liens or claims, preventing, hindering or delaying any of the DIP Lender's enforcement or realization upon any of the DIP Collateral, or initiating or prosecuting any claim or action against the DIP Lender, other than with respect to challenging a Termination Declaration by seeking a determination that an Event of Default has not occurred or is not continuing. Proceeds from the DIP Facility and/or Cash Collateral not to exceed \$25,000 in the aggregate (the "Investigation Budget Cap") may be used to pay Professional Fees incurred by the Committee's professionals (if any) in connection with the investigation of Avoidance Actions or any other claims or causes of action (but not the prosecution of such actions) on account of the Prepetition Secured Facilities (but not the DIP Facility).

32. Prepetition Secured Parties Consent.

(i) Notwithstanding anything set forth in the Settlement Agreement by and among the Debtors and the Prepetition Secured Parties (the "Settlement Agreement") filed as an exhibit to the motion at D.I. 42, (including any conditions or other terms with respect to the consent of any Prepetition Secured Party to the Interim Order or the Final Order): (a) the Prepetition Secured Parties unequivocally consent to (I) the use of Cash Collateral, subject to the terms of this Interim Order, the Final Order and the DIP Documents, (II) the DIP Facility, including the Priming DIP Liens, as described in this Interim Order and in the DIP Documents; and (III) the Approved Budget; provided that the Final Order shall be in form and substance substantially similar to this Interim Order, subject to such changes that are not materially adverse to the adequate protection and intercreditor terms provided herein pertaining to the Prepetition Secured Parties;

and (b) the DIP Lender may agree to make additional DIP Loans (the “Incremental DIP Loans”) to Borrower during the Availability Period, subject to terms and conditions determined by the DIP Lender in its sole discretion; provided, that the aggregate principal balance of all DIP Loans and all Incremental DIP Loans (in each case, exclusive of amounts “paid in kind”) shall not exceed \$17 million (the “DIP Loan Cap”) without the consent of the Prepetition Secured Parties (such consent not to be unreasonably withheld, conditioned or delayed); provided, further, that the Prepetition Secured Parties shall consent (and be deemed to have consented) to the funding of Incremental DIP Loans in excess of the DIP Loan Cap to the extent such Incremental DIP Loans are provided by the DIP Lender as the DIP Lender deems necessary and appropriate to achieve a sale of the Debtors’ assets or otherwise to allow the DIP Lender to realize upon the DIP Collateral (each, a “Realization Event”), and the sole remedy of the Prepetition Secured Parties shall be to dispute before the Bankruptcy Court whether the funding of such Incremental DIP Loans is in fact reasonably necessary to fund a Realization Event.

(ii) Notwithstanding anything contained herein to the contrary, approval of the Settlement Agreement shall not be a condition to the consent of the Prepetition Secured Parties to the Debtors’ use of Cash Collateral, the terms of the DIP Facility, this Term Sheet or the Interim Order or the Final Order, and, to the extent of any conflict or inconsistency between the Settlement Agreement on the one hand and the DIP Term Sheet and this Interim Order, on the other hand, the DIP Term Sheet and the Interim Order shall govern.

(iii) The DIP Lender agrees that it shall not object to, contest or otherwise interfere with the Settlement Agreement or with the Debtors’ and/or the Prepetition Secured Parties’ efforts to have the Settlement Agreement court approved so long as the DIP Obligations continue to be secured by the Priming DIP Liens; provided, that notwithstanding anything contained herein to the

contrary, approval of the Settlement Agreement shall not be a condition to the consent of the Prepetition Secured Parties to the Debtors' use of Cash Collateral, the terms of the DIP Credit Facility, this Term Sheet or the Interim Order or the Final Order, and, to the extent of any conflict or inconsistency between the Settlement Agreement on the one hand and the DIP Term Sheet and this Interim Order on the other hand, the DIP Term Sheet and this Interim Order shall govern.

33. Intercreditor Terms. Notwithstanding anything set forth in the Settlement Agreement, until the DIP Lender has indefeasibly received the Payoff Amount (as defined in the DIP Term Sheet) and its commitments under the DIP Facility are terminated (or the DIP Lender otherwise provides its prior written consent in its sole discretion), the Prepetition Secured Parties agree, and shall be deemed to have agreed upon entry of the Interim DIP Order, as follows:

- (i) Not to contest, protest or object to, or otherwise interfere with, any foreclosure action, other action by the DIP Lender to realize upon the DIP Collateral or any other exercise of rights and remedies against the Debtors by the DIP Lender; provided further, that the DIP Lender shall have no obligation to consult with the Prepetition Secured Parties prior to taking any action;
- (ii) Not to take any action with respect to, or against the DIP Collateral or exercise any other rights or remedies against the Debtors with respect to the DIP Collateral (including any right of setoff or recoupment); it being understood that only the DIP Lender shall have the right to make determinations as to the disposition of the DIP Collateral in its sole discretion, without regard to the Prepetition Secured Parties, and that the sole right of the Prepetition Secured Parties is to hold a "silent" lien on the DIP Collateral;
- (iii) To have consented (and be deemed to have consented) (including as may be required under section 363(f)(2) of the Bankruptcy Code) to any sale or disposition of the DIP Collateral (and release any liens and security interest therein) agreed to by the DIP Lender, provided that the liens of the Prepetition Secured Parties shall attach to the proceeds to the extent not applied to the DIP Obligations or otherwise reserved for use of cash collateral consented to by the DIP Lender in connection with the realization on the DIP Collateral or repayment of the DIP Obligations, including any wind-down budget agreed to by the DIP Lender in connection therewith;

- (iv) Not accept any payments in respect of any obligations owed to the Prepetition Secured Parties, and to turn over to the DIP Lender any payments or proceeds of DIP Collateral or other distributions received during the Case (including under any chapter 7 or 11 plan) for application to the obligation owed to the DIP Lender, other than cash adequate protection payments permitted pursuant to the terms of the DIP Documents;
- (v) Consent (and be deemed to have consented) to any use of cash collateral or incremental debtor-in-possession financing consented to or provided by the DIP Lender to the Debtors as the DIP Lender deems necessary and appropriate to allow the DIP Lender to realize upon the DIP Collateral (including, without limitation, to provide funds to extend the period for the sale process and to fund any wind-down expenses);
- (vi) Not seek relief from the automatic stay;
- (vii) Not seek any additional adequate protection;
- (viii) Not take any action that would restrain, hinder, limit, delay or otherwise interfere with any action taken by the DIP Lender (or the DIP Lender's inaction) in connection with the Cases that is consistent with the Interim Order; and
- (ix) Execute such additional documentation that the DIP Lender may reasonably request in furtherance of any of the foregoing.

provided that; the Prepetition Secured Parties may file any necessary responsive or defensive pleadings in opposition to any motion, claim or adversary proceeding objecting to or otherwise seeking the disallowance of the Prepetition Obligations, the Adequate Protection Superpriority Claims, the Prepetition Liens and the Replacement Liens. For the avoidance of doubt, (a) the Prepetition Secured Parties may file proofs of claim against the Debtors with respect to their secured and unsecured claims; provided that until the DIP Obligations are indefeasibly paid in full and the DIP Facility is terminated, the Prepetition Secured Parties shall not seek payment of such claims nor any priority for such claims or liens that would be senior to or *pari passu* with the Priming DIP Liens and DIP Obligations, and (b) the DIP Lender agrees that it will not interfere with any agreement between the Prepetition Secured Parties and the Debtors with respect to the division and distribution of any Sale proceeds so long as such Sale proceeds are first used for the

indefeasible payment in full of the DIP Obligations, and the DIP Facility has been terminated, and (c) the DIP Lender acknowledges that the secured claims arising out of the Prepetition Credit Agreement may be increased and allowed pursuant to an order approving the Settlement Agreement and that the liens granted in connection with the Prepetition Credit Agreement will attach to such allowed claims (subject in all cases to the Priming DIP Liens and DIP Superpriority Claims).

34. Interim Order Controls. To the extent of any conflict or inconsistency between or among (a) the express terms or provisions of any of the DIP Documents, the Motion, any other order of this Court (including, without limitation, the Cash Management Order), or any other agreements, on the one hand, and (b) the terms and provisions of this Interim Order, on the other hand, the terms and provisions of this Interim Order shall govern and control.

35. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order. The DIP Lender and the Prepetition Secured Parties have acted in good faith in connection with this Interim Order and are entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code.

36. Approval of DIP Fees. In consideration for the DIP Financing and the consent to the use of Cash Collateral in accordance with the terms of this Interim Order, the DIP Lender shall be paid all fees, expenses and other amounts payable under the DIP Documents as such become due, including, without limitation, commitment fees, original issue discounts, extension fees and the reasonable and documented fees and expenses of the DIP Lender in connection with the facility, without regard to whether or not the transactions contemplated hereby are consummated (all such fees, together, the “DIP Fees”). The DIP Fees shall be fully earned and payable upon entry of this Interim Order. The DIP Fees shall be part of the DIP Obligations. Any

and all DIP Fees paid prior to the Petition Date by any of the Debtors to the DIP Lender in connection with or with respect to the DIP Facility in each case is hereby approved in full.

37. Lender Professionals' Fees. Subject to the terms of this Interim Order, professionals for the DIP Lender (the "DIP Professionals") and professionals for the Prepetition Secured Parties ("Prepetition Professionals," and together with the DIP Professionals, the "Lender Professionals") shall be entitled to payment of their reasonable fees and expenses ("Lender Expenses") and shall not be required to comply with the U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, this Court nor shall they be subject to the standards set forth in sections 330 and 331 of the Bankruptcy Code. The Lender Professionals shall submit copies of summary invoices to the Debtors, the U.S. Trustee, and counsel for any Committee (the "Fee Notice Parties"). The summary invoices shall only include a general description of the nature of the matters worked on, a list of professionals who worked on the matter, their hourly rate (if such professionals bill at an hourly rate), the number of hours each professional billed and, with respect to the invoices of law firms, the year of law school graduation for each attorney; provided, however, that the U.S. Trustee reserves the right to seek copies of invoices containing the detailed time entries of any professional. The provision of such invoices shall not constitute a waiver of the attorney-client privilege or any benefits of the attorney work product doctrine. If no objection to the payment of such Lender Professional's fees and expenses is made in writing by the Fee Notice Parties within ten (10) calendar days after delivery of such invoices, then, without further order of, or application to, the Court or notice to any other party, such Lender Expenses shall be promptly paid by the Debtors. If an objection is made by any of the Fee Notice Parties within the ten-day objection period to the payment of the Lender Expenses, then the disputed portion of such Lender Expenses shall not be paid until the objection is resolved by the

applicable parties in good faith or by order of the Court. The Debtors shall timely pay in accordance with the terms and conditions of this Interim Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs and expenses on any invoice to which no Fee Objection has been timely filed.

38. Indemnification. The Debtors shall indemnify and hold harmless the DIP Lender (and its directors, officers, members, employees and agents) against any loss, liability, cost or expense incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof (except to the extent resulting from the gross negligence or willful misconduct of the indemnified party, as determined by a final, non-appealable judgment of a court of competent jurisdiction).

39. Right to Credit Bid. Subject to section 363(k) of the Bankruptcy Code, the DIP Lender shall be authorized to credit bid the full amount of the outstanding DIP Obligations, including any accrued interest and expenses, in a sale of any DIP Collateral.

40. Pleadings. The Debtors shall use their commercial best efforts to (x) provide draft copies of all substantive pleadings and documents that the Debtors intend to file with the Court (or any other court) to the DIP Lender and the Prepetition Agent as soon as reasonably practicable, but in no event less than two (2) business days before the filing of any relief that is sought on a non-expedited or non-emergency basis, and (y) without limiting any of the consent or approval rights contained in this Order, and to the extent practicable, consult in good faith with counsel to the DIP Lender and the Prepetition Agent regarding the form and substance of any of the foregoing documents in advance of their filing, execution, distribution or use.

41. Proofs of Claim. Neither the DIP Lender nor the Prepetition Secured Parties will be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any

claim arising under the DIP Documents or the Prepetition Loan Documents. The Debtors' stipulations, admissions, and acknowledgments and the provisions of this Interim Order shall be deemed to constitute a timely filed proof of claim for the DIP Lender and the Prepetition Secured Parties with regard to all claims arising under the DIP Documents or the Prepetition Loan Documents.

42. No Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees. The DIP Lender shall have no responsibility for the payment or reimbursement of any fees or disbursements of any Estate Professional incurred in connection with the Cases or any Successor Case. Nothing in this Order or otherwise shall be construed to obligate the DIP Lender, in any way, to compensate or reimburse expenses of, any Estate Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Nothing herein (including consent to the Carve-Out) shall be construed as consent to the allowance of any professional fees or expenses of any Estate Professionals in these Chapter 11 Cases or any Successor Cases, or of any other person or entity, or shall affect the right of any party (including the DIP Lender) to object to the allowance and payment of any such fees and expenses.

43. Limitations on Use of DIP Proceeds, Cash Collateral and Carve-Out. Unless otherwise ordered by the Court and except as otherwise permitted in this Interim Order, the proceeds of the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral and the Carve-Out may not be used in connection with: (a) using or seeking to use Cash Collateral or selling or otherwise disposing of DIP Collateral without the consent of the DIP Lender; (b) using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the DIP Lender; (c) incurring any indebtedness without the prior consent of the DIP Lender, except to the extent permitted under the DIP Documents; or (d) seeking to amend or modify any of the rights

granted to the DIP Lender or the Prepetition Secured Parties under this Interim Order, the DIP Documents or the Prepetition Loan Documents, including seeking to use Cash Collateral and/or DIP Collateral on a contested basis. Except as otherwise permitted in this Interim Order, the proceeds of the DIP Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral and the Carve-Out may not be used in connection with: (w) objecting to or challenging in any way the Priming DIP Liens, the DIP Obligations, the Prepetition Liens or the Prepetition Secured Obligations, the DIP Collateral (including Cash Collateral) or, as the case may be, Prepetition Collateral, or any other claims or liens, held by or on behalf of any of the DIP Lender or the Prepetition Secured Parties, respectively; (x) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code, applicable state law equivalents or other actions to recover or disgorge payments against the DIP Lender, the Prepetition Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees); (y) litigating, objecting to, challenging, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the Priming DIP Liens, the Prepetition Liens, the Prepetition Secured Obligations or any other rights or interests of the DIP Lender or the Prepetition Secured Parties; or (z) seeking to subordinate, recharacterize, disallow or avoid the DIP Obligations or the Prepetition Secured Obligations.

44. Turn Over. Subject to entry of the Final Order, prior to the indefeasible payment in full in cash and the complete satisfaction of all DIP Obligations and termination of the commitment in accordance with the DIP Documents, any party who holds a lien or security interest in DIP Collateral that is junior and/or subordinate to the Priming DIP Liens or a claim that is subordinate to the DIP Superpriority Claims (including any of the Prepetition Secured Parties)

receives or is paid the proceeds of any DIP Collateral or receives any other payment or consideration from the Debtors or any other source (including under any chapter 11 plan) other than as expressly permitted in the DIP Documents and this Interim Order, such party shall be deemed to have received, and shall hold, such proceeds or payments in trust for the DIP Lender and shall immediately turn over such amounts to the DIP Lender for application to repay the DIP Obligations in accordance with the DIP Documents and this Interim Order until indefeasibly paid in full in cash.

45. Effect of Stipulations on Third Parties. The Debtors' Stipulations contained in paragraph G and releases in paragraph H hereof shall be binding upon the Debtors in all circumstances upon entry of this Interim Order. The Debtors' Stipulations shall be binding upon each other party-in-interest, including the Committee, except to the extent such party in interest that obtains standing (including any chapter 11 trustee) other than the Debtors (or if the Chapter 11 Cases are converted to cases under chapter 7 prior to the expiration of the Challenge Period (as defined below), the chapter 7 trustee in such Successor Case), first, commences, by the earliest of (x) with respect to any Committee, sixty (60) calendar days after the formation and appointment of any Committee, (y) with respect to other parties-in-interest with requisite standing other than the Debtors or any Committee, seventy-five (75) calendar days following the date of entry of the Interim Order, and (such time period established by the earliest of clauses (x) and (y), 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 either (i) no Challenge (as defined below) is raised during the Challenge Period or (ii) with respect only to those parties who file a Challenge, such Challenge is finally adjudicated, shall be referred to as the "Challenge Period Termination Date"), a contested matter, adversary proceeding, or other matter challenging or otherwise objecting to the admissions,

stipulations, findings, or releases included in the Debtors' Stipulations (each, a "Challenge"), and second, obtains a final, non-appealable order in favor of such party-in-interest sustaining any such Challenge in any such timely-filed contested matter, adversary proceeding, or other action (any such Challenge timely brought for which such a final and non-appealable order is so obtained, a "Successful Challenge"). Except as otherwise expressly provided herein, from and after the Challenge Period Termination Date and for all purposes in these Chapter 11 Cases and any Successor Cases (and after the dismissal of these Chapter 11 Cases or any Successor Cases), (i) any and all payments made to or for the benefit of the Prepetition Secured Parties or otherwise authorized by this Interim Order (whether made prior to, on, or after the Petition Date) shall be indefeasible and not be subject to counterclaim, set-off, subordination, recharacterization, defense, disallowance, recovery or avoidance, (ii) any and all such Challenges by any party-in-interest shall be deemed to be forever released, waived, and barred, (iii) all of the Prepetition Secured Obligations shall be deemed to be fully allowed claims within the meaning of section 506 of the Bankruptcy Code, and (iv) the Debtors' Stipulations shall be binding on all parties in interest in these Chapter 11 Cases or any Successor Cases, including any Committee or chapter 11 or chapter 7 trustee. Notwithstanding the foregoing, to the extent any Challenge is timely asserted, the Debtors' Stipulations and the other provisions in clauses (i) through (iv) in the immediately preceding sentence shall nonetheless remain binding and preclusive on any Committee and on any other party-in-interest from and after the Challenge Period Termination Date, except to the extent that such Debtors' Stipulations or the other provisions in clauses (i) through (iv) of the immediately preceding sentence were challenged in such Challenge and such Challenge becomes a Successful Challenge. Notwithstanding any provision to the contrary herein, nothing in this Interim Order

shall be construed to grant standing on any party in interest, including any Committee, to bring any Challenge on behalf of the Debtors' estates.

46. No Third-Party Rights. Except as explicitly provided for herein or in any of the DIP Documents, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or direct, indirect, or incidental beneficiary.

47. No Lender Liability. In determining to make any loan (whether under the DIP Documents or otherwise) or to permit the use of Cash Collateral or taking any other act permitted under this Interim Order and the DIP Documents or by other Court order, the DIP Lender shall not (i) be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar federal, state or local statute or regulation) or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

48. Section 506(c) Claims. Subject to entry of a Final Order and as a further condition of the DIP Facility and any obligation of the DIP Lender to make credit extensions pursuant to the DIP Documents (and the consent of the DIP Lender to the payment of the Carve-Out to the extent provided herein and the consent of the Prepetition Secured Parties of the priming of the Prepetition Liens by the DIP Facility and the use of Cash Collateral) (a) no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases shall be charged against or recovered from or against any or all of the DIP Lender or the Prepetition Secured Parties with respect to the DIP Collateral or the Prepetition Collateral, in each case pursuant to section 105 or section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the DIP

Lender or the Prepetition Secured Parties, as applicable and (b) no such consent shall be implied from any other action, inaction, or acquiescence of any or all of the DIP Lender or the Prepetition Secured Parties.

49. No Marshaling. The DIP Lender, and subject to entry of the Final Order, the Prepetition Secured Parties, shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable.

50. Section 552(b). The DIP Lender, and subject to entry of a Final Order, the Prepetition Secured Parties, shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Secured Parties or the Prepetition Secured Parties, as applicable with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral or DIP Collateral, as applicable.

51. Exculpation. Nothing in this Interim Order or the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender or Prepetition Secured Party any liability for any claims arising from the prepetition or postpetition activities of the Debtors, including with respect to the operation of their businesses, in connection with their restructuring efforts or administration of these Chapter 11 Cases. In addition, other than with respect to the acts to exercise any state law statutory or common law rights and remedies outside of the supervision of the Bankruptcy Court, (a) the DIP Lender shall not in any way or manner be liable or responsible for: (i) the safe-keeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any Diminution thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or

other person, and (b) all risk of loss, damage, or destruction of the DIP Collateral shall be borne by the Debtors.

52. Release of DIP Lender. Upon entry of this Interim Order, the Debtors, on their own behalf and their estates, forever and irrevocably: (i) release, discharge, and acquit each of the DIP Lender and its former or current officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors-in-interest of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every type, including, without limitation, any so-called “lender liability” or equitable subordination claims or defenses, solely with respect to or relating to the negotiation and entry into the DIP Documents; and (ii) waive, discharge and release any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and avoidability of the Priming DIP Liens and the DIP Obligations.

53. Insurance Proceeds and Policies. Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Lender, shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

54. Rights Preserved. Except as set forth in this Interim Order and in the DIP Documents (including paragraph 33 hereof), the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the DIP Lender and Prepetition Secured Parties’ right to seek any other or supplemental relief in respect of the Debtors; (b) any of the rights of the DIP Lender and the Prepetition Secured Parties under the Bankruptcy Code or

under applicable non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases or Successor Cases, conversion of any of the Cases to cases under Chapter 7, or appointment of a Chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans; (c) any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Lender or Prepetition Secured Parties; (d) the Debtors', any Committee's or any party-in-interest's right to oppose any of the relief requested in (a) – (c) hereof except as expressly prohibited in this Interim Order; and (e) any and all rights of the Debtors, a Committee (if appointed) or any other party-in-interest with respect to the terms and approval of the Final Order and any other position which any party-in-interest deems appropriate to raise in the Debtors' Cases.

55. No Waiver by Failure to Seek Relief. The failure of the DIP Lender or Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the DIP Documents, the Prepetition Loan Documents or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise.

56. Binding Effect of Interim Order. Immediately upon entry of this Interim Order by this Court, the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Lender, the Prepetition Secured Parties, all other creditors of any of the Debtors, any Committee (or any other court appointed committee) appointed in the Chapter 11 Cases and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases, any Successor Cases, or upon dismissal of any Chapter 11 Case or Successor Case.

57. No Modification of Interim Order. Until and unless the DIP Obligations have been indefeasibly paid in full in cash, and all commitments to extend credit under the DIP Facility have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly, without the prior written consent of the DIP Lender, (i) any modification, stay, vacatur or amendment to this Interim Order; (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation any administrative expense of the kind specified in sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code) in any of the Cases or Successor Cases, equal or superior to the DIP Superpriority Claims or Adequate Protection Superpriority Claims, other than the Carve Out and the Prepetition Priority Liens; (iii) any order allowing use of Cash Collateral (other than as permitted during the Remedies Notice Period) resulting from DIP Collateral or Prepetition Collateral; (iv) any lien on any of the DIP Collateral with priority equal or superior to the Priming DIP Liens, except as specifically provided in the DIP Documents; or (v) without the prior written consent of the Prepetition Agent, any lien on any of the Prepetition Collateral with priority equal or superior to the Prepetition Liens or Replacement Liens except as otherwise permitted under this Interim Order or the DIP Documents.

58. Discharge. Except as otherwise agreed in writing by the DIP Lender and the Prepetition Agent (acting at the direction of the Prepetition Lenders), the DIP Obligations and the obligations of the Debtors with respect to the adequate protection provided herein shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash (and, in the case of DIP Obligations, “payment in full” as provided by the DIP Documents), on or before the effective date of such confirmed plan of

reorganization, or each of the DIP Lender and Prepetition Agent has otherwise agreed in writing. None of the Debtors shall propose or support any plan of reorganization or sale of all or substantially all of the Debtors' assets, or order confirming such plan or approving such sale, that is not conditioned upon the indefeasible payment of the DIP Obligations, and the payment of the Debtors' obligations with respect to the adequate protection provided for herein, in full in cash within a commercially reasonable period of time (and in no event later than the effective date of such plan of reorganization or sale) (a "Prohibited Plan or Sale") without the written consent of each of the DIP Lender and the Prepetition Agent (acting at the direction of the Prepetition Lenders). For the avoidance of doubt, the Debtors' proposal or support of a Prohibited Plan or Sale, or the entry of an order with respect thereto, shall constitute an Event of Default hereunder and under the DIP Documents.

59. Joint and Several. The Debtors are jointly and severally liable for the DIP Obligations and all other obligations hereunder.

60. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Bankruptcy Court abstains from hearing any of the Cases or Successor Cases. The terms and provisions of this Interim Order, including the claims, liens, security interests and other protections granted to the DIP Lender and the Prepetition Secured Parties pursuant to this Interim Order and the DIP Documents, shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until: (i) in respect of the

DIP Facility, all the DIP Obligations, pursuant to the DIP Documents and this Interim Order, have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms), and all commitments to extend credit under the DIP Facility are terminated; and (ii) in respect of the Prepetition Secured Facilities, all of the Prepetition Secured Obligations pursuant to the Prepetition Loan Documents and this Interim Order, have been indefeasibly paid in full in cash. The terms and provisions concerning the indemnification of the DIP Lender shall continue in the Cases, in any Successor Cases, following dismissal of the Cases or any Successor Cases, following termination of the DIP Documents and/or the indefeasible repayment of the DIP Obligations. In addition, the terms and provisions of this Interim Order shall continue in full force and effect for the benefit of the Prepetition Secured Parties notwithstanding the repayment in full or termination of the DIP Obligations until such time as the Prepetition Secured Obligations have been indefeasibly paid in full.

61. Final Hearing. The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for March 12, 2020, at 2:00pm (Eastern Standard Time) before the Honorable Laurie Selber Silverstein, United States Bankruptcy Judge, in Courtroom #2, at the United States Bankruptcy Court for the District of Delaware. On or before February 14, 2020, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order, the proposed Final Order and the Motion, on: (a) the parties having been given notice of the Interim Hearing; (b) any party that has filed prior to such date a request for notices with this Bankruptcy Court; and (c) counsel for a Committee (if 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 no later than March 5, 2020 at 4:00 pm (Eastern Standard Time), which objections shall be served so as to be received on or before such date by: (i) proposed counsel to the Debtors, DLA Piper LLP (US), 1201 N. Market Street, Suite 2100, Wilmington, Delaware 19801, Attn: Maris J. Kandestin, Esq., and 1251 Avenue of the Americas, New York, New York 10020, Attn: Rachel Ehrlich Albanese, Esq.; (ii) counsel to the Prepetition Lender/Agent, Venable LLP, 1290 Avenue of the Americas, New York, New York 10020, Attn: Jeffrey S. Sabin ; and (iii) counsel to the DIP Lender, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19899, Attn: Adam G. Landis and Kerri Mumford and Proskauer Rose LLP, Eleven Times Square, New York, NY 10036 Attn: Peter Antoszyk and Lucy F. Kweskin.

62. Necessary Action. The Debtors are authorized to take any and all such actions and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this Order and the transactions contemplated hereby.

63. Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable immediately upon entry thereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9014 of the Bankruptcy Rules, any applicable Local Bankruptcy Rules, 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.

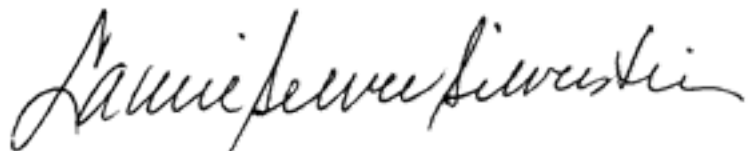
64. Binding Effect of Interim Order. Immediately upon entry of this Interim Order by this Court, the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Lender, the Prepetition Secured Parties, all

other creditors of any of the Debtors, any Committee (or any other court appointed committee) appointed in the Chapter 11 Cases and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases, any Successor Cases, or upon dismissal of any Chapter 11 Case or Successor Case.

65. Headings. The headings in this Interim Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Interim Order.

66. Retention of Jurisdiction. This Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Dated: February 14th, 2020
Wilmington, Delaware



LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE