

**EXHIBIT A**

**Proposed Interim Order**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

HALT MEDICAL, INC.

Debtor.

Chapter 11

Case No. 17-10810 (LSS)

**INTERIM ORDER (I) AUTHORIZING DEBTOR TO  
INCUR POSTPETITION SECURED SUPERPRIORITY INDEBTEDNESS  
PURSUANT TO SECTIONS 105(a), 362, 364(c)(1), 364(c)(2), 364(c)(3), AND  
364(d);(II) MODIFYING THE AUTOMATIC STAY; AND (III) SCHEDULING  
A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND 4001(c)**

THIS MATTER having come before this Court on the motion dated April 12, 2017 (the "Motion")<sup>1</sup> of Halt Medical, Inc., as debtor and debtor in possession ("Halt" or the "Debtor") seeking, among other things, entry of an interim order (the "Interim Order"):

(i) Authorizing the Debtor, pursuant to sections 105, 362, and 364 of title 11 of the United States Code (the "Bankruptcy Code"), rule 4001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 4001-2 of the Local Rules of this Court (the "Local Rules"), from the commencement of this case through and including the date of the Final Hearing (as defined below) to obtain post-petition loans and advances from Acessa DipCo LLC (the "Lender"), consisting of a debtor-in-possession facility in an aggregate principal amount not to exceed \$4,160,000 at any time outstanding on a senior secured and superpriority basis pursuant to the terms and conditions contained herein (the "DIP Facility"), to utilize on an interim basis up to \$\_\_\_\_\_ under the DIP Facility pending the Final Hearing;

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Motion or the DIP Loan Agreement (as defined herein).

(ii) Authorizing the Debtor to enter into that certain *Debtor-in-Possession Credit and Security Agreement*, by and between the Debtor and the Lender in the form annexed as Exhibit 1 hereto and all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to, or in favor of the Lender, including, without limitation, security agreements, notes, guaranties, mortgages, and Uniform Commercial Code (“UCC”) financing statements and all other related agreements, documents, notes, certificates, and instruments executed and/or delivered in connection therewith or related thereto (collectively, as may be amended, modified or supplemented in accordance with the terms of this Interim Order and in effect from time to time, the “DIP Loan Agreement”); and incur the “Obligations” under and as defined in the DIP Loan Agreement (collectively, the “DIP Obligations”);

(iii) Authorizing the Debtor to perform such acts as may be reasonably necessary or desirable in order to give effect to the provisions of the DIP Loan Agreement on an interim basis;

(iv) Authorizing the use of the proceeds of the DIP Facility on an interim basis in a manner consistent with the terms and conditions of the DIP Loan Agreement, and for working capital purposes in accordance with the Budget (as defined in the DIP Loan Agreement)

(v) Providing, pursuant to sections 364(c)(1) and 507(b) of the Bankruptcy Code, that all obligations owing to the Lender under the DIP Loan Agreement shall be accorded administrative expense status, and shall, subject only to the Carve-Out (as defined below), have priority over any and all other administrative expenses arising in this case (the “DIP Superpriority Claim”);

(vi) Granting the Lender, pursuant to sections 364(c)(2) and 364(d) of the Bankruptcy Code, first priority perfected security interests in and Liens (the “DIP Liens”) on all

of the Debtor's personal property and all of the Debtor's real property and fixtures (as defined below, the "Collateral"), subject to the terms and conditions set forth herein and in the DIP Loan Agreement;

(vii) Authorizing and directing the Debtor to pay, without further order of this Court, the principal, interest, fees, expenses and other amounts payable to the Lender under the DIP Loan Agreement as they become due, all as and to the extent provided in the DIP Loan Agreement, on an interim basis;

(viii) Vacating and 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 Loan Agreement and this Interim Order;

(ix) authorizing the Debtor to use Cash Collateral (defined below) and grant adequate protection to the Pre-petition Agent on behalf of the Pre-petition Noteholders under that certain Note Purchase and Exchange Agreement dated March 17, 2014 (the "Pre-petition Notes") and, together with all agreements, documents, notes, mortgages, security agreements, pledges, guarantees, subordination agreements, instruments, amendments, and any other agreements delivered pursuant thereto or in connection therewith, the "Pre-petition Note Documents");

(x) Scheduling a final hearing (the "Final Hearing") to consider entry of an order (the "Final Order") granting the relief requested in the Motion on a final basis and approving the form of notice with respect to the Final Hearing; and

(xi) Waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Interim Order, on the terms set forth in this Interim Order,

all as described more fully in the Motion; and the Court having considered the Motion and the *Declaration of Kimberly Bridges-Rodriquez in Support of Halt Medical, Inc.'s First Day Motions and the Declaration of Geoffrey A. Richards In Support of Debtor's Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtors and Debtors in Possession to Obtain Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Super-Priority Claims, (IV) Granting Adequate Protection to Pre-petition Secured Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing and (VII) Granting Related Relief*; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein on an interim basis being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the interim relief sought in the Motion being necessary and in the best interests of the Debtor, its estate and all parties in interest; and the Court having reviewed the Motion and having heard the statements in support of the interim relief requested therein at a hearing before the Court held and concluded on April \_\_, 2017 (the "Interim Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the interim relief granted herein; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor pending the Final Hearing and otherwise is fair and reasonable and in the best interest of the Debtor, its creditors, its estate and equity holders and is essential for the continued operation of the Debtor's business; and it further appearing that the Debtor is unable to secure unsecured credit on similar or more favorable

terms; and upon all the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor:

BASED UPON THE RECORD ESTABLISHED AT THE HEARING, THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(A) Petition Date. On April 12, 2017 (the "Petition Date"), the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code in this Court, commencing this case. The Debtor continues to manage and operate its business and property as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case, nor has an official committee of unsecured creditors (a "Creditors' Committee") been appointed as of the date hereof.

(B) Jurisdiction and Venue. This Court has jurisdiction over this proceeding, and over the property affected hereby, pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in and pursuant to 28 U.S.C. § 157(b)(2). Venue for this case and for the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

(C) Notice. The Interim Hearing was held pursuant to the authorization of Bankruptcy Rule 4001. Notice of the Interim Hearing and the emergency relief requested in the Motion been provided by the Debtor to the United States Trustee for the District of Delaware (the "United States Trustee"), those parties listed as Debtor's twenty largest unsecured creditors, the Pre-Petition Agent and the Pre-Petition Noteholders, the Lender, the District Director of the Internal Revenue Service, the Securities and Exchange Commission, and all other creditors immediately and directly affected by this Motion. The Debtor submits that under the circumstances such notice of the Interim Hearing and the interim relief requested in the Motion

is due and sufficient notice and complies with sections 102(1) and 364(c) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(c), 4001(d) and the local rules of the Court.

(D) Need for Postpetition Financing. The Debtor has demonstrated its immediate need to obtain postpetition financing pursuant to section 364 of the Bankruptcy Code. In the absence of the financing provided by the DIP Loan Agreement, the Debtor will be unable to continue operating its business and to successfully reorganize, to the detriment of the Debtor, its estate, its creditors, and other parties in interest. An immediate need exists for the Debtor to obtain funds from the DIP Facility in order to continue its operations and to engage in a process for the sale of substantially all of its assets (the "Sale Process") to preserve and maximize the value of its estate to achieve a Sale Transaction (as defined in the DIP Loan Agreement). The Debtor does not have sufficient working capital and other financing available to operate its business, maintain the estate's property, and administer this case in the absence of post-petition financing.

(E) Immediate Irreparable Damage or Loss Will Result if Immediate Financing Is Not Obtained. There will be immediate and irreparable loss or damage to the estate if immediate financing is not obtained. Without the requested financing, the Debtor will be unable, among other things, to meet its respective payroll requirements, to pay necessary insurance premiums, such as health insurance and workers' compensation, and to fund other ongoing and essential capital needs and obligations. The Debtor must obtain interim financing in the amount of \$\_\_\_\_\_ to meet its immediate obligations, to effectuate an orderly continuation of its business operations and to engage in the Sale Process. It is in the best interests of the Debtor's estate to be allowed to establish the DIP Facility contemplated by the DIP Loan Agreement on an immediate interim basis.

(F) No Credit Available on More Favorable Terms. Given the Debtor's unique business and current financial condition, available assets and contingent liabilities, as well as current conditions in the credit markets, the Debtor is unable to obtain adequate, unsecured financing from any lender on substantially similar terms or terms more favorable than those provided by the Lender in the DIP Loan Agreement and within the time required to avoid immediate and irreparable harm to the Debtor. The Debtor has been unable to obtain (a) unsecured credit allowable solely as an administrative expense pursuant to sections 364(b) and 503(b) of the Bankruptcy Code; (b) credit solely having priority over all other administrative expenses specified in sections 503(b) and 507(a) and (b) of the Bankruptcy Code; and (c) credit secured by a lien junior to the Pre-petition Noteholder Liens (defined below).

(G) The Senior Secured Notes. The Debtor stipulates and acknowledges that: (i) it issued the Pre-petition Notes to the Pre-petition Noteholders in the aggregate principal amount of \$84,346,363 (the "Pre-petition Noteholders Principal Amount") and, together with any interest, fees and costs under the Pre-petition Note Documents, the "Pre-petition Obligations"), which Pre-petition Obligations constitute a valid obligation of the Debtor; (ii) the Debtor has no valid claims of any sort whatsoever against the Pre-petition Agent; and (iii) the Pre-petition Notes and the Pre-petition Obligations are secured by valid, properly perfected and unavoidable liens and security interests held by the Pre-petition Agent on behalf of the Pre-petition Noteholders (the "Pre-petition Noteholder Liens") on substantially all of the assets of the Debtor, as further described in the Pre-petition Note Documents (the "Pre-petition Collateral"). The Pre-petition Agent does not object to the relief requested in the Motion, the entry of this Interim Order or the priming of the Pre-petition Noteholder Liens.

(H) Section 506(c) Waiver. As a further condition of the DIP Loan Agreement and any obligation of the Lender to make credit extensions pursuant to the DIP Loan



Agreement, upon entry of the Final Order approving this provision, the Debtor, its estate, and any of its Affiliates, shall be deemed to have waived any claim to surcharge the Collateral under section 506(c) of the Bankruptcy Code excluding; however, any such claims for matters provided for in the Budget and incurred prior to the occurrence of an Event of Default and termination of the DIP Facility but not paid by the Debtor (subject to the Lender's rights to object to any such claims).

(I) Use of Proceeds of the DIP Facility. Proceeds of the DIP Facility on an interim basis shall be used, in each case in a manner consistent with the terms and conditions of the DIP Loan Agreement, and for working capital purposes in accordance with the Budget provided to the Lender under the DIP Loan Agreement.

(J) Extension of Financing. The Lender has indicated a willingness to provide financing to the Debtor in accordance with the DIP Loan Agreement and subject to (i) the entry of this Interim Order and the Final Order; and (ii) findings by this Court that such financing is essential the Debtor's estate, that the Lender is a good faith financier, and that the Lender's claims, superpriority claims, security interests, and liens and other protections granted pursuant to this Interim Order (and the Final Order) and the DIP Facility will not be affected by any subsequent reversal, modification, vacatur or amendment of this Interim Order or the Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

(K) Business Judgment; Good Faith of the Lender. The terms and conditions of the DIP Facility and the DIP Loan Agreement, and the fees paid and to be paid thereunder are fair, reasonable, and the best available under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and consideration. The Debtor chose the Lender as its postpetition lender in good faith, without collusion, and after obtaining the advice of experienced counsel. The Debtor

and the Lender proposed and negotiated the terms of the DIP Loan Agreement in good faith, at arm's length and without collusion. The Lender is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code, and the Lender's claims, superpriority status, security interests and liens and other protections arising from or granted pursuant to this Order and the DIP Loan Agreement will not be affected by any subsequent reversal, modification, vacatur or amendment of this Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

(L) Cash Collateral. For purposes of this Interim Order, the term "Cash Collateral" shall mean and include all "cash collateral," as defined in section 363 of the Bankruptcy Code, in or on which the Pre-petition Agent holds, for the benefit of the Pre-petition Noteholders, a lien, security interest or other interest (including, without limitation, any adequate protection liens or security interests) whether existing on the Petition Date, arising pursuant to this Interim Order, or otherwise.

(M) Pursuant to sections 361, 363(e), and 364(d)(1) of the Bankruptcy Code, the Pre-petition Agent is entitled, for the benefit of the Pre-petition Noteholders, to adequate protection to the extent of any diminution in the value of their interest in collateral securing the Pre-petition Obligations, including the Cash Collateral, resulting from, among other things, (a) the incurrence of the priming DIP Obligations; (b) the use of Cash Collateral; (c) the granting of the DIP Liens and the DIP Superpriority Claims (defined below); (d) the subordination of the Pre-petition Obligations to the Carve-Out; and (e) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.

(N) Entry of Interim Order. For the reasons stated above, the Debtor has requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

BASED UPON THE FOREGOING FINDINGS AND CONCLUSIONS, AND UPON THE MOTION AND THE RECORD MADE BEFORE THIS COURT AT THE HEARING, AND WITH THE CONSENT OF THE DEBTOR AND THE LENDER TO THE FORM AND ENTRY OF THIS INTERIM ORDER, AND GOOD AND SUFFICIENT CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED THAT:

1. Motion Granted. The Motion is hereby granted on an interim basis, solely to the extent set forth herein.

2. Objections Overruled. All objections to the entry of this Interim Order to the extent not withdrawn or resolved, are hereby overruled.

3. DIP Loan Agreement. The Debtor is hereby expressly and immediately authorized, empowered and directed to execute and deliver the DIP Loan Agreement and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Loan Agreement, and to execute and deliver all instruments, certificates, agreements and documents which may be required or necessary for the performance by the Debtor under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Loan Agreement; in connection therewith, the Debtor is expressly and immediately authorized and empowered to incur any such DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Loan Agreement. The Debtor is hereby authorized and directed to do and perform all acts, pay the principal, interest, fees, expenses and other amounts described in the DIP Loan Agreement and all other documents comprising the DIP Facility as such become due, including, without limitation, closing fees, administrative fees, a non-refundable origination fee of \$160,000 a non-refundable exit fee of \$160,000 each due and payable pursuant to the terms of the DIP Financing Agreement, reasonable attorneys' fees and disbursements, and other fees and charges as provided for in the DIP Loan Agreement, which amounts shall not otherwise be subject to approval of this Court.

Upon execution and delivery, the DIP Loan Agreement shall represent valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with its terms.

4. Authorization to Borrow on an Interim Basis. In order to enable the Debtor to continue to operate its business, during the period from the date of this Interim Order through the date of entry of a Final Order (the "Interim Period") and subject to the terms and conditions of this Interim Order, the DIP Loan Agreement, documents comprising the DIP Facility, and the Budget, the Debtor is hereby authorized under the DIP Facility to borrow up to a total amount of \$\_\_\_\_\_ on an interim basis.

5. Application of the DIP Proceeds. The Debtor shall use the proceeds of Advances in the Interim Period for the purpose of funding post-petition operations in accordance with the Budget.

6. Conditions Precedent. The Lender shall have no obligation to make any loan or advance under the DIP Loan Agreement during the Interim Period unless the conditions precedent to make such loan under the DIP Loan Agreement have been satisfied in full or waived in accordance with the DIP Loan Agreement.

7. Post-Petition DIP Liens. Effective immediately upon the entry of this Interim Order, the Lender is hereby granted pursuant to sections 361, 362, 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code and constitute first priority, continuing, valid, binding, enforceable, non-avoidable and automatically perfected post-petition security interests and liens (collectively, the "DIP Liens"), senior and superior in priority to all other secured and unsecured creditors of the Debtor's estate except as otherwise provided in this Interim Order and the Final Order, upon and to all presently owned and hereafter acquired assets and real and personal property of the Debtor, including, without limitation, the following: all of the Debtor's Accounts,

chattel paper and electronic chattel paper, deposit accounts, documents, Equipment, General Intangibles (including, but not limited to the Owned Intellectual Property and Licensed Intellectual Property), goods, instruments, Inventory, Investment Property, letter-of-credit rights, letters of credit, all sums on deposit; together with (a) all substitutions and replacements for and products of any of the foregoing; (b) in the case of all goods, all accessions; (c) all accessories, attachments, parts, equipment and repairs now or hereafter attached or affixed to or used in connection with any goods; (d) all warehouse receipts, bills of lading and other documents of title now or hereafter covering such goods; (e) all collateral subject to the Lien of any Security Document; (f) any money, or other assets of the Debtor that now or hereafter come into the possession, custody, or control of the Lender; (g) all sums on deposit in any bank account of the Debtor; (h) proceeds of any and all of the foregoing; (i) books and records of the Debtor, including all mail or electronic mail addressed to the Debtor; and (j) all of the foregoing, whether now owned or existing or hereafter acquired or arising or in which the Debtor now has or hereafter acquires any rights (together, the “Collateral”), as security for the payment and performance of the DIP Obligations and as an element of the consideration for the Advance. Upon request by the Lender, the Debtor will grant the Lender a security interest in all proceeds arising from or in connection with commercial tort claims that the Debtor may have against any person. The Liens to be created and granted to the Lender, as provided herein, (A) are created pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code and (B) are first, valid, prior, perfected, unavoidable, and superior to any security, mortgage, or collateral interest or lien or claim to the Collateral.

8. Survival of Liens. The DIP Liens, lien priority, administrative priorities and other rights and remedies granted to the Lender pursuant to the DIP Loan Agreement, this Interim

Order and the other Loan Documents (specifically including, but not limited to, the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority and liens provided for herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of indebtedness by the Debtor (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of the Chapter 11 Case, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission:

(a) except for the Carve-Out, no costs or expenses of administration which have been or may be incurred in the chapter 11 cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on a parity with any claim of the Lender against the Debtor in respect of any DIP Obligation;

(b) the DIP Liens in favor of the Lender set forth in the DIP Loan Agreement hereof shall constitute valid and perfected first priority Liens and shall be prior to all other Liens and security interests, now existing or hereafter arising, in favor of any other creditor or any other person whatsoever; and

(c) the DIP Liens in favor of the Lender set forth herein and in the other Loan Documents shall continue to be valid and perfected without the necessity that the Lender file or record financing statements, mortgages or otherwise perfect its DIP Lien under applicable non-bankruptcy law.

9. Superiority Administrative Claim Status. Subject to the Carve-Out, the DIP Obligations shall constitute, in accordance with Section 364(c)(1) of the Bankruptcy Code, a superpriority administrative claim having priority over any and all administrative expenses of and unsecured claims against the Debtor now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in, or arising or ordered under, sections 105, 326, 328, 503(b), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code. The Lender shall have a superpriority administrative expense claim against the estate pursuant to section 364(c)(1) of the Bankruptcy Code for the DIP Obligations

and all related costs and expenses, which shall be prior, senior and superior to any other claim, including any other superpriority administrative expense claim of any kind or nature, except as provided herein and/or in the DIP Loan Agreement. The DIP Obligations are claims to be afforded priority over administrative expenses pursuant to section 364(c)(1) of the Bankruptcy Code, as provided herein and in the DIP Loan Agreement and secured by liens pursuant to section 364 of the Bankruptcy Code as provided herein. (All such superpriority claims referred to herein collectively as the “DIP Superpriority Claim”.)

10. Post-Petition Lien Perfection. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection and priorities of the DIP Liens upon the Collateral, without the necessity of filing or recording any financing statement, assignment, mortgage, deed of trust, trademark security agreement, copyright security agreement, patent security agreement or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the DIP Liens or to entitle the Lender to the priorities granted herein and in the DIP Loan Agreement; provided, however, that the Debtor shall, promptly following the request of the Lender, execute such instruments, assignments, mortgages, deeds of trust, trademark security agreements, copyright security agreements, patent security agreements or other documents as are necessary to perfect the Lender’s liens upon any of the Collateral and shall take such other action as may be required to perfect or to continue the perfection of the Lender’s Liens upon the Collateral pursuant to the terms of the DIP Loan Agreement.

11. Adequate Protection. As adequate protection for the diminution, if any, in the value of the Pre-petition Agent’s interests in the Pre-petition Collateral resulting from (a) the incurrence of the priming DIP Obligations; (b) the use of Cash Collateral; (c) the granting of the

DIP Liens and the DIP Superpriority Claim; (d) the subordination of the Pre-petition Noteholders Principal Amount to the Carve-Out; and (e) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (collectively, the “Diminution”), the Pre-petition Agent, for the benefit of the Pre-petition Noteholders, hereby is granted (effective and perfected upon the date of this Interim Order and without the necessity of execution by the Debtor of mortgages, security agreements, pledge agreements, financing statements, and other agreements or instruments): (a) valid, perfected, postpetition security interests in and liens on the Collateral (the “Replacement Liens”), and (b) a superpriority administrative expense claim, for the Diminution, which claim shall have priority over all administrative expense claims and unsecured claims against the Debtor or its estate, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kind specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 552(b), 726, 1113 and 1114 and any other provision of the Bankruptcy Code (the “Adequate Protection Claim.”) The Replacement Liens and Adequate Protection Claim shall be subordinate only to (i) the DIP Liens, the DIP Superpriority Claim and/or payment of any DIP Obligations on account thereof and (ii) the Carve-Out. Nothing in this Interim Order shall, or shall be deemed to, limit, abridge or otherwise affect the rights of the Pre-petition Agent to request at any time that the Court provide additional or further adequate protection if the protections afforded by this Order appear to be inadequate.

12. Carve-Out. Subject to the terms and conditions contained herein, the DIP Liens, the DIP Superpriority Claim, the Replacement Liens, and the Adequate Protection Claim are subordinate only to the claims of the following parties for the following amounts means the claims of the following parties for the following amounts: (i) (a) the allowed and unpaid



professional fees and disbursements for any professionals retained pursuant to Sections 327, 1102 or 1103(a) of the Bankruptcy Code by Borrower and the creditors' committee in the Chapter 11 Case (the "Case Professionals") incurred after the delivery of a notice of an Event of Default in an aggregate amount not in excess of \$250,000 (in addition to such prepetition retainers or deposits held by a Case Professional), plus (b) all professional fees and disbursements of such Case Professionals incurred prior to the delivery of a notice of an Event of Default to the extent allowed or later allowed and payable by order of the Court (which order has not been vacated or stayed, unless the stay has been vacated) under Sections 328, 330, 331, or 363 of the Bankruptcy Code and any interim compensation procedures order, but solely to the extent that the same are set forth in the Budget or secured by prepetition retainers or deposits held by a Case Professional; and (ii) claims for the unpaid fees of the United States Trustee or the Clerk of the Court payable pursuant to 28 U.S.C. § 1930(a); provided, however, that the foregoing reserve for the payment of Professional Fees shall not apply to any fees or expenses incurred in the prosecution of any litigation or the assertion of any claims raised against or with respect to the Lender, the Pre-petition Agent, the Pre-petition Collateral, or the Collateral.

13. Reservation of Rights and Bar of Challenges and Claims. (a) The Debtor's acknowledgements and stipulations with respect to the Pre-petition Obligations and the Pre-petition Noteholder Liens, set forth in Paragraph G above (the "Debtor's Stipulations") shall be and hereby are binding upon the Debtor in all circumstances upon entry of this Interim Order. The Debtor's Stipulations shall be binding upon each other party in interest, including the Creditors' Committee, if any, unless such Creditors' Committee or any other party in interest (including any chapter 11 trustee in the Chapter 11 Cases or any subsequently appointed chapter 7 trustee) first, commences, by the earlier of (x) with respect to any Creditors' Committee with

requisite standing, sixty (60) calendar days from the formation of any Creditors' Committee, and (y) solely if no Creditors' Committee is formed, with respect to other parties in interest with requisite standing other than the Debtor or any Creditors' Committee, seventy-five (75) calendar days following the Petition Date (such time period established by the earlier of clauses (x) and (y), shall be referred to as the "Challenge Period"), a contested matter, adversary proceeding, or other action challenging or otherwise objecting to the Debtor's Stipulations or any other matter in connection with or related to the Pre-petition Obligations or the Pre-petition Noteholders Liens (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.

(b) If no Challenge is timely brought within the Challenge Period, (i) any and all such Challenges by any party in interest shall be deemed to be forever released, waived, and barred; (ii) the Pre-petition Obligations shall be deemed to be a fully allowed secured claim within the meaning of section 506 of the Bankruptcy Code; and (iii) the Debtor's stipulations in paragraph G shall be binding on all parties in interest, including any Creditors' Committee or any trustee subsequently appointed in this case.

14. Rights and Remedies Upon Event of Default. Any automatic stay otherwise applicable to the Lender is hereby modified so that after the occurrence of any Event of Default and at any time thereafter, upon three (3) business days prior written notice of such occurrence, in each case given to the Debtor, counsel to the Debtor, counsel to any official committees, if any, the United States Trustee, and counsel to the Pre-petition Agent (collectively, the "Notice Parties"), the Lender shall be entitled to exercise their rights and remedies in accordance with the DIP Loan Agreement, as applicable. Following the giving of written notice by the Lender of the

occurrence of an Event of Default, the Notice Parties shall be entitled to an emergency hearing before this Court solely for the purpose of contesting whether an Event of Default has occurred. If the Notice Parties do not contest the right of the Lender to exercise its remedies based upon whether an Event of Default has occurred within such time period, or if they do not timely contest the occurrence of an Event of Default and this Court, after notice and hearing, declines to stay the enforcement thereof, the automatic stay as to the Lender shall automatically terminate at the end of such notice period. Subject to the provisions of this paragraph, upon the occurrence of an Event of Default, the Lender is authorized to exercise its remedies and proceed under or pursuant to the DIP Loan Agreement. Nothing included herein shall prejudice, impair, or otherwise affect the Lender's rights to seek any other or supplemental relief in respect of the Debtor nor the Lender's rights, as provided in the DIP Loan Agreement, to suspend or terminate the making of loans under the DIP Loan Agreement.

15. Expenses. As provided in the DIP Loan Agreement, the Debtor shall pay on demand all costs and expenses, including reasonable attorneys' fees, incurred by the Lender in connection with the Obligations, the DIP Loan Agreement, the Loan Documents and any other document or agreement related hereto or thereto, and the transactions contemplated hereby, including all such costs, expenses and fees incurred in connection with the negotiation, preparation, execution, amendment, administration, performance, collection and enforcement of the Obligations and all such documents and agreements and the creation, perfection, protection, satisfaction, foreclosure or enforcement of the DIP Liens, together with all wire transfer and similar money transfer fees. In addition to the payment of expenses pursuant to Section 8.5 of the DIP Loan Agreement, the Debtor shall indemnify, defend and hold harmless the Lender, and any of its participants, parent corporations, subsidiary corporations, affiliated corporations,

successor corporations, and all present and future officers, directors, employees, attorneys and agents of the foregoing (the “Indemnitees”) from and against any of the “Indemnified Liabilities” as set forth in Section 8.6 of the DIP Loan Agreement. The Debtor’s obligations under Section 8.6 of the DIP Loan Agreement shall survive the termination of the DIP Loan Agreement and this Interim Order and the discharge of the Debtor’s other obligations thereunder.

16. Termination Date. Immediately upon the Termination Date, (i) all DIP Obligations shall be immediately due and payable in the aggregate unpaid principal balance of all Advances made by the Lender to the Debtor under the DIP Loan Agreement, together with unpaid interest on the principal amount hereunder remaining unpaid from time to time; (ii) all other fees provided for under the DIP Loan Agreement, including the Closing Fee and Exit Fee, shall be immediately due and payable; and (iii) the Lender’s obligations under the DIP Loan Agreement shall cease.

17. Proofs of Claim. The Debtor acknowledges and agrees that the DIP Obligations and the related liens, rights, priorities and protections granted to or in favor of the Lender, respectively, as set forth herein and in the DIP Loan Agreement, shall constitute a proof of claim on behalf of the Lender in the chapter 11 cases. The Lender shall not be required to file proofs of claim in the chapter 11 cases or in any successor cases, however, the Lender is hereby authorized and entitled to file (and amend and/or supplement) proofs of claim in the chapter 11 cases or any successor cases.

18. Compensation. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of the Debtor, any official committee, or of any person, or shall affect the right of the Lender to object to the allowance and payment of such fees and expenses or to permit the Debtor to pay any such amounts and not set forth in the Budget.

19. Section 506(c) Claims. Subject to entry of a Final Order approving this provision, the Debtor and its Affiliates and the Debtor's bankruptcy estate hereby waive and shall cause each of its respective Affiliates to waive, any claims to surcharge the Pre-petition Collateral or the Lender's Collateral under section 506(c) of the Bankruptcy Code excluding, however, any such claims for matters provided for in the Budget and incurred prior to the occurrence of an Event of Default and termination of the DIP Facility but not paid by the Debtor (subject to the Lender's rights to object to any such claims)

20. Vacating the Automatic Stay. The automatic stay imposed by section 362(a) of the Bankruptcy Code is hereby modified to permit (a) the Debtor to grant the DIP Liens and the DIP Superpriority Claim, and to perform such acts as the Lender may request to assure the perfection and priority of the DIP Liens; and (b) the implementation of the terms of this Interim Order.

21. Enforceable Obligations. The DIP Loan Agreement shall constitute and evidence the valid and binding obligations of the Debtor, which obligations shall be enforceable against the Debtor, its estate and any successors thereto and its creditors, in accordance with the terms and conditions of the DIP Loan Agreement.

22. Protection of Lender and Other Rights. During the Interim Period, the Debtor shall use the proceeds of the extensions of credit under the DIP Facility only for the purposes specifically set forth in the DIP Loan Agreement and this Interim Order and in compliance with the Budget.

23. Government Acceptance. Upon approval of this Interim Order by the Court, the Debtor has and shall be deemed to have (a) obtained all authorizations, consents and approvals required to be obtained from and (b) made all filings with and given all notices required to be

given to, all federal, state and local governmental agencies, authorities and instrumentalities in connection with the execution, delivery, validity and enforceability of the DIP Loan Agreement and the use of Cash Collateral to which any Debtor is a party. All federal, state and local governmental agencies, authorities and instrumentalities may accept this Interim Order as evidence of the transactions consummated hereby.

24. [Reserved].

25. Protections of 364(e). If any provision of this Interim Order is hereafter modified, vacated, or stayed by subsequent order of this Court or any other court for any reason, the Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code.

26. Binding Effect. Except as otherwise provided in this Interim Order, the terms and provisions of this Interim Order shall, immediately upon entry of this Interim Order by this Court, become valid and binding upon the Debtor, the Lender, all other creditors of the Debtor, any statutory committee appointed in these cases, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtor's estate in these cases or in any subsequent chapter 7 cases.

27. No Waiver. The failure of the Lender to seek relief or otherwise exercise their rights and remedies under the DIP Loan Agreement, the DIP Facility or this Interim Order, as applicable, shall not constitute a waiver of any of the Lender's rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair the Lender under the Bankruptcy Code or under non-bankruptcy law, including without limitation, the rights of the Lender to: (i) request conversion of the chapter 11 case to a chapter 11 case under chapter 7, dismissal of the chapter 11 cases, or the appointment of a trustee in the chapter 11 cases; or

(ii) propose, subject to the provisions of Section 1121 of the Bankruptcy Code, a plan; or  
(iii) exercise any of the rights, claims or privileges (whether legal, equitable or otherwise) of the Lender.

28. No Third Party Rights. Except as specifically provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity security holders, or any direct, indirect, or incidental beneficiary.

29. No Marshaling. Pursuant to the DIP Loan Agreement, the Debtor hereby waives any right of marshaling the Debtor may have.

30. Survival of Interim Order. The terms of this Interim Order and any actions taken pursuant hereto, shall survive the entry of any order which may be entered: (a) confirming any plan in the chapter 11 cases; (b) dismissing the chapter 11 cases; (c) converting the chapter 11 cases to any other chapter under the Bankruptcy Code; (d) withdrawing of the references of the chapter 11 cases from the Bankruptcy Court; and (e) providing for abstention from handling or retaining of jurisdiction of this chapter 11 cases in the Bankruptcy Court. The terms and provisions of this Interim Order as well as the protections granted pursuant to this Interim Order and the DIP Loan Agreement, shall continue in full force and effect notwithstanding the entry of such order, and such protections shall maintain their priority as provided by this Interim Order until all the obligations of the Debtor to the Lender pursuant to the DIP Loan Agreement are indefeasibly paid in full and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms). The DIP Obligations shall not be discharged by the entry of an order confirming a plan, the Debtor having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code. The Debtor shall not propose or support any plan that is not conditioned upon the payment in full in cash of all of

the DIP Obligations, on or prior to the earlier to occur of (i) the effective date of such plan; and (ii) the Termination Date.

31. Inconsistency. To the extent any provisions of the DIP Loan Agreement are in conflict with the terms and conditions of this Interim Order, the terms and conditions of this Interim Order shall control.

32. Amendment. The Debtor and the Lender may amend, modify, supplement, or waive any provision of the DIP Facility, provided that such amendment or waiver, in the judgment of the Debtor and the Lender, is either non-prejudicial to the rights of third parties or is not material. Except as otherwise provided herein, no waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by the Debtor and the Lender (after having obtained the approval of the Lender in accordance with the terms of the DIP Loan Agreement) and approved by the Bankruptcy Court.

33. Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable by Rule 9014, and shall take effect and be fully enforceable immediately upon execution hereof.

34. Waiver of Right to Modify. This Interim Order shall not be modified, amended or extended without the prior written consent of the Lender and no such consent shall be implied by any other action, inaction or acquiescence of the Lender.

35. No Unauthorized Disposition of Collateral. The Debtor shall not sell, use or dispose of the Collateral except as approved by the Lender in accordance with the Budget and the DIP Loan Agreement.

36. [Reserved]



37. Waiver of Stay. Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Interim Order.

38. Exclusive Jurisdiction. This Court shall retain exclusive jurisdiction to interpret and enforce the provisions of the DIP Loan Agreement and this Order in all respects; provided, however, that in the event this Court abstains from exercising or declines to exercise jurisdiction with respect to any matter provided for in this paragraph or is without jurisdiction, such abstention, refusal, or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

39. Final Hearing. The Debtor shall, on or before \_\_\_\_\_ serve by U.S. mail copies of the notice of entry of this Interim Order, together with a copy of this Interim Order and proposed Final Order to (i) the parties having been given notice of the emergency hearing; (ii) any other party which has filed a request for special notice with this Court and served such requested upon the Debtor's counsel; (iii) counsel for any statutory committee; and (iv) the United States Trustee. The notice of entry of this Interim Order shall state that any party in interest objecting to the DIP Facility or the terms of the Final Order shall file written objections with the United States Bankruptcy Court Clerk for the District of Delaware no later than \_\_\_\_\_ 2017, which objections shall be served so that they are received by no later than 4:00 p.m. prevailing Eastern time, on such date by: (i) special corporate counsel to the Debtor, Cooley LLP, 101 California Street, 5th Floor, San Francisco, CA 94111-5800 (Attn: Robert L. Eisenbach III, Esq.) [reisenbach@cooley.com](mailto:reisenbach@cooley.com), and lead counsel for the Debtor, Drinker Biddle & Reath LLP, 222 Delaware Avenue, Suite 1410, Wilmington, DE 19801 (Attn: Steven K. Kortanek, Esq.) [steven.kortanek@dbr.com](mailto:steven.kortanek@dbr.com); (ii) counsel for the Pre-petition Agent, Arnold &

Porter Kaye Scholer LLP, 601 Massachusetts Avenue, N.W., Washington, D.C. 20001 (Attn: Michael L. Bernstein), (iii) counsel for the Stalking Horse Purchaser, Smith, Gambrell & Russell, LLP, Suite 3100, Promenade, 1230 Peachtree Street, N.E., Atlanta, Georgia 30309 (Attn: Brian P. Hall, Esq.); [bhall@sgrlaw.com](mailto:bhall@sgrlaw.com), Waller Lansden Dortch & Davis, LLP, 100 Congress Avenue, Suite 1800, Austin, TX 78701 (Attn: Morris D. Weiss, Esq.); [morris.weiss@wallerlaw.com](mailto:morris.weiss@wallerlaw.com), and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19801 (Attn: Adam G. Landis, Esq.) [landis@lrclaw.com](mailto:landis@lrclaw.com), and (vi) the Office of the United States Trustee, United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Richard Schepacarter, Esq. and Brya Keilson, Esq.) [richard.schepacarter@usdoj.gov](mailto:richard.schepacarter@usdoj.gov) and [brya.keilson@usdoj.gov](mailto:brya.keilson@usdoj.gov).

40. The Final Hearing to consider the Motion and entry of the Final Order shall be held on \_\_\_\_\_, 2017 at \_\_\_ a.m. before the Honorable Judge \_\_\_\_\_, United States Bankruptcy Judge. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtor and entered by this Court.

Dated: \_\_\_\_\_, 2017

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United States Bankruptcy Judge

**Exhibit 1**

*Debtor-in-Possession Credit and Security Agreement*