




CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

**The following constitutes the ruling of the court and has the force and effect therein described.**

**Signed September 29, 2017**

  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

.....	§	
In re:	§	Chapter 11
	§	
ADPT DFW HOLDINGS LLC, <i>et al.</i> , <sup>1</sup>	§	Case No. 17-31432
	§	
Debtors.	§	Jointly Administered under Case No. 17-31432
.....	§	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
REGARDING DEBTORS' THIRD AMENDED JOINT PLAN OF  
REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

On September 26, 2017, this Court commenced a hearing (the "Confirmation Hearing")<sup>2</sup> to consider confirmation of the *Debtors' Third Amended Joint Plan of Reorganization Under*

<sup>1</sup> The Debtors include all of the affiliated entities that are listed on the Appendix, attached hereto.

*Chapter 11 of the Bankruptcy Code* [Dkt. No. 719] (the “Plan”), proposed by the above-referenced debtors and debtors-in-possession (collectively, the “Debtors”). This Court makes the following findings of fact and conclusions of law (the “Findings and Conclusions”) in support of the *Order Confirming Debtors’ Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the “Confirmation Order”):

1. The following record (the “Record”) was established to support confirmation of the Plan:

(a) All exhibits which were admitted into evidence during the Confirmation Hearing, including the *Plan Supplement* [Dkt. No. 589, as amended by Dkt. Nos. 632, 678, 771, and 790] (collectively, the “Plan Supplement”);

(b) The testimony that was provided by witnesses, either through live testimony, declaration, or by proffer prior to or during the Confirmation Hearing;

(c) The evidence in respect of the transmittal and service of the solicitation packages [Dkt. Nos. 542, 599, 600, 612, 691, and 736], all of which was filed with this Court and admitted into evidence (the “Solicitation Notices”);

(d) The evidence regarding tabulation of votes on the Plan which was filed with this Court [Dkt. Nos. 718 and 745] (the “Voting Report”) and admitted into evidence;

(e) The entire record of the Debtors’ chapter 11 cases (the “Chapter 11 Cases”) and the docket maintained by the Clerk of this Court and/or Epiq Bankruptcy Solutions, LLC (“Epiq”), its duly appointed agent, including, without limitation, all pleadings and other documents filed, all orders entered, and evidence and argument made, proffered, or adduced at the hearings held before this Court during the pendency of these Chapter 11 Cases, as to all of which this Court took judicial notice at the Confirmation Hearing;<sup>3</sup> and

---

<sup>2</sup> Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to such terms in the Plan or the Disclosure Statement (defined below), as applicable.

<sup>3</sup> This Court takes judicial notice of the docket in these Chapter 11 Cases maintained by the clerk of this Court and/or its duly appointed agent, including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before this Court during these Chapter 11 Cases, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing.

(f) The statements and argument of counsel on the record at the Confirmation Hearing, and all papers and pleadings filed with this Court in support of, in opposition to, or otherwise submitted in connection with, confirmation of the Plan, including the *Debtors' Brief in Support of, and Omnibus Response to Objections to, Confirmation of Debtors' Third Amended Joint Chapter 11 Plan of Reorganization* [Dkt. No. 778].

2. The evidence that was admitted into the Record in support of confirmation of the Plan and all related matters demonstrates, by a clear preponderance of the evidence, that the Plan is confirmable and should be confirmed. The failure specifically to describe, include, or refer herein to any particular article, section, or provision of the Plan, the Plan Supplement, or any related document shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Court that the Plan, the Plan Supplement, and all related documents be approved and confirmed in their entirety as if set forth verbatim herein.

3. The Plan, as supported by the Record, satisfies all applicable requirements under title 11 of the United States Code (the "Bankruptcy Code"), the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and the Local Bankruptcy Rules for the Northern District of Texas (the "Local Rules") and the Plan is in the best interests of the Debtors and their bankruptcy estates (the "Estates"), and therefore should be confirmed.

4. As presented at the Confirmation Hearing and as provided for herein, the consensual resolution of certain objections to confirmation of the Plan and the cure amounts for certain non-Debtor counterparties satisfy all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules and are in the best interests of the Debtors and their Estates and supported by the Record and therefore should be approved. All objections to confirmation of the Plan not withdrawn or resolved by agreement at or prior to the Confirmation Hearing are overruled on the merits, or are otherwise disposed of, as set forth herein and in the Confirmation Order.

5. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. All findings of fact and conclusions of law announced by this Court at the Confirmation Hearing are hereby incorporated herein for all purposes to the extent not inconsistent herewith. 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.

6. The Record amply supports confirmation of the Plan, and this Court will issue the Confirmation Order confirming the Plan.

**A. Jurisdiction and Venue**

7. This Court has subject matter jurisdiction to confirm the Plan pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b).

**B. Background**

8. On April 19, 2017 (the "Petition Date"), the Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their assets and continue to operate and manage their businesses as debtors in possession pursuant to 11 U.S.C. §§ 1107 and 1108. On May 1, 2017, the Official Unsecured Creditors' Committee was appointed by the United States Trustee. On June 7, 2017, this Court ordered the appointment of an equity security holders' committee for the estate of Adeptus Health Inc. No trustee or examiner has been appointed in these cases.

**C. The Disclosure Statement and Plan**

9. On August 1, 2017, this Court issued its *Order (I) Approving Disclosure Statement, (II) Establishing Procedures for the Solicitation and Tabulation of Votes to Accept or*

*Reject The Debtors' Chapter 11 Plan, (III) Scheduling a Confirmation Hearing, and (IV) Approving Related Notice Procedures* [Dkt. No. 515] (the "Disclosure Statement Order") approving the *Disclosure Statement for Debtors' Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Dkt. No. 514] (the "Disclosure Statement") in accordance with section 1125 of the Bankruptcy Code and Bankruptcy Rules 3017 and 3018, and establishing certain deadlines relating to confirmation of the Plan.

10. On or before August 4, 2017, the Debtors mailed the Disclosure Statement and related solicitation materials to solicit votes for the Plan. *See* Dkt. No. 542. This Court previously determined that, by order entered September 14, 2017 at Dkt. No. 720, pursuant to Bankruptcy Rule 3019, the Debtors were authorized to modify the Second Amended Plan (as reflected in the Plan) and that they were not required to resolicit the Plan as a result of such modifications.

11. The Plan, including the 9019 Settlement, is the result of extensive arms' length negotiations among the Debtors, the Deerfield Parties, the Creditors' Committee, and the Equity Committee and is supported by each of these parties. No evidence was submitted by any objecting party sufficient to rebut the Debtors' evidence concerning the good faith, arms' length nature of negotiations regarding the 9019 Settlement and the Plan.

**D. Notice**

12. As set forth in the Record, the Debtors complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable laws in connection with: the solicitation of votes on the Plan; the provision of appropriate and adequate notice, including with respect to (a) the dates of the Confirmation Hearing, (b) the September 11, 2017 deadline for filing and serving objections to confirmation and for voting on the Plan, (c) the September 22, 2017 deadline for filing and serving objections to the

modifications to the Second Amended Plan as embodied in the Plan, (d) the September 25, 2017 deadline for responding to objections to Plan confirmation, and (e) all other relevant deadlines related to the Plan. *See* Dkt. Nos. 542, 599, 600, 612, 691, and 736.

13. As such, the notice provided with respect to all matters relating to the solicitation of votes on, and the confirmation of, the Plan was adequate and proper and satisfied the requirements of due process with respect to all creditors, equity holders, and parties-in-interest who were provided actual or constructive notice.

#### **E. Voting**

14. Because the Plan provides for substantive consolidation of all of the Debtors' Estates and because, based on the Record, substantive consolidation is appropriate, the votes of Classes should be tabulated on a "per plan" basis. *In re Enron Corp.*, No. 01-16034 (AJG), 2004 Bankr. LEXIS 2549, at \*234-36 (Bankr. S.D.N.Y. July 15, 2004) (finding that section 1129(a)(10) requirements are met on a "per plan" basis in confirming joint chapter 11 plan for substantively consolidated cases); *In re Tribune Co.*, 464 B.R. 126, 183 (Bankr. D. Del. 2011) (noting that Bankruptcy Code section 1129(a)(10)) is evaluated on a "per plan" basis in substantively consolidated cases). Therefore, consistent with section 1129(a)(10) of the Bankruptcy Code, the Voting Report properly reflects the tabulation of votes to accept or reject the Plan.

15. As set forth in the Record, each Class of Claims and Interests either is (a) impaired pursuant to section 1124 of the Bankruptcy Code and voted to accept the Plan under section 1126 of the Bankruptcy Code and for purposes of section 1129(a)(8)(A) of the Bankruptcy Code, (b) not impaired under section 1124 of the Bankruptcy Code and for the purposes of section 1129(a)(8)(B) of the Bankruptcy Code and is deemed to have accepted the Plan, or (c) impaired pursuant to section 1124 of the Bankruptcy Code and voted to reject the

Plan under section 1126 of the Bankruptcy Code, but is receiving treatment that satisfies the applicable requirements of section 1129(b) of the Bankruptcy Code.

**F. Approval of 9019 Settlement**

16. The negotiations surrounding the 9019 Settlement were conducted in good faith and at arms' length, and the 9019 Settlement is of benefit to the Debtors' Estates and represents a fair and reasonable compromise of the issues in dispute in these Chapter 11 Cases and resolves potential objections to confirmation of the Plan and the Trustee/Exclusivity Motion (as defined in the Disclosure Statement). The 9019 Settlement also benefits the Estates by eliminating the need to engage in extensive and costly litigation over, among other issues, the allocation of Causes of Action between the Estates and because funding provided by the Equity Funders will enable the Litigation Trust Trustee to maximize recoveries on account of the Litigation Trust Causes of Action. The terms and conditions of the 9019 Settlement are embodied in the terms of the Plan, and are an integral part of the Plan.

17. This Court has considered the following with respect to the 9019 Settlement: (a) the probability of success, the complexity and likely duration of the litigation involved and any attendant expense, inconvenience, and delay regarding confirmation of the Plan, (b) that the 9019 Settlement resolves the potential objections by the Equity Committee to the Plan and the Trustee/Exclusivity Motion (as defined in the Disclosure Statement), and (c) all other factors bearing on the reasonableness of the compromise embodied in the 9019 Settlement. Absent the 9019 Settlement, the Debtors' emergence from Chapter 11 would have been delayed, administrative expenses would have increased, and the ultimate result would be uncertain, all to the detriment of the Debtors' Estates and their respective stakeholders and other parties-in-interest.

18. After giving due consideration to the above factors and Record, this Court finds that the 9019 Settlement (a) is fair, equitable, reasonable, and is within the range of potential outcomes of the litigation and (b) is in the best interest of the Debtors, their Estates, and all other parties-in-interest in these Chapter 11 Cases, including all creditors and interest holders. In addition, the Record establishes that sound business justifications exist for the Debtors to enter into the 9019 Settlement embodied in the Plan. Specifically, the Plan represents a consensual and immediate resolution of numerous, complex disputes among the parties to the 9019 Settlement, and affords significant value to the Debtors' estates. Each component of the 9019 Settlement underlying the Plan, and the treatment of creditors as provided under the Plan, is an integral, integrated, and inextricably linked part of the Plan that is not severable from the entirety of the 9019 Settlement and the Plan. The 9019 Settlement not only avoids costly litigation and delays, but also provides the means to effectively reorganize the Debtors' businesses. Therefore, the 9019 Settlement satisfies the applicable standards of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019 and should be approved in its entirety.

19. The 9019 Settlement incorporates the settlement of claims as between Eligible Holders and the Deerfield Parties. The 9019 Settlement Consideration offered to Eligible Holders is to induce Eligible Holders to compromise and release any claims that electing Eligible Holders may hold against the Released Parties. The 9019 Settlement Consideration is not being offered to Eligible Holders to compromise any claims that any Debtor estate may hold against a Released Party. The period of time specified in the Plan for Eligible Holders to opt out of the 9019 Settlement is adequate and appropriate under the circumstances. The Deerfield Parties would not have offered the Eligible Holders the 9019 Settlement Consideration without the release by Eligible Holders of the Released Parties.

**G. Implementation of the Plan**

20. Article V of the Plan provides the means for implementing the Plan. The provisions of Article V of the Plan and the transactions and transfers to be implemented pursuant to the Restructuring Transactions are consistent with and permissible under section 1123(a)(5) of the Bankruptcy Code and are consistent with the interests of creditors, equity holders, and public policy.

21. Each of the Restructuring Transactions is necessary and appropriate to facilitate and ensure the feasibility of the Plan, preserve tax attributes (if any), facilitate the reorganization, and maximize value for the Debtors, their Estates, creditors, and other parties-in-interest. Approval of the Restructuring Transactions is within the authority of this Court pursuant to section 1123(a) of the Bankruptcy Code and otherwise in furtherance of the general principles of the Bankruptcy Code. The Restructuring Transactions represent the exercise of the sound business judgment of the Debtors, will benefit the Debtors' Estates, and are proposed in good faith.

22. The entry of the Confirmation Order constitutes authorization of this Court for the Debtors and their representatives to take or cause to be taken all actions necessary, reasonable, or appropriate to implement all provisions of, and to consummate, the Plan prior to, on and after the Effective Date, including without limitation, the Restructuring Transactions. All such actions taken or caused to be taken consistent with the terms of the Confirmation Order and the Plan shall be deemed to have been authorized and approved by this Court without further approval, act, or action under any applicable law, order, rule, or regulation.

**H. New Board of Reorganized Debtors**

23. The new board of directors for Reorganized Debtors shall consist of the following individuals: Bryan Sendrowski; Adam Grossman; Leslie Henshaw; Frank Williams; and Greg

Scott, Executive Chairman. As set forth in the Plan Supplement, Mr. Sendrowski, Mr. Grossman, Ms. Henshaw, and Mr. Williams shall not receive compensation for their roles as board members. Mr. Scott will receive compensation for a two-year commitment to serve as Executive Chairman. The post-confirmation compensation structure disclosed in the Plan Supplement was disclosed for information purposes only in accordance with section 1129(a)(5) of the Bankruptcy Code, and nothing in the Confirmation Order, the Plan, or the Plan Supplement shall operate to approve or direct the implementation of the compensation structure as disclosed.

**I. New Securities Under the Plan**

24. As the consideration to be paid to holders of Allowed Deerfield Secured Claims and Allowed DIP Facility Claims, the Reorganized Debtors will issue New Equity Interests on the Effective Date for distribution to holders of Allowed Deerfield Secured Claims and Allowed DIP Facility Claims.

25. The offer, sale, issuance, and/or distribution of each of the New Equity Interests is duly authorized. Moreover, the New Equity Interests are being offered, sold, issued, or distributed (a) by the Debtors, which are not underwriters as defined in section 1145(b) of the Bankruptcy Code, (b) under the Plan, and (c) in exchange for Claims against one or more of the Debtors, or principally in exchange for such Claims and partly for cash or property, within the meaning of section 1145(a)(1) of the Bankruptcy Code, and therefore, the offer, sale, issuance, and/or distribution of the New Equity Interests by the Debtors are exempt from the requirements of section 5 of the Securities Act of 1933 and any state or local law requiring registration prior to the offering, issuance, distribution, or sale of a security on account of the applicability of section 1145(a)(1) of the Bankruptcy Code.

26. Pursuant to section 1146 of the Bankruptcy Code, (a) the issuance, transfer, or exchange of any securities, instruments, or documents, (b) the creation of any Lien, mortgage, deed of trust, or other security interest, (c) all sale transactions consummated by the Debtors and approved by this Court on and after the Confirmation Date through and including the Effective Date, including any transfers effectuated under this Plan, (d) any assumption, assignment, or sale by the Debtors of their interests in unexpired leases of nonresidential real property or executory contracts pursuant to section 365(a) of the Bankruptcy Code, and (e) the issuance, renewal, modification, or securing of indebtedness by such means and the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with this Plan, including, without limitation, the Confirmation Order, shall not be subject to any document recording tax, stamp tax, conveyance fee, or other similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, sales tax, use tax, or other similar tax or governmental assessment. Consistent with the foregoing, each recorder of deeds or similar official for any county, city, or Governmental Unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument without requiring the payment of any filing fees, documentary stamp tax, deed stamps, stamp tax, transfer tax, intangible tax, or similar tax.

**J. Claims for Payment of Taxes From Responsible Parties**

27. Section 2.4 of the Plan provides that each holder of an Allowed Priority Tax Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Tax Claim, Cash from the Reorganized Debtors in an amount equal to the Allowed Amount of such Claim; *provided* that Allowed Priority Tax Claims representing liabilities incurred in the ordinary course of business by the Debtors, as Debtors in Possession,

shall be paid by the Debtors or the Reorganized Debtors, as applicable, in the ordinary course of business consistent with past practice and in accordance with the terms and subject to the conditions of any orders or agreements governing, instruments evidencing, or other documents establishing, such liabilities. Such treatment of Allowed Priority Tax Claims is consistent with the requirements of the Bankruptcy Code.

**K. Notice of the Confirmation Hearing and Cure Amounts**

28. Actual written notice of the Confirmation Hearing, and a reasonable opportunity to object or be heard with respect thereto was provided to, among other parties: (a) the Office of the United States Trustee; (b) the Debtors' equity holders; (c) all entities known to have, or to have asserted, any lien, claim, encumbrance, or other property interest in or upon any of the Debtors' assets; (d) all taxing authorities for those jurisdictions in which the Debtors' assets are located; (e) the Internal Revenue Service; (f) all counterparties to the Debtors' unexpired leases and executory contracts; (g) all parties that filed a notice of appearance and request for service of papers in these Chapter 11 Cases; (h) all relevant state and federal environmental authorities; and (i) all known creditors of the Debtors. Such notice was adequate, reasonable, and proper notice of the time and place of the Confirmation Hearing and the opportunity to object and be heard with respect thereto.

29. The Debtors also gave notice of the proposed cure amount (the "Cure Amount") to each non-debtor counterparty to an executory contract or unexpired lease that the Debtors seek to assume under the Plan (collectively, the "Assumed Contracts"). The service of such Cure Notice was good, sufficient, and appropriate under the circumstances and no further notice need be given to any party in respect of establishing a Cure Amount for the respective Assumed Contract. Non-debtor counterparties to the Assumed Contracts have had a sufficient, reasonable, and appropriate opportunity to object to the Cure Amount. The Debtors received objections to

the Cure Amounts for certain non-debtor counterparties to the Assumed Contracts and have either resolved or established a process to resolve all such objections.

30. As further evidenced by the certificates and publication of service previously filed with this Court, proper, timely, adequate, and sufficient notice of the Confirmation Hearing and the assumption of the Assumed Contracts has been provided in accordance with Bankruptcy Rules 2002, 6006, and 9014. *See* Dkt. Nos. 542, 599, 600, 612, 691, and 736. The Debtors also have complied with all obligations to provide notice of the Confirmation Hearing and the assumption of the Assumed Contracts. The foregoing notices were adequate, sufficient, and proper under the circumstances, and no other or further notice of the Confirmation Hearing or the assumption of the Assumed Contracts is required.

31. The disclosures made by the Debtors concerning the Confirmation Hearing and the assumption of the Assumed Contracts were reasonable, complete, and adequate under the circumstances. *See* Disclosure Statement Order at ¶ 2. Such notices also comply with the provisions of the Bankruptcy Rules, the Federal Rules of Civil Procedure, and the Local Rules.

#### **L. Creation of the Litigation Trust**

32. The Adeptus Litigation Trust (the “Litigation Trust”) is approved and all necessary parties are hereby authorized to execute the Litigation Trust Agreement for the Adeptus Litigation Trust in substantially the form set forth in the Plan Supplement (the “Litigation Trust Agreement”). The final form of the Litigation Trust Agreement as attached to these Findings and Conclusions as **Exhibit 1** is hereby approved.

33. The creation of the Litigation Trust is reasonable and appropriate and will: (a) perform the functions and take the actions provided for or permitted by the Plan, the Litigation Trust Agreement and in any other agreement executed by the Litigation Trust Trustee for the Litigation Trust pursuant to the Plan; (b) investigate, prosecute, settle, or abandon the

Litigation Trust Causes of Action assigned to the Litigation Trust under the Plan as Litigation Trust Assets and to distribute the proceeds of any recoveries therefrom in accordance with the terms of the Plan and the Litigation Trust Agreement; (c) object to, prosecute objections to, compromise and settle Disputed Medical Malpractice Claims, Subordinated Claims (including TRA Claims), General Unsecured Claims, and Convenience Class Claims; (d) make distributions to the Litigation Trust Beneficiaries in accordance with the Plan; (e) marshal, liquidate, and distribute the Litigation Trust Assets in an expeditious but orderly manner; and (f) effectuate the 9019 Settlement, including providing the opt-out notice to Eligible Holders. The transactions to be consummated in connection with the transfer of the Litigation Trust Assets as set forth in the Plan are in the best interests of the Debtors, their Estates, and all other parties-in-interest, including all stakeholders, and otherwise satisfies the requirements of the Bankruptcy Code and Bankruptcy Rules, and should be approved.

34. Notwithstanding any other provision of the Plan, the Plan Supplement, any modification to the Plan Supplement, or this Confirmation Order, upon the Effective Date, all Causes of Action against University of Colorado Health, Texas Health Resources, and/or Dignity Health (each, a “Joint Venture Partner”); UCHealth Partners, LLC, FTH DFW Partners LLC, and/or AGH Phoenix LLC (each a “JV”); and their respective members and subsidiaries (together with the Joint Venture Partners and the JVs, collectively, the “JV Parties”), shall vest in the Reorganized Debtors and are expressly excluded from the Litigation Trust Assets and the Litigation Trust Causes of Action; *provided*, that, in the event that any operating agreement of any JV Partner is rejected, modified, or terminated and such rejection, modification, or termination results in a Class 5 Claim, all Causes of Action against the JV Parties relating to such Joint Venture Partner shall vest in the Litigation Trust, without further action from any party or

further order of this Court, and shall be included in the Litigation Trust Assets and the Litigation Trust Causes of Action.

35. Each of the JV Parties acknowledge and agree that it shall not object to the transfer of Causes of Action as set forth in paragraph 34 to the Litigation Trust and that any such transfer shall not create a defense, release, or setoff with respect to such Cause of Action.

36. The Litigation Trust will be administered by an initial trustee approved by this Court (the "Litigation Trust Trustee"). Pursuant to the terms of the Litigation Trust Agreement, Alan Carr of Drivetrain Advisers is appointed as the initial Litigation Trust Trustee.

**M. Releases, Exculpations, and Injunctions**

37. The Plan provides for various releases, exculpations, and injunctions pursuant to Sections 11.5, 11.6, 11.7, 11.8, 11.9, and 11.10, thereof, and such provisions, as modified by the Confirmation Order, are appropriate.

38. The releases, exculpations, and injunctions provided for by the Plan (a) are within the proper jurisdiction and purview of this Court under 28 U.S.C. § 1334; (b) are integral elements of the transactions incorporated into the Plan; (c) confer material benefit on, and are in the best interests of, the Debtors, their Estates, and their creditors; (d) are made in exchange for consideration; (e) are essential to the overall objectives of the Plan and resolve the Claims that are the subject of the releases, exculpations, and injunctions; (f) to the extent they impact claims against certain non-Debtors (such as the Debtors' officers and directors), such claims are channeled to insurance proceeds; and (g) are consistent with sections 105, 524, 1123, 1125, 1129, and 1141 and other applicable provisions of the Bankruptcy Code.

**N. Assumption of the Assumed Contracts**

39. The Debtors have exercised reasonable business judgment in determining whether to assume or reject each of the Debtors' executory contracts and unexpired leases under the

terms of the Plan and the Confirmation Order. The assumption of the Assumed Contracts pursuant to the terms of the Confirmation Order and the Plan is in the best interest of the Debtors and their Estates, creditors, and other parties-in-interest and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

40. Each pre- or post-confirmation assumption or rejection of an executory contract or unexpired lease pursuant to Article IX of the Plan shall be legal, valid, and binding upon the applicable Debtor, and all non-Debtor parties to such executory contract or unexpired lease, as applicable, all to the same extent as if such assumption or rejection had been effectuated pursuant to an appropriate order of this Court entered before the Confirmation Date under section 365 of the Bankruptcy Code. Each of the executory contracts and unexpired leases to be assumed or rejected is deemed to be an executory contract or an unexpired lease, as applicable.

41. As set forth in Article IX of the Plan and the Confirmation Order, the Plan constitutes a motion to assume the Assumed Contracts. Except as otherwise provided in a separate order of this Court, any non-Debtor party to an Assumed Contract was required to object to such assumption or to the Cure Amounts proposed by the Debtors in connection therewith, notice of which this Bankruptcy Court finds was reasonable and appropriate.

42. All executory contracts and unexpired leases not rejected pursuant to the Plan shall be deemed assumed as of the Effective Date. Except as otherwise provided in a separate order of this Court or a stipulation filed of record, the respective Cure Amounts are the sole amounts necessary under sections 365(b)(1)(A) and (B) of the Bankruptcy Code to cure all monetary defaults and pay all actual pecuniary losses under the Assumed Contracts.

43. The Debtors have (a) cured and/or provided adequate assurance of cure of any and all defaults existing prior to the Effective Date under any of the Assumed Contracts, within

the meaning of section 365(b)(1)(A) of the Bankruptcy Code; and (b) provided compensation or adequate assurance of compensation to any party for actual pecuniary loss to such party resulting from a default prior to the Effective Date under any of the Assumed Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code.

44. The Debtors have provided adequate assurance of their future performance under the relevant Assumed Contracts within the meaning of sections 365(b)(1)(C) and 365(b)(3) (to the extent applicable) of the Bankruptcy Code.

45. Upon the entry of the Confirmation Order, (a) all of the requirements of section 365(b) will have been satisfied with respect to each Assumed Contract for which no timely objection was filed; (b) all rights to object to the assumption of any such Assumed Contract will have been waived; (c) except as otherwise provided in a stipulation filed of record or as this Court may hereafter determine is necessary and appropriate to effect the purpose of the Bankruptcy Code, all rights to object to the Cure Amounts with respect to any such Assumed Contracts will have been waived; and (d) the assumption of such Assumed Contracts are hereby approved.

46. Each executory contract or unexpired lease to be rejected pursuant to the Plan is burdensome, and the rejection thereof is in the best interests of the Estates.

47. The TRA is not an executory contract subject to assumption or rejection pursuant to section 365 of the Bankruptcy Code. Upon the Effective Date, the TRA shall be deemed of no further force and effect as a result of the dissolution of PubCo. Because the Deerfield Parties and their affiliates are not direct or indirect successors to PubCo, no TRA Claim shall be enforceable against the Reorganized Debtors or their affiliates.

**O. Bankruptcy Rule 3020(e)**

48. Good cause exists for waiving and eliminating the stay of the Confirmation Order

set forth in Bankruptcy Rule 3020(e). In particular, the Plan represents a fair and equitable compromise by and among the major parties-in-interest in the Chapter 11 Cases and should be consummated as expeditiously as possible. If the stay is not waived and eliminated, the ability of the Debtors to consummate the Plan could be delayed.

**P. Substantive Consolidation of the Debtors' Estates is Appropriate.**

49. Section 5.1 of the Plan provides for the substantive consolidation of the Debtors' Estates.

50. Substantive consolidation under the Plan is appropriate because –

- (a) The Debtors maintained consolidated financial statements.
- (b) All of the Debtors are commonly owned.
- (c) All of the Debtors have guaranteed financing that was provided by the Deerfield Parties.
- (d) Segregating and ascertaining assets and liabilities of the individual Debtors would be difficult.
- (e) Assets and business functions of the Debtors were commingled.
- (f) PubCo is the direct or indirect owner of all of the Debtors.
- (g) The Debtors have common officers and directors.
- (h) All salaries and expenses of all of the Debtors were paid from a consolidated cash management system.
- (i) Creditors did not rely on the Debtors' separate identities but dealt with the Debtors as a single economic unit.

Moreover, creditors of the Debtors dealt with the Debtors as a single economic unit and did not rely on their separate identity when extending credit, and the affairs of the Debtors are so entangled that consolidation benefits all creditors of all of the Estates. This Court reserves the right to enter a separate memorandum of law regarding the substantive consolidation of the

Debtors' Estates, and the findings of fact and conclusions of law set forth in such memorandum of law are incorporated herein.

**Q. The Plan Complies with Section 1129 of the Bankruptcy Code.**

51. The Debtors demonstrated that the Plan satisfies the provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence.

52. As demonstrated by the Record, the Plan complies with all relevant sections of the Bankruptcy Code, the Bankruptcy Rules, and applicable non-bankruptcy law relating to the confirmation of the Plan.

**R. The Plan Complies with Section 1129(a)(1) of the Bankruptcy Code.**

53. The Plan complies with section 1129(a)(1) of the Bankruptcy Code because, as demonstrated below and in the findings contained herein, the Plan complies fully with the requirements of sections 1121, 1122 and 1123 of the Bankruptcy Code, as well as the other applicable provisions of the Bankruptcy Code.

(a) *The Plan Complies with Section 1121 of the Bankruptcy Code.*

54. The Debtors have satisfied section 1121 of the Bankruptcy Code in that the Debtors have standing to file a plan. Furthermore, the Plan reflects the date it was filed with the Court and identifies the entities submitting it as Plan proponents, thereby satisfying Bankruptcy Rule 3016(a).

(b) *The Plan Complies with Section 1122 of the Bankruptcy Code.*

55. The Plan's classification scheme conforms to section 1122 of the Bankruptcy Code, as the Plan separately classifies Claims based on valid business and legal reasons. The Plan's classification scheme is appropriate because it is based on the respective legal rights of each holder of a Claim against or Interest in the Estates and the proposed classifications were not proposed to create a consenting impaired class or to manipulate class voting.

(c) *The Plan Complies with Section 1123 of the Bankruptcy Code.*

56. The Plan complies fully with each requirement of section 1123(a) of the Bankruptcy Code:

- (i) Under section 1123(a)(1), a plan must “designate, subject to section 1122 of this title, classes of claims, other than claims of a kind specified in section 507(a)(1), 507(a)(2), or 507(a)(8) of this title, and classes of interest.” Article III of the Plan designates classes of Claims and Interests that require classification.
- (ii) Under section 1123(a)(2), a plan must “specify any class of claims or interests that is not impaired.” Article III of the Plan specifies which classes of Claims and Interests are not impaired under the Plan.
- (iii) Under section 1123(a)(3), a plan must “specify the treatment of any class of claims or interests that is impaired.” Article III of the Plan specifies which classes of Claims and Interests are impaired, and their treatment, under the Plan.
- (iv) Under section 1123(a)(4), a plan must “provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest.” As reflected in the treatment set forth in Article III of the Plan, the treatment of each of the Claims and Interests in each particular class is the same as the treatment of each of the other Claims or Interests in such class or the holder of a particular claim or interest has agreed to a less favorable treatment of such particular claim or interest.
- (v) Under section 1123(a)(5), a plan must “provide adequate means for the plan’s implementation.” Article V and various other provisions of the Plan provides adequate means for implementation of the Plan.
- (vi) Under section 1123(a)(6), a plan must “provide for the inclusion in the charter of the debtor, if the debtor is a corporation . . . , of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends.” As set forth in the Plan Supplement, the Debtors have satisfied section 1123(a)(6).
- (vii) Under section 1123(a)(7), a plan must “contain only provisions that are consistent with the interests of creditors and equity security holders and

with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee.” The composition of the boards of directors of the Reorganized Debtors have been disclosed in the Plan Supplement, and commencing on the Effective Date, each of the directors of the Reorganized Debtors shall serve pursuant to the terms of the applicable organizational documents of the Reorganized Debtors. The initial Litigation Trust Trustee is identified herein.

- (viii) Under section 1123(a)(8), where a debtor is an individual, a plan must provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan. The Debtors are not individuals. Therefore, the provisions of section 1123(a)(8) of the Bankruptcy Code are inapplicable.

57. As referenced in Section N above, the Plan provides for the assumption of certain of the Debtors’ executory contracts and unexpired leases.

58. The Debtors’ decisions pursuant to the Plan regarding the rejection and assumption of executory contracts and unexpired leases are based on sound business judgment and are necessary to the implementation of the Plan and are in the best interests of the Debtors, their Estates, holders of Claims, and other parties-in-interest in the Debtors’ Chapter 11 Cases. Article IX of the Plan states the means by which all monetary defaults under each executory contract and unexpired lease are to be satisfied pursuant to section 365 of the Bankruptcy Code. All Cure Amounts which may be required by section 365(b)(1) of the Bankruptcy Code under any executory contract or unexpired lease that are assumed under the Plan shall be made by the Debtors. Accordingly, the requirements of sections 1123(b)(2) and 365 of the Bankruptcy Code have been satisfied.

**S. The Plan Complies with Section 1129(a)(2) of the Bankruptcy Code.**

59. Consistent with section 1129(a)(2) of the Bankruptcy Code, the Debtors have complied with the applicable provisions of title 11, including, specifically, sections 1125 and

1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure and solicitation in connection with the Plan, the Disclosure Statement, and all other matters considered by this Court in connection with the Chapter 11 Cases.

60. On August 1, 2017, after due notice and a hearing, this Court entered the Disclosure Statement Order, which, *inter alia*, approved the Disclosure Statement, finding that it contained “adequate information” within the meaning of section 1125 of the Bankruptcy Code and established procedures for the Debtors’ solicitation of votes on the Plan.

61. As evidenced by the Solicitation Notices, in accordance with section 1125 of the Bankruptcy Code and pursuant to the Disclosure Statement Order, the Debtors (through Epiq) solicited acceptances or rejections of the Plan from holders of Claims in each class of impaired Claims that are to receive distributions under the Plan. Classes 1 and 2 of the Plan are unimpaired, and as a result, pursuant to section 1126(f) of the Bankruptcy Code, holders of Claims in those classes are conclusively presumed to have accepted the Plan. Classes 3, 4, 5, 6, 7, 8, and 9 are impaired, entitled to receive distributions under the Plan, and have been solicited to vote on the Plan. The Debtors have complied with the applicable provisions of section 1126 of the Bankruptcy Code.

**T. The Plan Complies with Section 1129(a)(3) of the Bankruptcy Code.**

62. Having examined the totality of the circumstances surrounding the Plan, this Court has determined that the Plan was proposed in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. The Plan achieves the rehabilitative and reorganizational goals of the Bankruptcy Code by restructuring the Debtors’ obligations and providing the means through which the Debtors may continue to operate as a viable enterprise. Attendant to the continued operation of the enterprise is the ability of the

Debtors to preserve jobs and continue business operations. The Plan is the result of arms' length discussions and negotiations among the Debtors, the Deerfield Parties, the Creditors' Committee, the Equity Committee, and other key and relevant stakeholders. Significantly, the Plan incorporates the 9019 Settlement, which resolved significant litigation pending among the parties, as well as related proceedings and potential objections to confirmation of the Plan. The Debtors, the Deerfield Parties, the Creditors' Committee, and the Equity Committee and each of their respective officers, directors, employees, advisors, and professionals (a) acted in good faith in negotiating, formulating, and proposing, where applicable, the Plan and the agreements, compromises, settlements (including the 9019 Settlement), transactions, transfers, and documentation contemplated thereby, and (b) will be acting in good faith in proceeding to (i) consummate and implement the Plan and the agreements, compromises, settlements (including the 9019 Settlement), transactions, transfers, and documentation contemplated thereby, including the Plan Supplement documents, and (ii) take any actions authorized, directed or contemplated herein or in the Plan. The Plan, with its compromises and proposed treatments, clearly promotes the objectives and purposes of the Bankruptcy Code.

**U. The Plan Complies With Section 1129(a)(4) of the Bankruptcy Code.**

63. Section 1129(a)(4) of the Bankruptcy Code requires that certain professional fees and expenses paid by the plan proponent, by a debtor, or by a person issuing securities or acquiring property under a plan, be subject to approval of the court as reasonable. Section 2.2 of the Plan provides that each Professional who holds or asserts a Fee Claim incurred prior to the Effective Date shall be required to file with this Court and serve on all parties required to receive such notice, a request for payment no later than forty-five (45) days after the Effective Date. A Fee Claim that has been properly filed and served pursuant to Section 2.2 of the Plan shall become an Allowed Claim only to the extent allowed by Final Order.

**V. The Plan Complies With Section 1129(a)(5) of the Bankruptcy Code.**

64. Section 1129(a)(5) of the Bankruptcy Code requires that a plan proponent disclose the identity and affiliations of the proposed officers, directors, or voting trustee of the debtors after confirmation of the plan; that the appointment or continuance of such officers, directors, or voting trustee be consistent with the interests of creditors and equity interest holders and with public policy; and that there be disclosure of the identity and compensation of any insiders to be retained or employed by the reorganized debtors. Section 5.8 of the Plan describes the process pursuant to which the members of the new board for the Reorganized Debtors will be determined. The identification of the new board was disclosed herein and in the Plan Supplement. The Plan Supplement discloses the identity and compensation of any insiders to be retained or employed by the Reorganized Debtors. The identification of the proposed officers and directors of the Reorganized Debtors satisfies all requirements of section 1129(a)(5) of the Bankruptcy Code.

**W. The Plan Complies With Section 1129(a)(6) of the Bankruptcy Code.**

65. Section 1129(a)(6) of the Bankruptcy Code requires that any regulatory commission having jurisdiction over the rates charged by the reorganized debtor in the operation of its businesses approve any rate change provided for in the plan. The Plan does not provide for the change of any rate that is within the jurisdiction of any governmental regulatory commission after the occurrence of the Effective Date. Therefore, the provisions of section 1129(a)(6) of the Bankruptcy Code are inapplicable.

**X. The Plan Complies with Section 1129(a)(7) of the Bankruptcy Code.**

66. As set forth fully in the Debtors' liquidation analysis and by the evidence adduced in the Confirmation Hearing, the "best interests" test is satisfied as to all impaired classes of Claims and Interests which have not accepted the Plan. Furthermore, a liquidation under chapter

7 as set forth in the liquidation analysis would profoundly and adversely affect the ultimate proceeds available for distribution to all holders of Allowed Claims in the Chapter 11 Cases. Liquidation under chapter 7 would result in substantially smaller distributions being made to creditors than those provided for under the Plan due to, *inter alia*, (a) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a chapter 7 trustee for bankruptcy and other necessary professional advisors; (b) the anticipated erosion in value of assets in the context of the expeditious liquidation required under chapter 7 and the “forced sale” environment in which such a liquidation would likely occur; (c) the adverse effects of the Debtors’ business as a result of the likely departure of key employees, doctors, and professional staff; (d) the substantial increases in Claims which would have to be satisfied on an administrative or priority basis or on parity with creditors in the Chapter 11 Cases; (e) the reduction of value associated with a chapter 7 trustee’s operation of the Debtors’ businesses; (f) the likelihood of contentious litigation by and between parties-in-interest and the high costs attendant thereto, including the litigation otherwise resolved through the 9019 Settlement; and (g) the substantial delay in distributions to the holders of Claims and Interests that would likely ensue in a chapter 7 liquidation. Finally, consummation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization.

67. In the context of the erosion of the asset values and the increased costs and delay associated with the administration of a chapter 7 case, confirmation of the Plan provides each rejecting creditor and interest holder with a recovery that is not less than such holder would receive in a chapter 7 liquidation of the Debtors, as demonstrated by the liquidation analysis annexed to the Disclosure Statement.

68. Based upon the foregoing, the Plan satisfies the requirements of section

1129(a)(7) of the Bankruptcy Code. Therefore, the “best interests” test is satisfied with respect to Classes 3, 4, 5, 6, 7, 8, and 9.

**Y. The Plan Complies with Sections 1129(a)(8) and (b)(1) of the Bankruptcy Code.**

69. Section 1129(a)(8) is satisfied with respect to the Claims in Classes 1 and 2 as such Claims are not impaired under the Plan and are conclusively presumed to have accepted the Plan in accordance with section 1126(f) of the Bankruptcy Code.

70. Based on the Record and uncontroverted evidence, on a consolidated basis, Classes 3, 5, and 6, which are impaired, accepted the Plan. Although no votes were cast by holders of Class 4 Claims, this Court finds that Class 4 is deemed to have accepted the Plan and is not subject to “cram down” pursuant to section 1129(b) of the Bankruptcy Code.

71. Accordingly, other than Classes 7, 8, and 9 (each of which is subject to the “cram down” provisions of section 1129(b) of the Bankruptcy Code, as discussed below), section 1129(a)(8) of the Bankruptcy Code is satisfied.

**Z. The Plan Complies with Section 1129(a)(9) of the Bankruptcy Code.**

72. Section 1129(a)(9) of the Bankruptcy Code requires that persons holding Claims entitled to priority under section 507(a) of the Bankruptcy Code receive specified cash payments under the Plan.

73. Consistent with section 1129(a)(9)(A), Section 2.1 of the Plan provides that each holder of an Allowed Administrative Expense Claim shall be repaid in full in cash or receive other treatment rendering them unimpaired. Consistent with section 1129(a)(9)(A), Section 2.2 of the Plan provides that all Allowed Fee Claims shall be paid by the Debtors.

74. Consistent with section 1129(a)(9)(C) of the Bankruptcy Code, Section 2.4 of the Plan provides that each holder of an Allowed Priority Tax Claim will be repaid in full in cash or receive other treatment rendering them unimpaired and will be paid in accordance with the terms

set forth in section 1129(a)(9)(C) of the Bankruptcy Code. Based upon the foregoing, the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

**AA. The Plan Complies with Section 1129(a)(10) of the Bankruptcy Code.**

75. For purposes of section 1129(a)(10) of the Bankruptcy Code, the Plan is a single plan for the substantively consolidated basis, and votes to accept or reject the Plan will therefore be considered on a “per plan” basis. The plan has been accepted by numerous impaired classes, including Classes 3, 5, and 6. Thus, for each of the Debtors as substantively consolidated, at least one non-insider class of impaired creditors accepted the Plan.

**BB. The Plan Complies with Section 1129(a)(11) of the Bankruptcy Code.**

76. The Debtors have demonstrated in accordance with section 1129(a)(11) of the Bankruptcy Code that confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of a debtor or any successor to a debtor under a plan, unless such liquidation or reorganization is proposed in the plan. This Court finds that the Plan proposes a reorganization of the Debtors’ assets.

77. This Court finds that the Plan is feasible pursuant to section 1129(a)(11). For purposes of determining whether the Plan satisfies the feasibility standard, the Debtors, their professional advisors, as well as other parties-in-interest, have demonstrated the ability of the Debtors to fulfill their obligations under the Plan. Based on the Record, this Court concludes that the Debtors’ financial projections are reasonable, credible, and made in good faith and that the Debtors will have sufficient means to meet all of their obligations under the Plan, including without limitation, payments of the Cure Amounts and performance under the Assumed Contracts. The Record provides ample support in order to determine that the Reorganized Debtors will emerge from bankruptcy as a viable, financially healthy business enterprise, unlikely to be in need of further financial reorganization.

78. Based on the foregoing, the Plan satisfies the feasibility standard of section 1129(a)(11).

**CC. The Plan Complies with Section 1129(a)(12) of the Bankruptcy Code.**

79. Section 2.1 of the Plan provides that the Debtors or Reorganized Debtors, as applicable, shall be responsible for timely payment of United States Trustee quarterly fees incurred pursuant to 28 U.S.C. §1930(a)(6). Any fees due as of the date of confirmation of the Plan will be paid in full on the Effective Date. After confirmation, the Reorganized Debtors shall pay United States Trustee quarterly fees as they accrue until these Chapter 11 Cases are closed by this Court. The Plan accordingly satisfies section 1129(a)(12) of the Bankruptcy Code. The Reorganized Debtors shall file post-confirmation quarterly operating reports until these Chapter 11 Cases are closed, which shall be prepared in accordance with the guidelines of the United States Trustee.

**DD. The Plan Complies with Section 1129(a)(13) of the Bankruptcy Code.**

80. Section 1129(a)(13) of the Bankruptcy Code requires that a plan continue after its effective date all retiree benefits at the level established pursuant to section 1114(e)(1)(B) or (g) of the Bankruptcy Code, at any time prior to confirmation of the plan, for the duration of the period a debtor has obligated itself to provide such benefits. The Debtors do not have any obligations to pay retiree benefits, and therefore, the Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code.

**EE. The Plan Complies with Sections 1129(a)(14) of the Bankruptcy Code.**

81. Section 1129(a)(14) of the Bankruptcy Code requires if a debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor must have paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition. The Debtors are not individuals;

accordingly, the Plan satisfies the requirements of sections 1129(a)(14) of the Bankruptcy Code.

**FF. The Plan Complies with Sections 1129(a)(15) of the Bankruptcy Code.**

82. Section 1129(a)(15) of the Bankruptcy Code requires that if a debtor is an individual, and the holder of an allowed unsecured claim has objected to confirmation of the plan, the property to be distributed to the holder must be not less than the value required by section 1129(a)(15). The Debtors are not individuals; accordingly, the Plan satisfies the requirements of sections 1129(a)(15) of the Bankruptcy Code.

**GG. The Plan Complies with Section 1129(a)(16) of the Bankruptcy Code.**

83. Section 1129(a)(16) of the Bankruptcy Code requires that all transfers of property of a plan shall be made in accordance with any applicable provisions of non-bankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust. The Plan does not provide for any property transfers by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; accordingly, the Plan satisfies the requirements of section 1129(a)(16) of the Bankruptcy Code.

**HH. The Plan Complies with Section 1129(b) of the Bankruptcy Code.**

84. Certain classes of Claims and Interests did not vote to accept the Plan. Classes 7, 8, and 9 (collectively, the “Cram Down Classes”) voted to reject the Plan, and accordingly, such Classes of Claims and Interests are subject to “cram down” pursuant to section 1129(b).

85. Section 1129(b) of the Bankruptcy Code provides that if all applicable requirements of section 1129(a) are met, save for section 1129(a)(8), a Plan may be confirmed so long as it does not discriminate unfairly and it is fair and equitable with respect to each class of claims and equity interests that is impaired and has not accepted the Plan.

86. This Court finds, as set forth below, that the Plan does not “discriminate unfairly” and is “fair and equitable” with respect to the Cram Down Classes. Accordingly, the Debtors have satisfied the “cram down” requirements in section 1129(b) of the Bankruptcy Code.

**(1) The Plan Is Fair And Equitable With Respect To The Cram Down Classes.**

87. Sections 1129(b)(2)(B)(ii) and 1129(b)(2)(C)(ii) provide that a plan is fair and equitable with respect to a class of impaired unsecured claims or equity interests that has not voted to accept the plan if the plan provides that the holder of any claim or interest that is junior to the claims or equity interests of such class will not receive or retain under the plan on account of such junior claim or interest any property.<sup>4</sup>

88. The Plan satisfies the absolute priority rule with respect to each of the Cram Down Classes pursuant to section 1129(b)(2)(B)(ii) and (C)(ii) of the Bankruptcy Code. No holder of a Claim or Interest that is junior to any of the Cram Down Classes will receive any distribution on account of such junior Claim or Interest until the Claims or Interests in such Cram Down Classes are satisfied in full. Further, no holder of a Claim or Interest that is senior to any Claim or Interest in a Cram Down Class will receive more than one hundred percent (100%) payment for its Claim or Interest. The Plan provides that holders of Allowed Priority Non-Tax Claims in Class 1 will be paid in full in Cash. The Plan provides that holders of Allowed Other Secured Claims in Class 2 will have their legal, equitable, and contractual rights Reinstated. The Plan provides that holders of Allowed Deerfield Secured Claims in Class 3 will receive distributions equal to the full amount of their Claims. Finally, holders of unsecured Claims and holders of Interests shall receive distributions in accordance with the priorities set forth in the

---

<sup>4</sup> Section 1129(b)(2)(A), which sets forth the absolute priority rule as to secured claims, is not applicable here because (a) Claims in Class 2 are not impaired under the Plan and thus deemed to accept the Plan and (b) Class 3 voted to accept the Plan.

Bankruptcy Code. Accordingly, the “cram down” of the Cram Down Classes is appropriate under section 1129(b)(2)(B)(ii) of the Bankruptcy Code.

89. The 9019 Settlement Consideration payable by the Deerfield Parties to Electing Holders does not implicate the “fair and equitable” test of section 1129(b). Specifically, Electing Holders are not receiving their Pro Rata share of the 9019 Settlement Consideration on account of their Existing Common Equity Interests. Instead, Electing Holders are receiving their Pro Rata share of the 9019 Settlement Consideration because the Deerfield Parties are entering into a direct settlement with the Electing Holders pursuant to which the Electing Holders will receive the 9019 Settlement Consideration in exchange for a direct release of claims against the Released Parties.

90. The Plan also satisfies the absolute priority rule with respect to Interests in Classes 8 and 9 pursuant to section 1129(b)(2)(C)(ii) of the Bankruptcy Code. Holders of Claims are not receiving more than 100% of their Allowed Claims. Because Classes 8 and 9 represent the lowest priority of any interests in the Debtors, there are no holders of any interests that are junior to the interests of Classes 8 and 9 that are receiving or retaining anything under the Plan. Additionally, Class 8 Existing Preferred Equity Interests are entitled to priority over Class 9 Existing Common Interests, and therefore, requiring holders of Class 8 Interests to be paid in full before holders of Class 9 Interests receive any distributions is appropriate.

91. Therefore, the Plan satisfies the requirements of sections 1129(b)(2)(B) and 1129(b)(2)(C) for all Classes of Claims and Interests that did not vote to accept the Plan and is thus fair and equitable with respect to those Classes.

**(2) The Plan Does Not Unfairly Discriminate With Respect To The Cram Down Classes.**

92. The Plan also does not discriminate unfairly with respect to the Cram Down

Classes.

93. The Plan's treatment of the Cram Down Classes is not unfairly discriminatory, for similarly situated holders of Claims or Interests will receive substantially similar treatment irrespective of Class.

94. The creation of the Class 6 Convenience Class is reasonable and necessary for administrative convenience because it reduces the number and amount of Claims in Class 5, and separate review of electing Claims would consume the Debtors' resources with very little benefit. Any instances of differing treatment under the Plan in regards to the Convenience Claim treatment in Class 6 are justified and permitted under section 1122(b) of the Bankruptcy Code and applicable law and do not unfairly discriminate against unsecured Claims in Class 5.

95. Thus, this Court finds that the Plan does not unfairly discriminate with respect to the Cram Down Classes, and the "cram down" test is satisfied.

## **II. The Plan Complies with Section 1125(e) of the Bankruptcy Code.**

96. Based on the Record in these Chapter 11 Cases, the Debtors and each of their respective current or former officers, directors, members, employees, agents, representatives, advisors, and attorneys have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances to the Plan.

97. To the extent that there is a conflict between the terms and conditions of the Confirmation Order and the Findings and Conclusions, the terms and conditions of the Confirmation Order shall govern.

### **SUMMARY**

98. The Plan meets the requirements of chapter 11 of the Bankruptcy Code and

should be confirmed. An order consistent with these Findings and Conclusions will be entered.

### END OF ORDER ###

Submitted by:

Louis R. Strubeck, Jr. (SBT 19425600)

John N. Schwartz (SBT 00797397)

Liz Boydston (SBT 24053684)

Norton Rose Fulbright US LLP

2200 Ross Avenue, Suite 3600

Dallas, Texas 75201-7932

Telephone: (214) 855-8000

Facsimile: (214) 855-8200

[louis.strubeck@nortonrosefulbright.com](mailto:louis.strubeck@nortonrosefulbright.com)

[john.schwartz@nortonrosefulbright.com](mailto:john.schwartz@nortonrosefulbright.com)

[liz.boydston@nortonrosefulbright.com](mailto:liz.boydston@nortonrosefulbright.com)

*Bankruptcy Counsel to the Debtors and  
Debtors in Possession*

**Appendix**  
(Sorted Alphabetically)

#	Debtor Name	Case No.	EIN
1.	Adeptus Health Colorado Holdings LLC	17-31448	30-0857912
2.	Adeptus Health Inc.	17-31434	46-5037387
3.	Adeptus Health LLC	17-31435	32-0432716
4.	Adeptus Health Management LLC	17-31455	32-0448472
5.	Adeptus Health Phoenix Holdings LLC	17-31461	35-2487075
6.	Adeptus Health Ventures LLC	17-31466	36-4802997
7.	ADPT Columbus Holdings LLC	17-31471	36-4835265
8.	ADPT DFW Holdings LLC	17-31432	30-0857947
9.	ADPT Houston Holdings LLC	17-31479	30-0857977
10.	ADPT New Orleans Holdings LLC	17-31486	32-0479313
11.	ADPT New Orleans Management LLC	17-31493	Pending
12.	ADPT-AZ MPT Holdings LLC	17-31497	61-1772047
13.	ADPT-AZ RE Holdings LLC	17-31502	47-5241979
14.	ADPT-CO MPT Holdings LLC	17-31508	47-3512571
15.	ADPT-CO RE Holdings LLC	17-31512	47-3565144
16.	ADPT-Columbus MPT Holdings LLC	17-31519	Pending
17.	ADPT-Columbus RE Holdings LLC	17-31523	Pending
18.	ADPT-DFW MPT Holdings LLC	17-31527	81-0772445
19.	ADPT-DFW RE Holdings LLC	17-31532	81-0785981
20.	ADPT-Houston MPT Holdings LLC	17-31533	30-0914017
21.	ADPT-Houston RE Holdings LLC	17-31536	61-1781468
22.	ADPT-LA MPT Holdings LLC	17-31542	81-0752643
23.	ADPT-LA RE Holdings LLC	17-31545	81-0758384
24.	AJNH Medical Center LLC	17-31548	36-4729524
25.	Alamo Heights SA Medical Center LLC	17-31553	35-2547715
26.	Algiers Medical Center LLC	17-31556	32-0455775
27.	Alvin Medical Center LLC	17-31561	90-1008817
28.	Anthem Medical Center LLC	17-31564	37-1740119
29.	Antoine Medical Center LLC	17-31440	35-2537322
30.	Arizona General ER LLC	17-31444	90-1025598
31.	Atascocita 1960 Medical Center LLC	17-31449	36-4780687
32.	Austin Brodie Medical Center LLC	17-31454	61-1713294
33.	Baytown Medical Center LLC	17-31456	30-0840445
34.	Bella Terra Medical Center LLC	17-31459	80-0957867
35.	Bender's Landing Medical Center LLC	17-31468	37-1752156
36.	Blacklick Woods Medical Center LLC	17-31475	30-0805532
37.	Briar Forest-Eldridge Medical Center LLC	17-31482	35-2481862
38.	Broad Wagoner Medical Center LLC	17-31488	35-2492252
39.	Brushy Creek Medical Center LLC	17-31494	38-3923792
40.	Camelback 83rd Medical Center LLC	17-31498	38-3945993
41.	Cedar Park Lakeline Medical Center LLC	17-31505	35-2493773
42.	Centennial Medical Center LLC	17-31509	32-0436930
43.	Center Street DP Medical Center LLC	17-31516	35-2453223
44.	Chandler Germann Medical Center LLC	17-31521	80-0938469
45.	Chandler Heights Medical Center LLC	17-31525	32-0456525

#	Debtor Name	Case No.	EIN
46.	Cinco Ranch Medical Center LLC	17-31529	61-1744313
47.	Colonial Lakes Medical Center LLC	17-31535	90-1004044
48.	Colorado General Hospital LLC	17-31539	35-2506314
49.	Conroe Medical Center LLC	17-31544	37-1743660
50.	Converse Medical Center LLC	17-31551	30-0820305
51.	Copperwood Medical Center LLC	17-31554	84-1697403
52.	Creekside Forest Medical Center LLC	17-31557	36-4781064
53.	Culebra-Tezel Medical Center LLC	17-31559	90-1020838
54.	De Zavala Medical Center LLC	17-31560	30-0879734
55.	Dublin Medical Center LLC	17-31563	80-0965351
56.	Eagles Nest Medical Center LLC	17-31565	04-3847518
57.	East Mesa Medical Center LLC	17-31437	90-1033851
58.	East Pflugerville Medical Center LLC	17-31439	90-1023315
59.	East Riverside Medical Center LLC	17-31442	38-3973259
60.	ECC Management, LLC	17-31443	16-1711879
61.	FCER Management, LLC	17-31447	11-3798239
62.	First Choice ER, LLC	17-31436	27-5348156
63.	First Texas Hospital Cy-Fair LLC	17-31451	47-3480091
64.	Four Points Medical Center LLC	17-31464	38-3938637
65.	Friendswood Medical Center LLC	17-31469	38-3916132
66.	FTH Houston Partners LLC	17-31474	47-3466871
67.	Garland Centerville Medical Center LLC	17-31477	35-2537960
68.	Gilbert Medical Center LLC	17-31481	80-0940827
69.	Gleannloch Farms Medical Center LLC	17-31485	35-2481256
70.	Glendale Medical Center LLC	17-31489	90-1012820
71.	Goodyear Medical Center LLC	17-31490	90-1007336
72.	Greenville Stacy Medical Center LLC	17-31492	38-3926926
73.	Guadalupe River Medical Center LLC	17-31496	35-2514826
74.	Hampden Tower Medical Center LLC	17-31499	38-3928757
75.	Helotes Medical Center LLC	17-31501	36-4782313
76.	Hilliard Medical Center LLC	17-31504	35-2491198
77.	Houston 9520 Jones Medical Center LLC	17-31507	32-0432459
78.	Houston FM 1960 Medical Center LLC	17-31511	37-1783329
79.	Katy ER Center LLC	17-31514	45-2583773
80.	Keller Medical Center LLC	17-31517	61-1736669
81.	Kingwood Medical Center LLC	17-31520	80-0684495
82.	Kuykendahl Medical Center LLC	17-31524	34-2028269
83.	La Porte Medical Center LLC	17-31526	80-0927953
84.	Lakewood Forest Medical Center LLC	17-31530	90-1013791
85.	League City Medical Center LLC	17-31438	36-4766358
86.	Legacy Trails Medical Center LLC	17-31441	61-1744649
87.	Lewis Center Medical Center LLC	17-31445	32-0431791
88.	Litchfield Park Medical Center LLC	17-31446	36-4801379
89.	Louetta Medical Center LLC	17-31450	74-3178584
90.	Marrero Medical Center LLC	17-31453	61-1753468
91.	Meadowbrook Heights Medical Center LLC	17-31457	32-0448039
92.	Medical Center of Crosby Lynchburg LLC	17-31458	38-3922039
93.	Medical Center of Spring Rayford Richards LLC	17-31462	37-1747613

#	Debtor Name	Case No.	EIN
94.	Mesa Tierra Medical Center LLC	17-31465	35-2523890
95.	Midlothian Medical Center LLC	17-31470	30-0802928
96.	Mountain Park Ranch Medical Center LLC	17-31473	38-3939092
97.	National Medical Professionals of Arizona LLC	17-31478	37-1757007
98.	National Medical Professionals of Ohio LLC	17-31483	30-0829176
99.	New Orleans East Medical Center LLC	17-31510	61-1753435
100.	Northwest Harris County Medical Center LLC	17-31538	36-4781722
101.	Ohio General ER LLC	17-31540	38-3918055
102.	Ohio General Hospital LLC	17-31547	80-0956267
103.	OpFree Licensing LP	17-31549	01-0831027
104.	OpFree RE Investments, Ltd.	17-31558	06-1740727
105.	OpFree, LLC	17-31562	34-2028263
106.	Pearland 518 Medical Center LLC	17-31566	90-1025398
107.	Pearland Parkway Medical Center LLC	17-31567	51-0576704
108.	Pearland Sunrise Medical Center LLC	17-31568	90-1001726
109.	Pflugerville Medical Center LLC	17-31569	45-2552050
110.	Potranco Medical Center LLC	17-31570	80-0966887
111.	Provinces Medical Center LLC	17-31571	80-0967881
112.	Queen Creek Medical Center LLC	17-31572	32-0457346
113.	Rosenberg Medical Center LLC	17-31452	80-0964882
114.	Roy Richard Medical Center LLC	17-31460	35-2491802
115.	San Antonio Nacogdoches Medical Center LLC	17-31463	80-0937326
116.	San Tan Valley Medical Center LLC	17-31467	36-4801184
117.	Seguin Foster Medical Center LLC	17-31472	35-2532650
118.	Sienna Plantation Medical Center LLC	17-31476	90-1009094
119.	South Bend Medical Center LLC	17-31480	61-1770288
120.	South Carrier Medical Center LLC	17-31484	32-0429602
121.	South Green Oaks Medical Center LLC	17-31487	90-1012518
122.	Spanish Oaks Medical Center LLC	17-31491	90-1012951
123.	Spring 2920 Medical Center LLC	17-31495	36-4776092
124.	Spring Green Medical Center LLC	17-31500	Pending
125.	SSH Medical Center LLC	17-31503	77-0666943
126.	Sterling Ridge Medical Center II LLC	17-31506	32-0439505
127.	Sterling Ridge Medical Center LLC	17-31513	16-1711883
128.	Summerwood Medical Center LLC	17-31515	30-0802964
129.	Surprise Medical Center LLC	17-31518	90-1012038
130.	SW Chandler Medical Center LLC	17-31522	90-1032288
131.	Sycamore School Medical Center LLC	17-31528	35-2494277
132.	Tempe McClintock Baseline Medical Center LLC	17-31531	38-3923748
133.	Tempe Rural-Baseline Medical Center LLC	17-31534	30-0852296
134.	Texas Regional Hospital LLC	17-31537	37-1753820
135.	Victory Lakes Medical Center LLC	17-31541	37-1751372
136.	Wadsworth-Belleview Medical Center LLC	17-31543	35-2486458
137.	Waterside Medical Center LLC	17-31546	36-4767886
138.	White Settlement Medical Center LLC	17-31550	38-3970573
139.	Wilderness-Hardy Oak Medical Center LLC	17-31552	80-0954867
140.	William Cannon Medical Center LLC	17-31555	35-2493839

(Sorted Numerically By Case Number)

#	Debtor Name	Case No.	EIN
1.	ADPT DFW Holdings LLC	17-31432	30-0857947
2.	Adeptus Health Inc.	17-31434	46-5037387
3.	Adeptus Health LLC	17-31435	32-0432716
4.	First Choice ER, LLC	17-31436	27-5348156
5.	East Mesa Medical Center LLC	17-31437	90-1033851
6.	League City Medical Center LLC	17-31438	36-4766358
7.	East Pflugerville Medical Center LLC	17-31439	90-1023315
8.	Antoine Medical Center LLC	17-31440	35-2537322
9.	Legacy Trails Medical Center LLC	17-31441	61-1744649
10.	East Riverside Medical Center LLC	17-31442	38-3973259
11.	ECC Management, LLC	17-31443	16-1711879
12.	Arizona General ER LLC	17-31444	90-1025598
13.	Lewis Center Medical Center LLC	17-31445	32-0431791
14.	Litchfield Park Medical Center LLC	17-31446	36-4801379
15.	FCER Management, LLC	17-31447	11-3798239
16.	Adeptus Health Colorado Holdings LLC	17-31448	30-0857912
17.	Atascocita 1960 Medical Center LLC	17-31449	36-4780687
18.	Louetta Medical Center LLC	17-31450	74-3178584
19.	First Texas Hospital Cy-Fair LLC	17-31451	47-3480091
20.	Rosenberg Medical Center LLC	17-31452	80-0964882
21.	Marrero Medical Center LLC	17-31453	61-1753468
22.	Austin Brodie Medical Center LLC	17-31454	61-1713294
23.	Adeptus Health Management LLC	17-31455	32-0448472
24.	Baytown Medical Center LLC	17-31456	30-0840445
25.	Meadowbrook Heights Medical Center LLC	17-31457	32-0448039
26.	Medical Center of Crosby Lynchburg LLC	17-31458	38-3922039
27.	Bella Terra Medical Center LLC	17-31459	80-0957867
28.	Roy Richard Medical Center LLC	17-31460	35-2491802
29.	Adeptus Health Phoenix Holdings LLC	17-31461	35-2487075
30.	Medical Center of Spring Rayford Richards LLC	17-31462	37-1747613
31.	San Antonio Nacogdoches Medical Center LLC	17-31463	80-0937326
32.	Four Points Medical Center LLC	17-31464	38-3938637
33.	Mesa Tierra Medical Center LLC	17-31465	35-2523890
34.	Adeptus Health Ventures LLC	17-31466	36-4802997
35.	San Tan Valley Medical Center LLC	17-31467	36-4801184
36.	Bender's Landing Medical Center LLC	17-31468	37-1752156
37.	Friendswood Medical Center LLC	17-31469	38-3916132
38.	Midlothian Medical Center LLC	17-31470	30-0802928
39.	ADPT Columbus Holdings LLC	17-31471	36-4835265
40.	Seguin Foster Medical Center LLC	17-31472	35-2532650
41.	Mountain Park Ranch Medical Center LLC	17-31473	38-3939092
42.	FTH Houston Partners LLC	17-31474	47-3466871
43.	Blacklick Woods Medical Center LLC	17-31475	30-0805532
44.	Sienna Plantation Medical Center LLC	17-31476	90-1009094
45.	Garland Centerville Medical Center LLC	17-31477	35-2537960

#	Debtor Name	Case No.	EIN
46.	National Medical Professionals of Arizona LLC	17-31478	37-1757007
47.	ADPT Houston Holdings LLC	17-31479	30-0857977
48.	South Bend Medical Center LLC	17-31480	61-1770288
49.	Gilbert Medical Center LLC	17-31481	80-0940827
50.	Briar Forest-Eldridge Medical Center LLC	17-31482	35-2481862
51.	National Medical Professionals of Ohio LLC	17-31483	30-0829176
52.	South Carrier Medical Center LLC	17-31484	32-0429602
53.	Gleannloch Farms Medical Center LLC	17-31485	35-2481256
54.	ADPT New Orleans Holdings LLC	17-31486	32-0479313
55.	South Green Oaks Medical Center LLC	17-31487	90-1012518
56.	Broad Wagoner Medical Center LLC	17-31488	35-2492252
57.	Glendale Medical Center LLC	17-31489	90-1012820
58.	Goodyear Medical Center LLC	17-31490	90-1007336
59.	Spanish Oaks Medical Center LLC	17-31491	90-1012951
60.	Greenville Stacy Medical Center LLC	17-31492	38-3926926
61.	ADPT New Orleans Management LLC	17-31493	Pending
62.	Brushy Creek Medical Center LLC	17-31494	38-3923792
63.	Spring 2920 Medical Center LLC	17-31495	36-4776092
64.	Guadalupe River Medical Center LLC	17-31496	35-2514826
65.	ADPT-AZ MPT Holdings LLC	17-31497	61-1772047
66.	Camelback 83rd Medical Center LLC	17-31498	38-3945993
67.	Hampden Tower Medical Center LLC	17-31499	38-3928757
68.	Spring Green Medical Center LLC	17-31500	Pending
69.	Helotes Medical Center LLC	17-31501	36-4782313
70.	ADPT-AZ RE Holdings LLC	17-31502	47-5241979
71.	SSH Medical Center LLC	17-31503	77-0666943
72.	Hilliard Medical Center LLC	17-31504	35-2491198
73.	Cedar Park Lakeline Medical Center LLC	17-31505	35-2493773
74.	Sterling Ridge Medical Center II LLC	17-31506	32-0439505
75.	Houston 9520 Jones Medical Center LLC	17-31507	32-0432459
76.	ADPT-CO MPT Holdings LLC	17-31508	47-3512571
77.	Centennial Medical Center LLC	17-31509	32-0436930
78.	New Orleans East Medical Center LLC	17-31510	61-1753435
79.	Houston FM 1960 Medical Center LLC	17-31511	37-1783329
80.	ADPT-CO RE Holdings LLC	17-31512	47-3565144
81.	Sterling Ridge Medical Center LLC	17-31513	16-1711883
82.	Katy ER Center LLC	17-31514	45-2583773
83.	Summerwood Medical Center LLC	17-31515	30-0802964
84.	Center Street DP Medical Center LLC	17-31516	35-2453223
85.	Keller Medical Center LLC	17-31517	61-1736669
86.	Surprise Medical Center LLC	17-31518	90-1012038
87.	ADPT-Columbus MPT Holdings LLC	17-31519	Pending
88.	Kingwood Medical Center LLC	17-31520	80-0684495
89.	Chandler Germann Medical Center LLC	17-31521	80-0938469
90.	SW Chandler Medical Center LLC	17-31522	90-1032288
91.	ADPT-Columbus RE Holdings LLC	17-31523	Pending
92.	Kuykendahl Medical Center LLC	17-31524	34-2028269
93.	Chandler Heights Medical Center LLC	17-31525	32-0456525

#	Debtor Name	Case No.	EIN
94.	La Porte Medical Center LLC	17-31526	80-0927953
95.	ADPT-DFW MPT Holdings LLC	17-31527	81-0772445
96.	Sycamore School Medical Center LLC	17-31528	35-2494277
97.	Cinco Ranch Medical Center LLC	17-31529	61-1744313
98.	Lakewood Forest Medical Center LLC	17-31530	90-1013791
99.	Tempe McClintock Baseline Medical Center LLC	17-31531	38-3923748
100.	ADPT-DFW RE Holdings LLC	17-31532	81-0785981
101.	ADPT-Houston MPT Holdings LLC	17-31533	30-0914017
102.	Tempe Rural-Baseline Medical Center LLC	17-31534	30-0852296
103.	Colonial Lakes Medical Center LLC	17-31535	90-1004044
104.	ADPT-Houston RE Holdings LLC	17-31536	61-1781468
105.	Texas Regional Hospital LLC	17-31537	37-1753820
106.	Northwest Harris County Medical Center LLC	17-31538	36-4781722
107.	Colorado General Hospital LLC	17-31539	35-2506314
108.	Ohio General ER LLC	17-31540	38-3918055
109.	Victory Lakes Medical Center LLC	17-31541	37-1751372
110.	ADPT-LA MPT Holdings LLC	17-31542	81-0752643
111.	Wadsworth-Belleview Medical Center LLC	17-31543	35-2486458
112.	Conroe Medical Center LLC	17-31544	37-1743660
113.	ADPT-LA RE Holdings LLC	17-31545	81-0758384
114.	Waterside Medical Center LLC	17-31546	36-4767886
115.	Ohio General Hospital LLC	17-31547	80-0956267
116.	AJNH Medical Center LLC	17-31548	36-4729524
117.	OpFree Licensing LP	17-31549	01-0831027
118.	White Settlement Medical Center LLC	17-31550	38-3970573
119.	Converse Medical Center LLC	17-31551	30-0820305
120.	Wilderness-Hardy Oak Medical Center LLC	17-31552	80-0954867
121.	Alamo Heights SA Medical Center LLC	17-31553	35-2547715
122.	Copperwood Medical Center LLC	17-31554	84-1697403
123.	William Cannon Medical Center LLC	17-31555	35-2493839
124.	Algiers Medical Center LLC	17-31556	32-0455775
125.	Creeside Forest Medical Center LLC	17-31557	36-4781064
126.	OpFree RE Investments, Ltd.	17-31558	06-1740727
127.	Culebra-Tezel Medical Center LLC	17-31559	90-1020838
128.	De Zavala Medical Center LLC	17-31560	30-0879734
129.	Alvin Medical Center LLC	17-31561	90-1008817
130.	OpFree, LLC	17-31562	34-2028263
131.	Dublin Medical Center LLC	17-31563	80-0965351
132.	Anthem Medical Center LLC	17-31564	37-1740119
133.	Eagles Nest Medical Center LLC	17-31565	04-3847518
134.	Pearland 518 Medical Center LLC	17-31566	90-1025398
135.	Pearland Parkway Medical Center LLC	17-31567	51-0576704
136.	Pearland Sunrise Medical Center LLC	17-31568	90-1001726
137.	Pflugerville Medical Center LLC	17-31569	45-2552050
138.	Potranco Medical Center LLC	17-31570	80-0966887
139.	Provinces Medical Center LLC	17-31571	80-0967881
140.	Queen Creek Medical Center LLC	17-31572	32-0457346

**LITIGATION TRUST AGREEMENT  
FOR THE ADEPTUS LITIGATION TRUST**

DATED: September 29, 2017

**TABLE OF CONTENTS**

	<b>Page</b>
<b>ARTICLE 1 DEFINITIONS .....</b>	<b>2</b>
<b>1.1 Terms Used in the Plan .....</b>	<b>2</b>
<b>1.2 General Construction .....</b>	<b>2</b>
<b>ARTICLE 2 THE LITIGATION TRUST .....</b>	<b>2</b>
<b>2.1 Creation and Name .....</b>	<b>2</b>
<b>2.2 Objectives, Purposes and Structure of the Litigation Trust .....</b>	<b>2</b>
<b>2.3 Grant and Acceptance .....</b>	<b>3</b>
<b>2.3.1 Grant of the Litigation Trust Assets .....</b>	<b>3</b>
<b>2.3.2 Acceptance by Litigation Trustee.....</b>	<b>4</b>
<b>2.4 Further Assurances.....</b>	<b>4</b>
<b>2.5 Nature of Litigation Trust Assets .....</b>	<b>4</b>
<b>2.6 Incidents of Ownership .....</b>	<b>4</b>
<b>2.7 Funding of Litigation Trust .....</b>	<b>4</b>
<b>2.8 Payment of Litigation Trust Operating Expenses .....</b>	<b>4</b>
<b>ARTICLE 3 THE LITIGATION TRUSTEE.....</b>	<b>5</b>
<b>3.1 Number .....</b>	<b>5</b>
<b>3.2 Action by the Litigation Trustee.....</b>	<b>5</b>
<b>3.3 Binding Nature of the Litigation Trustee’s Action. ....</b>	<b>5</b>
<b>3.4 Term of Service .....</b>	<b>5</b>
<b>3.5 Resignation .....</b>	<b>5</b>
<b>3.6 Removal .....</b>	<b>5</b>
<b>3.7 Appointment of Successor Litigation Trustee .....</b>	<b>5</b>
<b>3.7.1 Appointment of Successor Litigation Trustee.....</b>	<b>5</b>
<b>3.7.2 Vesting of Rights in Successor Litigation Trustee .....</b>	<b>5</b>
<b>3.8 Continuance of Litigation Trust .....</b>	<b>6</b>
<b>3.9 Compensation.....</b>	<b>6</b>
<b>3.10 Standard of Care; Indemnification; Exculpation .....</b>	<b>6</b>
<b>3.11 No Liability for Acts of Successor/Predecessor Litigation Trustees .....</b>	<b>7</b>
<b>3.12 Reliance by the Litigation Trustee .....</b>	<b>7</b>
<b>3.13 Reliance by Persons Dealing With the Litigation Trust.....</b>	<b>8</b>
<b>3.14 Discharge of the Litigation Trustee.....</b>	<b>8</b>
<b>3.14.1 Statement of Discharge.....</b>	<b>8</b>

3.14.2 Approval of Statement of Discharge ..... 8

3.14.3 Costs Relating to Statement of Discharge..... 8

3.14.4 Continuance of Litigation Trust for Winding Up..... 8

3.15 Confidentiality..... 9

3.16 Litigation Trust Oversight Board. .... 9

**ARTICLE 4 POWERS OF THE LITIGATION TRUSTEE..... 10**

4.1 Title ..... 10

4.2 Management Power ..... 10

    4.2.1 Guidance from Court ..... 15

    4.2.2 Additional Powers..... 15

4.3 Commingling of Litigation Trust Assets..... 15

4.4 Employment and Compensation of Professionals..... 16

4.5 Dispute Resolution ..... 16

**ARTICLE 5 OBLIGATIONS OF THE LITIGATION TRUSTEE..... 16**

5.1 Reports and Records ..... 16

    5.1.1 Litigation Trust Oversight Board Reports..... 16

    5.1.2 Records ..... 16

5.2 Eligible Investments..... 17

5.3 Litigation Trust Beneficiary Reports ..... 17

5.4 United States Trustee Fees ..... 17

5.5 Litigation Trust Account..... 17

**ARTICLE 6 LITIGATION TRUST INTERESTS ..... 18**

6.1 Allocation of Litigation Trust Interests ..... 18

6.2 Delivery of Books and Records from Debtors..... 18

6.3 Register Entries Regarding Litigation Trust Interests..... 18

6.4 Allocation of Litigation Trust Interests to Holders of Disputed Claims..... 19

6.5 Representation of Litigation Trust Interest..... 19

6.6 Litigation Trust Register and Litigation Trust Registrar ..... 19

    6.6.1 Appointment of Litigation Trust Registrar ..... 20

    6.6.2 Register of Litigation Trust Interests..... 20

    6.6.3 Access to Litigation Trust Register by Litigation Trust Beneficiaries ..... 20

    6.6.4 Absolute Owners; Interests Beneficial Only..... 20

    6.6.5 References to Litigation Trust Beneficiaries ..... 20

6.7 Litigation Trust Interests Non-Transferable..... 20

6.8 Exemption From Registration ..... 20

6.9 Exchange Act..... 21

**ARTICLE 7 ADMINISTRATION OF THE LITIGATION TRUST ESTATE ..... 21**

7.1 Establishment of Litigation Trust Available Cash..... 21

7.2 Establishment of Litigation Trust Operating Reserve and Related Matters ..... 21

    7.2.1 Litigation Trust Operating Reserve ..... 21

    7.2.2 Disputed Claims Reserve for Litigation Trust Beneficiaries ..... 21

7.3 Prosecution and Resolution of Causes of Action..... 22

    7.3.1 The Litigation Trust’s Authority to Pursue, Settle, or Abandon Causes of Action..... 22

    7.3.2 Settlement of Causes of Action ..... 22

7.4 Distributions to Holders of Litigation Trust Interests..... 22

    7.4.1 Distributions Generally ..... 22

    7.4.2 Distributions to Litigation Trust Beneficiaries ..... 22

    7.4.3 Distributions to Holders of Reserved Litigation Trust Interests..... 22

    7.4.4 Right to Setoff ..... 22

7.5 Place and Manner of Payments or Distributions ..... 23

7.6 De Minimis Payments; Fractional Dollars..... 23

7.7 Unclaimed or Undeliverable Distributions ..... 23

7.8 No Distribution in Excess of Allowed Amount of Claim ..... 23

**ARTICLE 8 TAX MATTERS ..... 24**

8.1 Tax Treatment..... 24

8.2 Tax Treatment of Disputed Claims Reserve..... 24

8.3 Tax Returns and Statements..... 24

8.4 Payment of Taxes ..... 24

8.5 Allocations of Litigation Trust Taxable Income ..... 25

8.6 Withholding..... 25

8.7 Valuation..... 25

8.8 Expedited Determination of Taxes ..... 26

**ARTICLE 9 TERMINATION..... 26**

**ARTICLE 10 MISCELLANEOUS ..... 27**

10.1 Notices ..... 27

10.2 Amendment ..... 28

10.3 No Waiver ..... 28

10.4 Counterparts ..... 29

<b>10.5</b>	<b>Governing Law; Severability .....</b>	<b>29</b>
<b>10.6</b>	<b>Headings .....</b>	<b>29</b>
<b>10.7</b>	<b>Relationship to Plan.....</b>	<b>29</b>
<b>10.8</b>	<b>Consent to Jurisdiction.....</b>	<b>29</b>
<b>10.9</b>	<b>Waiver of Jury Trial.....</b>	<b>29</b>
<b>10.10</b>	<b>References to Reorganized Debtors .....</b>	<b>29</b>
<b>10.11</b>	<b>No Suits by Creditors .....</b>	<b>29</b>
<b>10.12</b>	<b>Irrevocability .....</b>	<b>29</b>
<b>10.13</b>	<b>Enforcement and Administration.....</b>	<b>29</b>
<b>10.14</b>	<b>Third Party Beneficiaries .....</b>	<b>29</b>

**LITIGATION TRUST AGREEMENT  
FOR THE ADEPTUS LITIGATION TRUST**

THIS TRUST AGREEMENT (the “Litigation Trust Agreement”) is made as of September 29, 2017, by and between the Debtors<sup>1</sup> for the benefit of the Litigation Trust Beneficiaries entitled to the Litigation Trust Assets and Alan J. Carr as trustee (the “Litigation Trustee”).

**RECITALS**

WHEREAS, on April 19, 2017, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division. On September 29, 2017, the Bankruptcy Court confirmed the Debtors’ Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code dated August 1, 2017 [ECF Doc. No. 719] (the “Plan”). This Litigation Trust Agreement is executed to facilitate implementation of the Plan. Under the terms of the Plan, the Litigation Trust Assets will be transferred to the Litigation Trust created and evidenced hereby so that (1) the Litigation Trust Assets can be held in trust for the benefit of the Litigation Trust Beneficiaries entitled thereto for the objectives and purposes set forth herein and in the Plan, (2) certain Claims can be resolved, (3) distributions may be made in accordance with this Litigation Trust Agreement, (4) the Litigation Trust Assets can be liquidated, and (5) administrative services relating to the activities of the Litigation Trust and relating to the implementation of the Plan can be performed by the Litigation Trustee. The Litigation Trustee will make continuing efforts to undertake its duties as described in this Litigation Trust Agreement, make timely distributions, and not unduly prolong the duration of the Litigation Trust.

WHEREAS, the Litigation Trust is intended to qualify as (i) a “liquidating trust” pursuant to the Internal Revenue Code of 1986, as amended (the “IRC”) and the regulations promulgated thereunder (“Treasury Regulations”), including Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or another business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Litigation Trust and (ii) as a “grantor trust” for U.S. federal income tax purposes, pursuant to sections 671-677 of the IRC.

**DECLARATION OF TRUST**

NOW, THEREFORE, to declare the terms and conditions hereof, and in consideration of the confirmation of the Plan pursuant to the Bankruptcy Code and other good and valuable consideration, the receipt of which is hereby acknowledged, the Debtors and the Litigation Trustee have executed this Litigation Trust Agreement for the benefit of the Litigation Trust Beneficiaries entitled to the Litigation Trust Assets, and, at the direction of such Litigation Trust Beneficiaries (because the transfer of title to undivided interests in each of the Litigation Trust Assets to such Litigation Trust Beneficiaries, and the transfer of such interests by such Litigation Trust Beneficiaries to the Litigation Trust, would be impractical), absolutely and irrevocably assign to the Litigation Trustee and to its successors or assigns, all right, title, and interest of the Debtors in and to the Litigation Trust Assets in the form and manner provided for in the Plan;

TO HAVE AND TO HOLD unto the Litigation Trustee and its successors in trust and its successors and assigns;

---

<sup>1</sup>The debtors are set forth on Schedule 1 attached hereto and shall be referred to herein as, the “Debtors.”

IN TRUST NEVERTHELESS, under and subject to the terms and conditions of the Plan and this Litigation Trust Agreement for the benefit of the Litigation Trust Beneficiaries of the Litigation Trust (as their respective interests may appear in accordance with the Plan and this Litigation Trust Agreement);

PROVIDED, HOWEVER, that except as otherwise provided herein, upon termination of the Litigation Trust in accordance with Article 9 hereof, this Litigation Trust Agreement shall cease, terminate, and be of no further force and effect.

IT IS HEREBY FURTHER COVENANTED AND DECLARED that the Litigation Trust Assets are to be held and applied by the Litigation Trustee subject to the further covenants, conditions, and terms set forth below.

**ARTICLE 1**  
**DEFINITIONS**

**1.1 Terms Used in the Plan.** If not defined in this Litigation Trust Agreement, capitalized terms used herein have the meanings assigned to them in the Plan.

**1.2 General Construction.** As used in this Litigation Trust Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. “Includes” and “including” are not limiting, and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections, and other subdivisions of this Litigation Trust Agreement, and the words “herein,” “hereafter,” and words of similar import refer to this Litigation Trust Agreement as a whole and not to any particular Article, Section, or subdivision of this Litigation Trust Agreement.

**ARTICLE 2**  
**THE LITIGATION TRUST**

**2.1 Creation and Name.** There is hereby created the Litigation Trust, which shall be known as the “Adeptus Litigation Trust.”

**2.2 Objectives, Purposes and Structure of the Litigation Trust.** The Litigation Trust is created on behalf of, and for the benefit of, the Litigation Trust Beneficiaries. The purpose of the Litigation Trust is to provide a mechanism for the liquidation of the Litigation Trust Assets, to reconcile, object to, prosecute objections to, compromise and settle the Litigation Trust Causes of Action, Medical Malpractice Claims, Subordinated Claims (including TRA Claims), General Unsecured Claims, and Convenience Class Claims reconciliation process, and to effectuate the 9019 Settlement. The Litigation Trustee shall distribute the proceeds of the liquidation, net of all claims, expenses, charges, liabilities, and obligations of the Litigation Trust, to the holders of Litigation Trust Interests in accordance with the terms of the Plan. No business activities will be conducted by the Litigation Trust other than those associated with or related to the liquidation (through pursuing and resolving the Litigation Trust Causes of Action), reconciliation of Claims, and distribution of the Litigation Trust Assets as provided for in the Plan and this Litigation Trust Agreement, and such assets are being transferred to the Litigation Trust with no objective to continue or engage in the conduct of a trade or business. In furtherance of this objective, the Litigation Trustee shall make continuing good faith efforts to (1) resolve Disputed Claims, (2) prosecute and resolve viable Litigation Trust Causes of Action, (3) make timely distributions, and (4) not unduly prolong the duration of the Litigation Trust, in accordance with this Litigation Trust Agreement. The purposes of the Litigation Trust are as follows, and the Litigation Trust shall have no other purpose or activities:

(a) to perform the functions and take the actions provided for or permitted by the Plan, this Litigation Trust Agreement and in any other agreement executed by the Litigation Trustee for the Litigation Trust pursuant to the Plan;

(b) to investigate, prosecute, settle, or abandon the Litigation Trust Causes of Action assigned to the Litigation Trust under the Plan as Litigation Trust Assets and to distribute the proceeds of any recoveries therefrom in accordance with the terms of the Plan and this Litigation Trust Agreement;

(c) to object to, prosecute objections to, compromise and settle Disputed Medical Malpractice Claims, Subordinated Claims (including TRA Claims), General Unsecured Claims, and Convenience Class Claims;

(d) to make distributions to the Litigation Trust Beneficiaries in accordance with the Plan;

(e) to marshal, liquidate, and distribute the Litigation Trust Assets in an expeditious but orderly manner; and

(f) to effectuate the 9019 Settlement.

## **2.3 Grant and Acceptance.**

**2.3.1 Grant of the Litigation Trust Assets.** Under the terms of the Plan and the Confirmation Order, effective as of the Effective Date, the Debtors' Estates, holders of Claims, and holders of Interests, or by any other Person then in possession of Litigation Trust Assets, shall be deemed to have irrevocably granted, transferred, conveyed, and delivered control of, and all the rights, title and interests in and to, the Litigation Trust Assets, free and clear of all liens, claims, encumbrances or interests of any kind in such property, with no reversionary interest therein in favor of the Debtors or their Estates, to the Litigation Trust, and then control of, and all the rights, title and interests in and to, the Litigation Trust Assets shall be deemed to have irrevocably granted, transferred, conveyed to the Litigation Trustee, on behalf of, and for the benefit of, the Litigation Trust Beneficiaries. The Litigation Trustee further agrees to accept and hold the Litigation Trust Assets in trust for the Litigation Trust Beneficiaries, subject to the terms of this Litigation Trust Agreement. In accordance with Section 13.1 of the Plan, the transfer of the Litigation Trust Assets to the Litigation Trust shall be exempt from any stamp, transfer, recording, sales, use or similar tax. In no event shall any part of the Litigation Trust Assets revert to or be distributed to the Debtors, the Reorganized Debtors, holders of Claims or holders of Interests (other than in their capacity as a Litigation Trust Beneficiary). The Litigation Trustee shall have no duty to arrange for any of the transfers contemplated hereunder and shall be conclusively entitled to rely on the legality and validity of such transfers. Moreover, on the Effective Date, any attorney-client privilege, work product privilege or other privilege or immunity (collectively, the "Privileges") attaching to any documents or communications (whether written or oral) transferred to the Litigation Trust shall automatically vest in, and be available for assertion by, the Litigation Trust and its representatives. The Litigation Trust's receipt of the Privileges associated with the Litigation Trust Assets shall not operate as a waiver of other privileges possessed or retained by the Debtor or the Reorganized Debtors. To the extent any of the foregoing does not automatically occur on the Effective Date or is not effectuated through the Plan, the Confirmation Order and/or this Litigation Trust Agreement, the Debtors or the Reorganized Debtors shall, on the Effective Date or as soon thereafter as reasonably practicable, execute such other and further documents as are necessary or appropriate to effectuate or memorialize all of the foregoing at the reasonable request of the Litigation Trustee.

**2.3.2 Acceptance by Litigation Trustee.** The Litigation Trustee accepts the trust terms imposed under this Litigation Trust Agreement and agrees to manage the Litigation Trust in accordance with this Litigation Trust Agreement and subject to the terms and conditions of the Plan.

**2.4 Further Assurances.**

**2.4.1** The Debtors (and any successors thereto) will, upon reasonable request of the Litigation Trustee, execute, acknowledge, and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Litigation Trustee any portion of the Litigation Trust Assets intended to be conveyed hereby in the form and manner provided for in the Plan and to vest in the Litigation Trustee the powers, instruments, or funds in trust hereunder.

**2.4.2** The Reorganized Debtors shall cooperate in all commercially reasonable respects with the Litigation Trustee's prosecution of the Litigation Trust Causes of Action and shall not take any action or omit from taking any action if such action or omission could reasonably be expected to interfere with the investigation or prosecution of the Litigation Trust Causes of Action. The Litigation Trustee shall have the right to seek relief from the Bankruptcy Court if, in the judgment of the Litigation Trustee and a majority of the Litigation Trust Oversight Board, the Reorganized Debtors fail to cooperate in accordance with the provisions of this Section 2.4.

**2.4.3** The Reorganized Debtors shall cooperate in all commercially reasonable manners regarding Medical Malpractice Claims, Subordinated Claims (including TRA Claims), General Unsecured Claims, and Convenience Class Claims reconciliation process including by providing reasonable access to historical data, records, and staff and shall not take any action or omit from taking any action if such action or omission could reasonably be expected to interfere with the foregoing. The Reorganized Debtors shall cooperate with the Litigation Trustee and provide access to and preserve all books and records which shall be necessary for the reconciliation of such Claims and Interests at no cost to the Litigation Trust. The Litigation Trustee shall have the right to seek relief from the Bankruptcy Court if, in the judgment of the Litigation Trustee and a majority of the Litigation Trust Oversight Board, the Reorganized Debtors fail to cooperate in accordance with the provisions of this Section 2.4.

**2.5 Nature of Litigation Trust Assets.** The Litigation Trust shall not receive transfers of any stock or securities or any readily marketable assets, any operating assets of a going business, a partnership interest in a partnership that holds operating assets, or 50% or more of the stock of a corporation with operating assets.

**2.6 Incidents of Ownership.** The Litigation Trust Beneficiaries shall be the sole beneficiaries of the Litigation Trust, and the Litigation Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

**2.7 Funding of Litigation Trust.** The Litigation Trust shall be funded with the Litigation Trust Initial Funding, including any funding from the Equity Funders or the Deerfield Parties or additional funding on commercially reasonable terms as provided for in Section 1.1 of the Plan under the term "Litigation Trust Initial Funding," pursuant to the terms and conditions of the Plan and this Litigation Trust Agreement.

**2.8 Payment of Litigation Trust Operating Expenses.** To the extent the Litigation Trustee deems reasonably appropriate, Litigation Trust Operating Expenses shall be paid from the Litigation Trust Operating Reserve (as defined below).

**ARTICLE 3**  
**THE LITIGATION TRUSTEE**

**3.1 Number and Bond.** Except as otherwise provided herein, there shall be one Litigation Trustee of the Litigation Trust, who shall initially be appointed in accordance with the terms of the Plan. The Litigation Trustee shall not be required to give a bond or other surety hereunder.

**3.2 Action by the Litigation Trustee.** The Litigation Trust shall be managed by the Litigation Trustee as set forth in this Litigation Trust Agreement and shall be subject to the oversight of the Litigation Trust Oversight Board, as set forth in this Litigation Trust Agreement.

**3.3 Binding Nature of the Litigation Trustee's Action.** All actions taken and determinations made by the Litigation Trustee in accordance with the provisions of the Plan or this Litigation Trust Agreement shall be final and binding upon any and all Persons holding Litigation Trust Interests in the Litigation Trust.

**3.4 Term of Service.** Subject to Section 3.14.4, the Litigation Trustee's appointment shall continue until the earlier of (a) the termination of this Litigation Trust Agreement or (b) the Litigation Trustee's resignation, death, termination, removal, dissolution or liquidation.

**3.5 Resignation.** The Litigation Trustee may resign as Litigation Trustee of the Litigation Trust by an instrument in writing delivered to the Litigation Trust Oversight Board at least 21 days before the proposed effective date of resignation; *provided* that such resignation shall only become effective upon the appointment of a permanent or interim successor Litigation Trustee as jointly appointed with the affirmative vote of each member of the Litigation Trust Oversight Board. The Litigation Trustee shall continue to serve as Litigation Trustee after the delivery of the Litigation Trustee's resignation until the proposed effective date of the Litigation Trustee's resignation, unless the Litigation Trust Oversight Board consents to an earlier effective date of the Litigation Trustee's resignation, which shall be the date of appointment of a successor Litigation Trustee in accordance with Section 3.7 hereof becomes effective, but nothing in this Section 3.5 shall restrict the right to remove the Litigation Trustee as provided in Section 3.6 hereof.

**3.6 Removal.** The Litigation Trust Oversight Board may remove the Litigation Trustee with or without cause at any time; *provided, however*, that a vote of at least 2 members of the Litigation Trust Oversight Board must agree to remove the Litigation Trustee without cause. In the event of the removal of the Litigation Trustee, the Litigation Trustee will be entitled to the payment of all compensation earned by such Litigation Trustee and the reimbursement of previously incurred expenses in fulfilling its duties with respect to the Litigation Trust permitted under this Litigation Trust Agreement that remain due and owing through and including the date of removal.

**3.7 Appointment of Successor Litigation Trustee.**

**3.7.1 Appointment of Successor Litigation Trustee.** In the event of a vacancy by reason of the death or removal of the Litigation Trustee or prospective vacancy by reason of resignation, a successor Litigation Trustee shall be appointed with the affirmative vote of each member of the Litigation Trust Oversight Board as soon as practicable, but in any event within 30 days after the occurrence of the vacancy or, in the case of resignation, at least 10 days before the proposed date of resignation.

**3.7.2 Vesting of Rights in Successor Litigation Trustee.** Every successor Litigation Trustee shall execute, acknowledge, and deliver to the Litigation Trust, the Reorganized Debtors, and the retiring Litigation Trustee, if any, an instrument accepting such appointment subject to the terms and

provisions hereof. The successor Litigation Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Litigation Trustee, except that the successor Litigation Trustee shall not be liable for the acts or omissions of the retiring Litigation Trustee.

**3.8 Continuance of Litigation Trust.** The death, resignation, or removal of the Litigation Trustee shall not operate to terminate the Litigation Trust or to revoke any existing agency (other than any agency of the Litigation Trustee as the Litigation Trustee) created pursuant to the terms of this Litigation Trust Agreement or invalidate any action taken by the Litigation Trustee, and the Litigation Trustee agrees that the provisions of this Litigation Trust Agreement shall be binding upon and inure to the benefit of the Litigation Trustee and the Litigation Trustee's heirs, legal and personal representatives, successors or assigns, as the case may be. In the event of the resignation or removal of the Litigation Trustee, the Litigation Trustee shall promptly (1) execute and deliver by the effective date of resignation or removal such documents, instruments, and other writings as may be reasonably requested by the successor Litigation Trustee to effect the termination of the resigning or removed Litigation Trustee's capacity under this Litigation Trust Agreement and the conveyance of the Litigation Trust Assets then held by the resigning or removed Litigation Trustee to the successor Litigation Trustee; (2) deliver to the successor Litigation Trustee all documents, instruments, records, and other writings relating to the Litigation Trust as may be in the possession or under the control of the resigning or removed Litigation Trustee; and (3) otherwise assist and cooperate in effecting the assumption of the resigning or removed Litigation Trustee's obligations and functions by the successor Litigation Trustee. The resigning or removed Litigation Trustee hereby irrevocably appoints the successor Litigation Trustee as its attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such resigning or removed Litigation Trustee is obligated to perform under this Section 3.8. Such appointment shall not be affected by the subsequent disability or incompetence of the Litigation Trustee making such appointment.

**3.9 Compensation.** As compensation for services as Litigation Trustee, and under any other agreements to which the Litigation Trustee is a party as contemplated by the Plan, the Litigation Trustee shall receive compensation for its services on terms and conditions set forth in Exhibit 1 to this Litigation Trust Agreement and as may otherwise be agreed to by a majority of the Litigation Trust Oversight Board. In addition, the Litigation Trustee shall be reimbursed for the reasonable, ordinary and necessary expenses it incurs in fulfilling its duties with respect to the Litigation Trust. A majority of the Litigation Trust Oversight Board must approve any expenses over \$25,000 prior to payment.

**3.10 Standard of Care; Indemnification; Exculpation.** In no event shall the Litigation Trustee, acting in the capacity as the Litigation Trustee or in any other capacity contemplated by this Litigation Trust Agreement or the Plan, the Litigation Trustee's employees, or any of the Litigation Trustee's affiliates, professionals, directors, officers or representatives (the "Litigation Trustee Parties"), or the Litigation Trust Oversight Board members be personally liable to any Person for any claim asserted in connection with, related to or arising out of the affairs of the Litigation Trust, this Litigation Trust Agreement or the Plan, unless a final judgment no longer subject to appeal is entered by a court of competent jurisdiction (i) that such claim is the direct result of any of the Litigation Trustee Party's, or the Litigation Trust Oversight Board member's fraud, willful misconduct or bad faith or (ii) for court-awarded sanctions. The foregoing limitations shall not affect any the Reorganized Debtors' obligations, if any, to make payments pursuant to the Plan. None of the Litigation Trustee Parties or the Litigation Trust Oversight Board members shall be liable for incidental or consequential damages under any circumstances, even if it has been advised of the possibility of such damages. The Litigation Trustee Parties' aggregate liability, whether in tort, contract, or otherwise, is limited to the amount of fees paid to the Litigation Trustee for services as Litigation Trustee. The Litigation Trustee shall not be personally liable to the Litigation Trust or to any Person for the acts or omissions of any officer, employee, director,

authorized representative, or agent of the Litigation Trustee unless the Litigation Trustee acted with bad faith or willful misconduct in the selection, retention, or supervision of such officer, employee, director, authorized representative, or agent of the Litigation Trust. Except in those situations in which the Litigation Trust or the Litigation Trust Oversight Board, as the case may be, are not exonerated of personal liability in accordance with the foregoing, the Litigation Trustee Parties (including each former Litigation Trustee) and the Litigation Trust Oversight Board (including for purposes of this Section 3.10, any of the successors, assigns, subsidiaries, Affiliates, managed accounts and funds, current and former officers and directors, principals, shareholders, members, partners, managers, employees, subcontractors or agents of any of such party and, together with the Litigation Trustee Parties for the purposes of this Section 3.10, the “Indemnified Parties”) shall be indemnified by the Litigation Trust against and held harmless by the Litigation Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorney fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding, or investigation brought or threatened against any of the Indemnified Parties in connection with any matter arising out of or related to the Plan, this Litigation Trust Agreement, or the affairs of the Litigation Trust. If any of the Indemnified Parties becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Litigation Trust Agreement or the affairs of the Litigation Trust, the Litigation Trust shall periodically advance or otherwise reimburse on demand the Indemnified Party’s reasonable legal and other expenses (including, without limitation, attorney fees, disbursements, and related expenses) incurred in connection therewith, but the Indemnified Parties shall be required to repay promptly to the Litigation Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Parties to the extent that it shall be ultimately determined by Final Order that the Indemnified Parties engaged in fraud or willful misconduct in connection with the affairs of the Litigation Trust with respect to which such expenses were paid. If approved by the Litigation Trust Oversight Board, the Litigation Trust may indemnify and hold harmless the employees and agents of the Litigation Trust to the same extent as provided in this Section 3.10 for the Litigation Trustee Parties and the Litigation Trust Oversight Board members. The provisions of this Section 3.10 shall remain available to and be binding on any former Litigation Trustee or the estate of any decedent Litigation Trustee. All indemnification liabilities of the Litigation Trust shall be an expense of the Litigation Trust and the amounts necessary for such indemnification and reimbursement shall be paid by the Litigation Trust out of the available Litigation Trust Assets after reserving for all actual Litigation Trust Operating Expenses. Without limiting the foregoing, the Litigation Trust Oversight Board shall be entitled to the limitation of liability and exculpation provisions set forth in the Plan and the Confirmation Order.

**3.11 No Liability for Acts of Successor/Predecessor Litigation Trustees.** Upon the appointment of a successor Litigation Trustee and the delivery of the Litigation Trust Assets to the successor Litigation Trustee, the predecessor Litigation Trustee and any director, officer, affiliate, employee, employer, professional, agent, or representative of the predecessor Litigation Trustee shall have no further liability or responsibility with respect thereto. A successor Litigation Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no successor Litigation Trustee shall be in any way liable for the acts or omissions of any predecessor Litigation Trustee unless a successor Litigation Trustee expressly assumes such responsibility. A predecessor Litigation Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor Litigation Trustee for any events or occurrences subsequent to the cessation of its role as Litigation Trustee.

**3.12 Reliance by the Litigation Trustee.** The Litigation Trustee Parties may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, or other instrument or document that the Litigation Trustee Party has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the

Litigation Trustee Parties may conclusively rely as to the truth of the statements and correctness of the opinions expressed therein, but the Litigation Trustee Parties shall be under a duty to have examined, or caused to be examined, the same to determine whether or not such writings conform to the requirements of this Litigation Trust Agreement. The Litigation Trustee Parties may consult with counsel, and any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Litigation Trustee Parties in accordance therewith. The Litigation Trustee Parties shall have the right at any time to seek instructions from the Bankruptcy Court (or any other court of competent jurisdiction after the Chapter 11 case is finally closed) concerning the Litigation Trust Assets, this Litigation Trust Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or suffered by the Litigation Trustee Parties in accordance therewith.

**3.13 Reliance by Persons Dealing With the Litigation Trust.** In the absence of actual knowledge to the contrary, any person dealing with the Litigation Trust shall be entitled to rely on the authority of the Litigation Trustee Parties to act in connection with the acquisition, management, or disposition of Litigation Trust Assets and shall have no obligation to inquire into the existence of such authority.

**3.14 Discharge of the Litigation Trustee.**

**3.14.1 Statement of Discharge.** The Litigation Trustee shall upon termination of the Litigation Trust or upon the Litigation Trustee's resignation, removal, or death (in which case the Litigation Trustee's estate or the successor Litigation Trustee shall) render a statement of charge and discharge containing the following information: (1) all assets and funds of the Litigation Trust originally charged under the Litigation Trustee's control, (2) a summarized accounting, in sufficient detail, of all purchases, sales, gains, losses, and income in connection with the Litigation Trust during the Litigation Trustee's term of service, (3) all distributions made by the Litigation Trustee, and (4) the ending balance of all assets and funds of the Litigation Trust as of the date of discharge. At the discretion of the Litigation Trustee and a majority of the Litigation Trust Oversight Board, such statement may be audited by independent accountants in accordance with generally accepted auditing standards.

**3.14.2 Approval of Statement of Discharge.** The statement of charge and discharge required by Section 3.14.1 shall be presented to the Reorganized Debtors and the Litigation Trust Oversight Board and shall be filed with the Bankruptcy Court. Unless the Reorganized Debtors or the Litigation Trust Oversight Board request that such statement of charge and discharge not be approved within 30 days after the date on which such statement of charge and discharge was presented to the Reorganized Debtors and the Litigation Trust Oversight Board, the withdrawing Litigation Trustee shall be discharged from all liability to the Litigation Trust or any Person who has had or may then or thereafter have an interest in the Litigation Trust for acts or omissions in the Litigation Trustee's capacity as the Litigation Trustee or in any other capacity contemplated by this Litigation Trust Agreement or the Plan.

**3.14.3 Costs Relating to Statement of Discharge.** The expenses of any accounting, including, but not limited to any statement of charge or discharge, shall be paid by the Litigation Trust as a Litigation Trust Operating Expense.

**3.14.4 Continuance of Litigation Trust for Winding Up.** After the termination of the Litigation Trust under Section 9 and solely for the purpose of liquidating and winding up the affairs of the Litigation Trust, the Litigation Trustee shall continue to act as such until its duties have been fully performed and shall continue to be entitled to receive the fees permitted under this Litigation Trust Agreement. Upon distribution of all the Litigation Trust Assets, the Litigation Trustee shall deliver (in

electronic form, to the extent practical) the books, records and files that shall have been delivered or created by the Litigation Trustee to the Reorganized Debtors for safekeeping for six (6) years following the date of the final distribution of Litigation Trust Assets (unless such records and documents are necessary to fulfill the Litigation Trustee's obligations hereunder) subject to the terms of any joint prosecution and common interest agreement(s) to which the Litigation Trustee may be a party. Except as otherwise specifically provided herein, upon the final distribution of Litigation Trust Assets, the Litigation Trustee shall be deemed discharged and have no further duties or obligations hereunder, except to account to the Litigation Trust Beneficiaries as provided herein, the Litigation Trust Interests shall be cancelled and the Litigation Trust will be deemed to have dissolved.

**3.15 Confidentiality.** The Litigation Trustee, the Litigation Trust Oversight Board, and any representative of the Litigation Trust (each, a "Confidentiality Party") shall hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any person or entity to which any of the Litigation Trust Assets relates or of which it has become aware in its capacity (the "Information"). The foregoing is not intended to prohibit, nor shall it be construed as prohibiting, a Confidentiality Party from making such disclosures of information to the extent disclosure is required by applicable law, order, regulation or legal process, it being understood that no Confidentiality Party is permitted to use any Information for personal gain at any time. In the event that any Confidentiality Party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Information, such Confidentiality Party shall notify the Reorganized Debtors promptly (unless prohibited by law) so that the Reorganized Debtors may seek an appropriate protective order or other appropriate remedy or, in their discretion, waive compliance with the terms of this Section 3.15 (and if the Reorganized Debtors seek such an order, the relevant Confidentiality Party will provide cooperation as the Reorganized Debtors shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the Reorganized Debtors waive compliance with the terms of this Section 3.15 and any Confidentiality Party is nonetheless legally compelled to disclose the Information, the Confidentiality Party will furnish only that portion of the Information, which the Confidentiality Party, advised by counsel, is legally required and will give the Reorganized Debtors written notice (unless prohibited by law) of the Information to be disclosed and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the Information. Notwithstanding anything in this Litigation Trust Agreement to the contrary, the Litigation Trustee shall not disclose any Information that would result in a waiver of any Privileges.

**3.16 Litigation Trust Oversight Board.** The initial Litigation Trust Oversight Board shall consist of three members. The members shall be appointed as follows: one of the members by the Deerfield Parties, one of the members by the Creditors' Committee and one member by the Equity Committee. If the member of the Litigation Trust Oversight Board appointed by the Deerfield Parties desires to resign or is determined by the Deerfield Parties to no longer be competent to serve as a member of the Litigation Trust Oversight Board, the Deerfield Parties shall appoint a replacement member. If the member of the Litigation Trust Oversight Board appointed by the Creditors' Committee desires to resign or is determined by the other two members of the Litigation Trust Oversight Board to no longer be competent to serve as a member of the Litigation Trust Oversight Board, the members of the Creditors' Committee as of the Effective Date will jointly appoint a replacement member. If the member of the Litigation Trust Oversight Board appointed by the Equity Committee desires to resign or is determined by the other two members of the Litigation Trust Oversight Board to no longer be competent to serve as a member of the Litigation Trust Oversight Board, Wexford Spectrum Investors, Reef Road Capital LLC and MatlinPatterson Global Opportunities Master Fund LP will jointly appoint a replacement member. The Litigation Trust Oversight Board members shall be compensated for their services to or expenses related to the Litigation Trust as set forth in an exhibit attached hereto (the "LTOB Compensation Schedule"). Unless otherwise set forth in the LTOB Compensation Schedule, each Litigation Trust

Oversight Board member shall be responsible for its own fees and expenses incurred as a member of the Litigation Trust Oversight Board. The Litigation Trust Oversight Board shall be disbanded upon termination of the Litigation Trust pursuant to Section 9 hereof. In the event that the Medical Malpractice Claims, the Subordinated Claims (including TRA Claims), the General Unsecured Claims excluding the Deerfield Deficiency Claim and the Convenience Class Claims have been satisfied in full in accordance with the terms of the Plan, the members of the Litigation Trust Oversight Board appointed by the Creditors' Committee shall be deemed to have resigned. In the event that the Deerfield Deficiency Claim has been satisfied in full in accordance with the Plan, the members of the Litigation Trust Oversight Board appointed by the Deerfield Parties shall be deemed to have resigned. In each case, the remaining members of the Litigation Trust Oversight Board shall determine if they will jointly selection additional members of the Litigation Trust Oversight Board or operate with fewer members.

#### **ARTICLE 4**

#### **POWERS OF THE LITIGATION TRUSTEE**

**4.1 Title.** Legal title to all Litigation Trust Assets shall be vested in the Litigation Trust, except that the Litigation Trustee shall have the power to cause legal title (or evidence of title) to any of the Litigation Trust Assets to be held by any nominee or Person, on such terms, in such manner, and with such powers as the Litigation Trustee hereunder may determine and the Litigation Trustee shall comply with all provisions of law that may bear on the evidencing of ownership of and title to any portion of the Litigation Trust Assets as are necessary and appropriate and that the Litigation Trustee determines are in the best interests of the Litigation Trust. Upon the transfer of the Litigation Trust Assets to the Litigation Trust, the Debtors or the Reorganized Debtors, as the case may be, shall have no interest in or claim to the Litigation Trust Assets or the Litigation Trust, and the Litigation Trust shall succeed to all of the Debtors' and the Reorganized Debtors', as the case may be, rights, title and interest in and to the Litigation Trust Assets. The Litigation Trustee shall have no authority to bind the Debtors or Reorganized Debtors in any manner except with respect to the Litigation Trust Assets. Notwithstanding anything in this Litigation Trust Agreement to the contrary, the transfer of the Litigation Trust Assets to the Litigation Trust does not diminish, and fully preserves, any defenses a defendant would have if such Litigation Trust Assets had been retained by the Debtors. To the extent that any Litigation Trust Assets cannot be transferred to the Litigation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such Litigation Trust Assets shall be deemed to have been retained by the Reorganized Debtors, and the Litigation Trustee shall be deemed to have been designated as a representative of the Reorganized Debtors pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Litigation Trust Assets on behalf of the Reorganized Debtors, and all proceeds, income and recoveries on account of any such Litigation Trust Assets shall be assets of the Litigation Trust and paid over thereto immediately upon receipt by the Reorganized Debtors, or any other Person. Notwithstanding the foregoing, all net proceeds, income, and recoveries of or on account of such Litigation Trust Assets shall be transferred to the Litigation Trust to be distributed to the Litigation Trust Beneficiaries consistent with the terms of the Plan and this Litigation Trust Agreement.

**4.2 Management Power.** Except as otherwise expressly limited in this Litigation Trust Agreement or the Plan, the Litigation Trustee shall have control and authority over the Litigation Trust Assets, over the management and disposition thereof and over the management and conduct of the affairs of the Litigation Trust to the same extent as if the Litigation Trustee were the sole owner thereof in its own right. Except as provided in the Plan, or otherwise specified in this Litigation Trust Agreement, the Litigation Trustee need not obtain the consent of the Litigation Trust Oversight Board or an order from or approval of any court in the exercise of any power or discretion conferred hereunder, or account to any court in the absence of a breach of trust. The Litigation Trustee shall exercise its judgment for the benefit of the Litigation Trust Beneficiaries in order to maximize the value of distributions, giving due regard to

the cost, risk, uncertainty of outcome and delay of any course of action. In connection with the management and use of the Litigation Trust Assets, the Litigation Trustee's powers, except as otherwise expressly limited in this Litigation Trust Agreement, or the Plan, shall include, but shall not be limited to, the following:

- (a) to accept the Litigation Trust Assets, to pursue the liquidation and marshaling of the Litigation Trust Assets, to preserve and protect the Litigation Trust Assets, and to have exclusive possession and control thereof as permissible under applicable law;
- (b) in accordance with section 1123(b)(3) of the Bankruptcy Code and the Plan, to investigate, prosecute, enforce, compromise, settle, release, abandon or otherwise dispose of, all Litigation Trust Causes of Action; *provided, however*, the Litigation Trustee shall: (i) obtain consent of a majority of the Litigation Trust Oversight Board prior to comprising, settling, releasing, abandoning or otherwise disposing of any Litigation Trust Cause of Action that was asserted by the Litigation Trustee to have a value in excess of \$250,000 and (ii) prior to October 19, 2018, unless otherwise agreed by the Litigation Trustee and the Deerfield Parties, the Litigation Trustee shall not assert any avoidance actions under chapter 5 of the Bankruptcy Code against vendors of the Reorganized Debtors without the express consent of the Deerfield Parties; *provided further, however*, except as to any preference claims which may be asserted under section 547 of the Bankruptcy Code against non-insiders and any Causes of Action which may be asserted against McKesson Corporation and PST Services, Inc. (and their affiliates), any such employment and compensation arising from or relating to (a) the settlement or compromise of any Cause of Action or (b) the initiation, settlement, or compromise of any objection to Claims asserted by any counterparty to the TRA shall require the consent of the Equity Committee's representative on the Litigation Trust Oversight Board, such consent not to be unreasonably withheld. In the event that the Litigation Trustee or the other members of the Litigation Trust Oversight Board determine in their reasonable discretion that the representative of the Equity Committee unreasonably withheld its consent, the Litigation Trustee may seek an order from the Bankruptcy Court directing the Litigation Trustee to take such actions;
- (c) to: (1) file, withdraw, or litigate to judgment, objections to Medical Malpractice Claims, Subordinated Claims (including TRA Claims), General Unsecured Claims and Convenience Claims; (2) settle or compromise any Disputed Medical Malpractice Claim, Disputed General Unsecured Claim and Disputed Convenience Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court; *provided, however*, the Litigation Trustee shall obtain consent of a majority of the Litigation Trust Oversight Board prior to: (i) comprising, settling, releasing, abandoning or otherwise disposing of any Medical Malpractice Claims, Subordinated Claims (including TRA Claims), General Unsecured Claims and Convenience Claims where the difference between the asserted amount and the proposed settlement amount is in excess of \$250,000; (ii) filing any objections to Medical Malpractice Claims, Subordinated Claims (including TRA Claims), General Unsecured Claims and Convenience Claims where the difference between the asserted amount and the proposed settlement amount is in excess of \$500,000; and (iii) filing any omnibus objections to Medical Malpractice Claims, Subordinated Claims (including TRA Claims), General Unsecured Claims and Convenience Claims; *provided further, however*, except as to any preference claims which may be asserted under section 547 of the Bankruptcy Code against non-insiders

and any Causes of Action which may be asserted against McKesson Corporation and PST Services, Inc. (and their affiliates), any such employment and compensation arising from or relating to (a) the settlement or compromise of any Cause of Action or (b) the initiation, settlement, or compromise of any objection to Claims asserted by any counterparty to the TRA shall require the consent of the Equity Committee's representative on the Litigation Trust Oversight Board, such consent not to be unreasonably withheld. In the event that the Litigation Trustee or the other members of the Litigation Trust Oversight Board determine in their reasonable discretion that the representative of the Equity Committee unreasonably withheld its consent, the Litigation Trustee may seek an order from the Bankruptcy Court directing the Litigation Trustee to take such actions;

- (d) with the consent of a majority of the Litigation Trust Oversight Board, to make or cause to be made distributions of Litigation Trust Available Cash to holders of Litigation Trust Interests in accordance with the terms of this Litigation Trust Agreement and the Plan; *provided* that Defined Unsecured Claims will be entitled to a "true-up" payment from the 9019 Settlement Consideration solely to the extent that inclusion of TRA Claims in Class 5 General Unsecured Claims dilutes the distribution received by the Defined Unsecured Claims, and there shall be no distributions of any of the 9019 Settlement Consideration to Electing Holders without the consent of the Creditors' Committee representative on the Litigation Trust Oversight Board, such consent not to be unreasonably withheld, however, in the event that the Litigation Trustee or the other members of the Litigation Trust Oversight Board determine in their reasonable discretion that the representative of the Creditors' Committee unreasonably withheld its consent, the Litigation Trustee may seek an order from the Bankruptcy Court directing the Litigation Trustee to make such a distribution;
- (e) with the consent of a majority of the Litigation Trust Oversight Board, to liquidate and distribute Litigation Trust Assets or any part thereof or any interest therein upon such terms and for such consideration as the Litigation Trustee deems proper; *provided* that Defined Unsecured Claims will be entitled to a "true-up" payment from the 9019 Settlement Consideration solely to the extent that inclusion of TRA Claims in Class 5 General Unsecured Claims dilutes the distribution received by the Defined Unsecured Claims, and there shall be no distributions of any of the 9019 Settlement Consideration to Electing Holders without the consent of the Creditors' Committee representative on the Litigation Trust Oversight Board, such consent not to be unreasonably withheld, however, in the event that the Litigation Trustee or the other members of the Litigation Trust Oversight Board determine in their reasonable discretion that the representative of the Creditors' Committee unreasonably withheld its consent, the Litigation Trustee may seek an order from the Bankruptcy Court directing the Litigation Trustee to make such a distribution;
- (f) to withhold from the amount distributable to any person or entity such amount as may be required by applicable tax law pursuant to Section 8.6 of this Litigation Trust Agreement;
- (g) to engage in all acts that would constitute ordinary performance of the obligations of a trustee under a liquidating trust, including the filing of all federal returns as a grantor trust, and the making of any advance tax payment;
- (h) to file (or cause to be prepared and filed) any and all tax and information returns with respect to the Litigation Trust;

- (i) to pay taxes properly payable by the Litigation Trust, if any;
- (j) to request any appropriate tax determination, including, without limitation, a determination pursuant to section 505 of the Bankruptcy Code;
- (k) to make tax elections for and on behalf of the Litigation Trust;
- (l) to file and prosecute claims for tax refunds to which the Litigation Trust may be entitled;
- (m) to obtain insurance with such coverage and limits as it deems desirable and is approved by a majority of the Litigation Trust Oversight Board, including, without limitation, insurance covering liabilities of the Litigation Trustee Parties or employees or agents of the Litigation Trust incurred in connection with their services to the Litigation Trust in the form of an errors or omissions policy, general liability, directors' and officers' insurance (D&O or otherwise);
- (n) with the consent of a majority of the Litigation Trust Oversight Board and in accordance with section 4.4 herein, to appoint, engage, employ, and compensate professionals, officers, employees, and other Persons as are necessary to carry out its duties, including lawyers, managers, consultants, accountants, technical, financial, or investment advisors or managers, attorneys, agents or brokers, corporate fiduciaries, or depositories and the Litigation Trust Registrar (as defined below);
- (o) to supervise retained professionals, officers, employees, and other Persons as are necessary to carry out the Litigation Trustee's duties, including lawyers, managers, consultants, accountants, technical, financial, or investment advisors or managers, attorneys, agents or brokers, corporate fiduciaries, or depositories and the Litigation Trust Registrar (as defined below); *provided, however*, except as to any preference claims which may be asserted under section 547 of the Bankruptcy Code against non-insiders and any Causes of Action which may be asserted against McKesson Corporation and PST Services, Inc. (and their affiliates), any such employment and compensation arising from or relating to (a) the settlement or compromise of any Cause of Action or (b) the initiation, settlement, or compromise of any objection to Claims asserted by any counterparty to the TRA shall require the consent of the Equity Committee's representative on the Litigation Trust Oversight Board, such consent not to be unreasonably withheld. In the event that the Litigation Trustee or the other members of the Litigation Trust Oversight Board determine in their reasonable discretion that the representative of the Equity Committee unreasonably withheld its consent, the Litigation Trustee may seek an order from the Bankruptcy Court directing the Litigation Trustee to take such actions;
- (p) subject to the limitations in Section 5.2, to invest and reinvest Cash available to the Litigation Trust, pending distribution, and to liquidate such investments;
- (q) to determine the manner of ascertainment of income and principal, and the apportionment of income and principal, and the apportionment between income and principal of all receipts and disbursements, and to select an annual accounting period;
- (r) [reserved];

- (s) establish such funds, reserves and accounts within the Litigation Trust estate, as deemed by the Litigation Trustee in its discretion to be useful in carrying out the purposes of the Litigation Trust and draw checks or make withdrawals or wire transfers from such accounts, and to pay or distribute such amounts of the Litigation Trust Assets as permitted or required under the Plan and this Litigation Trust Agreement;
- (t) sue and be sued and participate, as a party or otherwise, in any judicial, administrative, arbitrative or other proceeding; *provided, however*, except as to any preference claims which may be asserted under section 547 of the Bankruptcy Code against non-insiders and any Causes of Action which may be asserted against McKesson Corporation and PST Services, Inc. (and their affiliates), any such employment and compensation arising from or relating to (a) the settlement or compromise of any Cause of Action or (b) the initiation, settlement, or compromise of any objection to Claims asserted by any counterparty to the TRA shall require the consent of the Equity Committee's representative on the Litigation Trust Oversight Board, such consent not to be unreasonably withheld. In the event that the Litigation Trustee or the other members of the Litigation Trust Oversight Board determine in their reasonable discretion that the representative of the Equity Committee unreasonably withheld its consent, the Litigation Trustee may seek an order from the Bankruptcy Court directing the Litigation Trustee to take such actions;
- (u) delegate any or all of the discretionary power and authority herein conferred at any time with respect to all or any portion of the Litigation Trust estate to any one or more reputable individuals or recognized institutional advisers or investment managers without liability for any action taken or omission made because of any such delegation, except for such liability as is provided in Section 3.10;
- (v) consult with the Reorganized Debtors and/or the Litigation Trust Oversight Board at such times and with respect to such issues relating to the conduct of the Litigation Trust as the Litigation Trustee considers desirable and in accordance with the terms of this Litigation Trust Agreement;
- (w) execute, deliver and perform such other agreements and documents and to take or cause to be taken any and all such other actions as it may deem necessary or desirable to effectuate and carry out the purposes of this Litigation Trust Agreement;
- (x) undertake any action or perform any obligation provided for or required by the Plan;
- (y) protect and enforce the rights to the Litigation Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;
- (z) determine and satisfy any and all liabilities created, incurred or assumed by the Litigation Trust;
- (aa) execute offsets against Claims as provided for in the Plan;
- (bb) subject to Section 6.2, assert or waive any privilege or defense on behalf of the Litigation Trust;

- (cc) seek the examination of any entity under, and subject to, the provisions of Bankruptcy Rule 2004;
- (dd) to pay filing fees from Litigation Trust Assets as the Litigation Trustee deems appropriate;
- (ee) to pay litigation costs from Litigation Trust Assets as the Litigation Trustee deems appropriate and as approved by a majority of the Litigation Trust Oversight Board; *provided, however*, except as to any preference claims which may be asserted under section 547 of the Bankruptcy Code against non-insiders and any Causes of Action which may be asserted against McKesson Corporation and PST Services, Inc. (and their affiliates), any such employment and compensation arising from or relating to (a) the settlement or compromise of any Cause of Action or (b) the initiation, settlement, or compromise of any objection to Claims asserted by any counterparty to the TRA shall require the consent of the Equity Committee's representative on the Litigation Trust Oversight Board, such consent not to be unreasonably withheld. In the event that the Litigation Trustee or the other members of the Litigation Trust Oversight Board determine in their reasonable discretion that the representative of the Equity Committee unreasonably withheld its consent, the Litigation Trustee may seek an order from the Bankruptcy Court directing the Litigation Trustee to take such actions;
- (ff) take or refrain from taking any and all actions the Litigation Trustee reasonably deems necessary for the continuation, protection and maximization of the Litigation Trust Assets or to carry out the purposes of this Litigation Trust Agreement; and
- (gg) in the event that the assets held by the Litigation Trust shall fail or cease to qualify as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), to take any and all necessary actions as it shall deem appropriate to have such assets treated as held by an entity classified as a non-publicly traded partnership for federal tax purposes.

Each of the preceding management powers shall be expressly limited as provided for in Article V and Article VI of the Plan.

**4.2.1 Guidance from Court.** Notwithstanding anything contained in this Litigation Trust Agreement to the contrary, the Litigation Trustee may, but is not required to, submit a proposed action to a court of competent jurisdiction, including the Bankruptcy Court, for its approval, on notice to the Reorganized Debtors (so long as such action is consistent with the purpose of the Litigation Trust), and may comply with any action approved by such court.

**4.2.2 Additional Powers.** Except as otherwise set forth in this Litigation Trust Agreement or in the Plan, and subject to the Treasury Regulations governing trusts, the retained jurisdiction of the Court as provided for in the Plan, but without prior or further authorization, the Litigation Trustee may control and exercise authority over the Litigation Trust Assets and over the protection, conservation and disposition thereof. No Person dealing with the Litigation Trust shall be obligated to inquire into the authority of the Litigation Trustee in connection with the protection, conservation or disposition of the Litigation Trust Assets.

**4.3 Commingling of Litigation Trust Assets.** The Litigation Trustee shall not commingle any of the Litigation Trust Assets with its own property or the property of any other Person.

**4.4 Employment and Compensation of Professionals.** The Litigation Trustee, with the consent of a majority of the Litigation Trust Oversight Board, shall have the authority to employ and compensate attorneys, accountants, financial advisors, investment advisors and other professionals, including a registrar (the “Litigation Trust Registrar”) and a disbursing agent to make distributions (collectively, the “Trustee Professionals”), as determined necessary for the operation of the Litigation Trust from time to time by the Litigation Trustee; *provided, however*, except as to any preference claims which may be asserted under section 547 of the Bankruptcy Code against non-insiders and any Causes of Action which may be asserted against McKesson Corporation and PST Services, Inc. (and their affiliates), any such employment and compensation arising from or relating to (a) the settlement or compromise of any Cause of Action or (b) the initiation, settlement, or compromise of any objection to Claims asserted by any counterparty to the TRA shall require the consent of the Equity Committee’s representative on the Litigation Trust Oversight Board, such consent not to be unreasonably withheld. In the event that the Litigation Trustee or the other members of the Litigation Trust Oversight Board determine in their reasonable discretion that the representative of the Equity Committee unreasonably withheld its consent, the Litigation Trustee may seek an order from the Bankruptcy Court directing the Litigation Trustee to take such actions. The Litigation Trustee may pay the reasonable fees and expenses of such professionals as a Litigation Trust Operating Expense without application to the Bankruptcy Court. The Litigation Trustee shall provide ten (10) days’ advance notice to the Litigation Trust Oversight Board of any payments to the Trustee’s Professionals. If a majority of the Litigation Trust Oversight Board objects to the proposed payment, it may file an objection with the Bankruptcy Court. The subject Trustee Professional shall thereafter only receive payment as ordered by the Bankruptcy Court with respect to the invoice(s) at issue.

**4.5 Dispute Resolution.** In the event of a dispute between the Litigation Trustee and the Reorganized Debtors or the Litigation Trust Oversight Board involving an allegation that any party has failed to act in a manner consistent with the Plan or this Litigation Trust Agreement, or is in breach of any applicable fiduciary duty, the parties shall meet and confer and attempt to reach a consensual resolution of the dispute. Should a consensual resolution not be reached, the Litigation Trustee, the Reorganized Debtors or the Litigation Trust Oversight Board may seek appropriate relief from the Bankruptcy Court, and the Bankruptcy Court shall retain jurisdiction to resolve such disputes.

## **ARTICLE 5**

### **OBLIGATIONS OF THE LITIGATION TRUSTEE**

#### **5.1 Reports and Records.**

**5.1.1 Litigation Trust Oversight Board Reports.** The Litigation Trustee shall consult with the Litigation Trust Oversight Board in good faith regarding all material issues affecting the Litigation Trust, including the prosecution, settlement or abandonment of any Litigation Trust Causes of Action and the disposition of Litigation Trust Assets. On the Effective Date and every 90 days thereafter, the Litigation Trustee shall provide the Litigation Trust Oversight Board with: (1) a proposed budget for the upcoming six (6) months, setting forth expected receipts and disbursements for litigation, operations, and other purposes and (2) a report on the status of each Litigation Trust Asset.

**5.1.2 Records.** The Litigation Trustee shall maintain records and books of account relating to the Litigation Trust Assets, the management thereof and all transactions undertaken by the Litigation Trustee, which records and books of account shall be maintained in accordance with GAAP consistently applied, except to the extent that any change is approved by the Litigation Trust’s independent public accountants. The Litigation Trustee shall also maintain records and books of account relating to all distributions made pursuant to this Litigation Trust Agreement. The Litigation Trustee or the Litigation Trust Registrar shall maintain a register (the “Litigation Trust Register”) of the Litigation

Trust Beneficiaries and Litigation Trust Interests in accordance with the terms of this Litigation Trust Agreement.

**5.2 Eligible Investments.** Cash held pending distribution, including Cash held in the Litigation Trust Operating Reserve (as defined below), shall, to the extent permitted by applicable law, be invested by the Litigation Trustee in (1) direct obligations of, or obligations guaranteed by, or obligations secured by, the United States of America (including without limitation United States Treasury Bills); (2) obligations of any agency or corporation that is or may hereafter be created by or pursuant to an Act of the Congress of the United States as an agency or instrumentality thereof, or (3) demand deposits or short-term certificates of deposit at any bank or trust company that has, at the time of the acquisition by the Litigation Trustee of such investments, capital stock and surplus aggregating at least \$100 million and whose short-term debt obligations are rated by at least two nationally recognized statistical rating organizations in one of the two highest categories therefor; *provided, however*, that such investments are investments permitted to be made by a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable Internal Revenue Service (“IRS”) guidelines, rulings, or other controlling authorities. Such investments shall mature in such amounts and at such times as, in the judgment of the Litigation Trustee at the times such investments are made, are necessary, or are desirable with a view to providing funds when needed to make payments from the Litigation Trust Assets. Any investment purchased with the Litigation Trust Assets shall be deemed a part of the Litigation Trust Assets. All interest, distributions, dividends and proceeds received by the Litigation Trustee in respect of such investments shall be a part of the Litigation Trust Assets.

**5.3 Litigation Trust Beneficiary Reports.** The fiscal year of the Litigation Trust shall be the calendar year. In addition to the reporting required under Section 3.14.1 and Section 8.2, within 90 days after the end of each calendar year during the term of the Litigation Trust, the Litigation Trustee shall make available to the Litigation Trust Oversight Board and, upon request, to the requesting Litigation Trust Beneficiary appearing on its records as of the end of such period a summary report including information concerning the activities of the Litigation Trust, a description of the progress of liquidating Litigation Trust Assets and making distributions to Litigation Trust Beneficiaries and any other material information relating to the Litigation Trust Assets and the administration of the Litigation Trust for the previous fiscal year. The Litigation Trustee may post any such report on a web site maintained by the Litigation Trustee or electronically file it with the Bankruptcy Court in lieu of actual notice to each Litigation Trust Beneficiary (unless otherwise required by law). The Litigation Trustee and Litigation Trust Oversight Board may require the recipient of such information to keep such information confidential pursuant to a confidentiality agreement in form and substance reasonably satisfactory to the Litigation.

**5.4 United States Trustee Fees.** After the Effective Date and until the Bankruptcy Case is closed, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of disbursements made under the Litigation Trust shall be paid by the Litigation Trustee as a Litigation Trust Operating Expense.

**5.5 Litigation Trust Account.** On the Effective Date, the Litigation Trustee shall establish an account, at a financial institution approved by the Litigation Trust Oversight Board (the “Litigation Trust Account”). The initial deposit into the Litigation Trust Account will be the Ohio Real Estate Proceeds. Thereafter, the Litigation Trustee shall deposit into the Litigation Trust Account recoveries from the liquidation of Litigation Trust Assets.

**ARTICLE 6**  
**LITIGATION TRUST INTERESTS**

**6.1 Allocation of Litigation Trust Interests.** As of the Effective Date, each holder of an Allowed Medical Malpractice Claim, Allowed General Unsecured Claim, Existing Preferred Equity Interests, and Allowed Subordinated Claim shall be allocated a Litigation Trust Interest in the Litigation Trust equal in an amount to such holder's respective Allowed Claim or Interest. As of the Exchange Date, each Existing Common Equity Interest shall be allocated a Litigation Trust Interest in the Litigation Trust equal in an amount to such holder's respective Allowed Interest

**6.2 Delivery of Books and Records from Debtors.** On or as soon as practicable after the Effective Date, the Debtors or Reorganized Debtors, as applicable, shall provide the Litigation Trustee with reasonable access to the books and records and other information of the Debtors or Reorganized Debtors concerning the Litigation Trust Causes of Action (including those maintained in electronic format and original documents) whether held by the Debtors or Reorganized Debtors, their agents, advisors, attorneys, accountants or any other professional hired by the Debtors or Reorganized Debtors. In connection with the transfer of the Litigation Trust Causes of Action, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) shall be shared by the Litigation Trust and the Reorganized Debtors and shall vest in the Litigation Trustee and attorneys, agents, and representatives to the extent necessary to effect such shared privilege. The Debtors or the Reorganized Debtors, as the case may be, and the Litigation Trustee are authorized to take all necessary actions to effectuate the sharing and vesting of such privileges. The Litigation Trustee's receipt of the shared privileges shall be without waiver of any such privileges, in recognition of the joint and/or successorship interest in prosecuting claims on behalf of the Debtors' Estates. The Litigation Trustee shall have no right to waive the attorney-client privilege, work product, or other protection of any information received from the Reorganized Debtors. The Debtors (or the Reorganized Debtors) retain the right to waive their own privileges. The Litigation Trust shall have no right to any privileged information or analysis of the Debtors or the Reorganized Debtors.

**6.3 Register Entries Regarding Litigation Trust Interests.** The Litigation Trustee or the Litigation Trust Registrar may make the following notations in the Litigation Trust Register:

- (1) a notation reflecting the Litigation Trust Interest and Claim held by each Creditor holding an Allowed General Unsecured Claim, and the pro rata share of such Litigation Trust Interest in proportion of all General Unsecured Claims, excluding the Deerfield Deficiency Claim;
- (2) a notation reflecting the Litigation Trust Interest and Claim held by each Creditor holding an Allowed General Unsecured Claim, and the pro rata share of such Litigation Trust Interest in proportion of all General Unsecured Claims, including the Deerfield Deficiency Claim;
- (3) a notation reflecting the Litigation Trust Interest and the Deerfield Deficiency Claim, and the pro rata share of such Litigation Trust Interest in proportion of all General Unsecured Claims;
- (4) a notation reflecting the Litigation Trust Interest and the Deerfield Deficiency Claim held by each Electing Holder resulting from the 9019 Settlement, and the pro rata share of such Litigation Trust Interest in proportion of all General Unsecured Claims;

- (5) a notation reflecting the Litigation Trust Interest and Claim held by each Creditor holding a Disputed General Unsecured Claim (a “Reserved Litigation Trust Interest”), and the pro rata share of such Reserved Litigation Trust Interest in proportion of all General Unsecured Claims, excluding the Deerfield Deficiency Claim;
- (6) a notation reflecting a Reserved Litigation Trust Interest and the pro rata share of such Reserved Litigation Trust Interest in proportion of all General Unsecured Claims, including the Deerfield Deficiency Claim;
- (7) a notation reflecting the Litigation Trust Interest and Existing Common Equity Interest held by each owner of a Allowed Existing Common Equity Interest and the pro rata share of such Litigation Trust Interest in proportion of all Existing Common Equity Interests;
- (8) a notation reflecting the Litigation Trust Interest and Existing Common Equity Interest held by each owner of a Disputed Existing Common Equity Interest and the pro rata share of such Litigation Trust Interest in proportion of all Existing Common Equity Interests;
- (9) a notation reflecting the Litigation Trust Interest and Existing Preferred Equity Interest held by each owner of a Allowed Existing Preferred Equity Interest and the pro rata share of such Litigation Trust Interest in proportion of all Existing Preferred Equity Interests; and
- (10) a notation reflecting the Litigation Trust Interest and Existing Preferred Equity Interest held by each owner of a Disputed Existing Preferred Equity Interest and the pro rata share of such Litigation Trust Interest in proportion of all Existing Preferred Equity Interests.

**6.4 Allocation of Litigation Trust Interests to Holders of Disputed Claims.** The allocation of any Litigation Trust Interest on account of a Disputed Claim or Disputed Interest pursuant to Section 6.1 herein shall be reserved on the Litigation Trust Register maintained by the Litigation Trust Registrar and shall be designated as a Reserved Litigation Trust Interest. Any Medical Malpractice Claim, General Unsecured Claim, Subordinated Claim, or Interest filed, in whole or in part, in an unknown or undetermined amount may be estimated by the Litigation Trustee, subject to approval by the Bankruptcy Court, and such Claim or Interest as estimated shall be deemed a Disputed Claim or Disputed Interest until otherwise Allowed, and consequently, shall be designated as a Reserved Litigation Trust Interest. To the extent all or a portion of a Disputed Claim or a Disputed Interest is ultimately disallowed, the Litigation Trust shall reallocate among the remaining Litigation Trust Interests, the Reserved Litigation Trust Interest that relates to the portion of the Disputed Claim or the Disputed Interest that was disallowed. To the extent all or a portion of a Disputed Claim or a Disputed Interest ultimately becomes an Allowed Claim or an Allowed Interest, the Reserved Litigation Trust Interest that relates to the portion of the Disputed Claim or Disputed Interest that was Allowed, shall be removed from the reserve.

**6.5 Representation of Litigation Trust Interest.** The Litigation Trust Interests shall be uncertificated and no evidence of any sort will be distributed to the Litigation Trust Beneficiaries with respect to their interest in the Litigation Trust. The Litigation Trust Interests shall be represented by appropriate book entries in the Litigation Trust Register.

**6.6 Litigation Trust Register and Litigation Trust Registrar.**

**6.6.1 Appointment of Litigation Trust Registrar.** With the consent of a majority of the Litigation Trust Oversight Board, the Litigation Trustee may appoint a Litigation Trust Registrar for the purpose of registering Litigation Trust Interests as herein provided. The Litigation Trust Registrar may be a duly qualified institution or the Litigation Trustee. For its services hereunder, the Litigation Trust Registrar, unless it is the Litigation Trustee, shall be entitled to receive reasonable compensation, approved by a majority of the Litigation Trust Oversight Board, from the Litigation Trust as a Litigation Trust Operating Expense.

**6.6.2 Register of Litigation Trust Interests.** The Litigation Trustee may cause the Litigation Trust Register to be kept at the office of the Litigation Trust Registrar or at such other place or places that shall be designated by the Litigation Trustee from time to time.

**6.6.3 Access to Litigation Trust Register by Litigation Trust Beneficiaries.** Litigation Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Litigation Trust Registrar and the Litigation Trustee, and in accordance with reasonable regulations prescribed by the Litigation Trust Registrar and the Litigation Trustee, to inspect and at the expense of the Litigation Trust Beneficiary make copies of the Litigation Trust Register, in each case for a purpose reasonable and related to such Litigation Trust Beneficiary's Litigation Trust Interest in the Litigation Trust.

**6.6.4 Absolute Owners; Interests Beneficial Only.** The Litigation Trustee may deem and treat the Litigation Trust Beneficiary of record as determined pursuant to Section 6.1 of this Litigation Trust Agreement as the absolute owner of such Litigation Trust Interests for the purpose of receiving Distributions and payment thereon or on account thereof and for all other purposes whatsoever and the Litigation Trustee shall not be charged with having received notice of any claim or demand to such Litigation Trust Interests or the interest therein of any other Person. The ownership of a Litigation Trust Interest shall not entitle any Litigation Trust Beneficiary to any title, right to, possession of, management of or control of the Litigation Trust or the Litigation Trust Assets (which title shall be vested in the Litigation Trustee) or to any right to call for a partition or division of the Litigation Trust Assets or to require an accounting.

**6.6.5 References to Litigation Trust Beneficiaries.** Any reference herein to a Litigation Trust Beneficiary or to the holder of a Litigation Trust Interest means the holder of a Allowed Medical Malpractice Claim, Allowed General Unsecured Claim, Allowed Subordinated Claim, and/or Existing Equity Interest under the Plan that is recorded on the official registry maintained by the Litigation Trustee and shall not include any Person not recorded on such official registry.

**6.7 Litigation Trust Interests Non-Transferable.** Litigation Trust Interests shall not be transferred other than by will, intestate succession or operation of law. Any transfer of a Litigation Trust Interest or any part thereof in violation of this Section 6.7 shall be void *ab initio*. Neither the Litigation Trustee nor other Persons affiliated with the Litigation Trust or the Reorganized Debtors will take any actions to facilitate or encourage any trading in the Litigation Trust Interests or any instrument or interest tied to the value of the Litigation Trust Interests.

**6.8 Exemption From Registration.** The Litigation Trust Interests have not been registered pursuant to the Securities Act of 1933, as amended (the "Securities Act"), or any state securities law. It is the intention of the parties hereto that the rights of the Litigation Trust Beneficiaries under the Litigation Trust and the Litigation Trust Interests do not constitute "securities" under the Securities Act or any state securities law, *provided, however*, that if the Litigation Trust Interests constitute "securities," the parties

hereto intend that the exemption from registration provided in section 1145 of the Bankruptcy Code shall apply to the Litigation Trust Interests. None of the parties hereto represents or warrants that the rights of a Litigation Trust Beneficiary under the Litigation Trust and the Litigation Trust Interests will not be securities or that their issuance under the Plan will be entitled to exemption from registration under applicable securities laws.

**6.9 Exchange Act.** If, notwithstanding the restrictions on transfer provided herein, the Litigation Trustee believes that the Litigation Trust may have become subject to the registration requirements of the Securities Exchange Act of 1934, as Amended (the “Exchange Act”), the Litigation Trustee (i) may promptly seek no action relief from the staff of the SEC to be exempted from all or some of the requirements of the Exchange Act if advised by counsel to the Litigation Trust that such a request has a reasonable chance of success and (ii) if such request is not granted by the SEC or the Litigation Trustee reasonably believes it shall not be granted, the Litigation Trustee shall cause the Litigation Trust to register pursuant to, and comply with, the applicable reporting requirements of the Exchange Act and to take any actions customary and appropriate in connection therewith.

## **ARTICLE 7**

### **ADMINISTRATION OF THE LITIGATION TRUST ESTATE**

**7.1 Establishment of Litigation Trust Available Cash.** Prior to making any distributions, the Litigation Trustee shall determine the amount of available Cash on hand in excess of current and anticipated Litigation Trust Operating Expenses and reserves (the “Litigation Trust Available Cash”), taking into account any Litigation Trust reserves created pursuant to this Article 7, including the Disputed Claims Reserve.

#### **7.2 Establishment of Litigation Trust Operating Reserve and Related Matters.**

**7.2.1 Litigation Trust Operating Reserve.** Within thirty (30) days after the Effective Date, and from time to time thereafter as necessary, the Litigation Trustee shall establish an account at a financial institution approved by a majority of the Litigation Trust Oversight Board (the “Litigation Trust Operating Reserve”). Funds from the Litigation Trust Account shall be deposited into the Litigation Trust Operating Reserve for the payment of Litigation Trust operating expenses, including, but not limited to: (1) the unpaid liabilities, debts or obligations of the Litigation Trust related to and arising out of operation of the Litigation Trust; (2) the fees of the Litigation Trustee; (3) all reasonable fees and expenses of professionals retained by the Litigation Trust; and (4) any and all other costs associated with the liquidation or preservation of the Litigation Trust Assets (the “Litigation Trust Operating Expenses”). The Litigation Trust Operating Reserve shall be funded with funds from the Litigation Trust Initial Funding and thereafter may be funded from time to time with additional Cash in an amount determined by the Litigation Trustee, with consent from a majority of the Litigation Trust Oversight Board, to be reasonably necessary to pay anticipated Litigation Trust Operating Expenses, and otherwise conduct the affairs of the Litigation Trust. Litigation Trust Operating Expenses shall be paid solely from the Litigation Trust Operating Reserve. Neither the Litigation Trust, nor the Litigation Trustee on behalf of the Litigation Trust, shall incur, create or assume any debt, guarantee any obligation of any person or entity, including any Litigation Trust Beneficiary or originate any loans, except as allowed under the Plan for the Litigation Trust Initial Funding.

**7.2.2 Disputed Claims Reserve for Litigation Trust Beneficiaries.** The Litigation Trustee shall establish and segregate a reserve account for Disputed Claims as of the Effective Date (the “Disputed Claims Reserve”). On the date of each Trust Distribution Date, the Litigation Trustee shall deposit into the Disputed Claims Reserve any distribution otherwise payable to a Litigation Trust

Beneficiary holding a Reserved Litigation Trust Interest to ensure equivalent distributions on account of such Disputed Claims in the event they are later determined to be Allowed Claims.

**7.3 Prosecution and Resolution of Causes of Action.**

**7.3.1 The Litigation Trust's Authority to Pursue, Settle, or Abandon Causes of Action.** Pursuant to the Plan and this Litigation Trust Agreement, the Litigation Trust shall have the exclusive right, power, and interest to pursue, settle, or abandon all Litigation Trust Causes of Action; *provided, however*, the Litigation Trustee shall obtain consent of the Litigation Trust Oversight Board as set forth in Section 4.2 of this Litigation Trust Agreement.

**7.3.2 Settlement of Causes of Action.** Settlement by the Litigation Trust of any Litigation Trust Cause of Action shall require approval only of the Litigation Trustee and the Litigation Trust Oversight Board as set forth in Section 4.2 of this Litigation Trust Agreement and the Plan, and shall not require approval of the Reorganized Debtors or the Bankruptcy Court.

**7.4 Distributions to Holders of Litigation Trust Interests.**

**7.4.1 Distributions Generally.** With the consent of a majority of the Litigation Trust Oversight Board, the Litigation Trustee may make distributions to Litigation Trust Beneficiaries. Every distribution shall be made from Litigation Trust Available Cash and shall be made pursuant to the Litigation Trust Waterfall and this Litigation Trust Agreement. At least once annually, the Litigation Trustee shall determine, in consultation with the Litigation Trust Oversight Board, whether there is sufficient Litigation Trust Available Cash to make a distribution to the Litigation Trust Beneficiaries, and if there is sufficient Litigation Trust Available Cash, it will be distributed. Each date that a distribution is made pursuant to the terms of this Article 7 is a "Distribution Date".

**7.4.2 Distributions to Litigation Trust Beneficiaries.** Distributions shall be made pursuant to the terms of the Litigation Trust Waterfall. The Litigation Trustee shall not make any distributions of Litigation Trust Assets to the Litigation Trust Beneficiaries unless the Litigation Trustee retains and reserves in the Disputed Claims Reserve on account of Reserved Litigation Trust Interests such amounts as are necessary to satisfy amounts that would have been distributed in respect of Disputed Claims or Disputed Interests if the Disputed Claims or Disputed Interests were determined to be Allowed Claims or Allowed Interests immediately prior to such proposed distribution to Litigation Trust Beneficiaries.

**7.4.3 Distributions to Holders of Reserved Litigation Trust Interests.** No distributions shall be made to holders of a Reserved Litigation Trust Interest. To the extent a Reserved Litigation Trust Interest is removed from the reserve on the Litigation Trust Register in accordance with Section 6.4, any Cash in the Disputed Claims Reserve relating to the portion of a Disputed Claim or Disputed Interest that ultimately becomes an Allowed Claim or Allowed Interest shall become Litigation Trust Available Cash and the ratable share of such Cash attributable to the Allowed Claim or the Allowed Interest held by the applicable Litigation Trust Beneficiary shall be released and distributed to such Litigation Trust Beneficiary on the next Distribution Date for such claim. To the extent a Reserved Litigation Trust Interest attributable to the portion of a Disputed Claim or Disputed Interest that is ultimately disallowed is reallocated among the remaining Litigation Trust Interests in accordance with Section 6.4, any Cash in the Disputed Claims Reserve relating to such Reserved Litigation Trust Interest shall become Litigation Trust Available Cash and shall be released and distributed on the next Distribution Date to the holders of such remaining Litigation Trust Interests entitled to distributions at such time, subject to the obligation of the Litigation Trustee to reserve Cash on account of Disputed Claims and Disputed Interests and the Litigation Trust Operating Reserve.

**7.4.4 Right to Setoff.** The Litigation Trustee may (but shall not be required to), pursuant to Bankruptcy Code sections 553 and 558 or applicable non-bankruptcy law, setoff against or recoup from any distribution to a Litigation Trust Beneficiary to be made under the Plan or this Litigation Trust Agreement any claims or causes of action of any nature whatsoever the Litigation Trustee may have against such Litigation Trust Beneficiary; *provided, however*, that neither the failure to effect such offset or recoupment nor the allowance of any Claim or Interest shall constitute a waiver or release by the Litigation Trustee of any setoff or recoupment the Litigation Trustee may have against such Litigation Trust Beneficiary, nor of any other claim or cause of action.

**7.5 Place and Manner of Payments or Distributions.** The Litigation Trustee shall make distributions to the Litigation Trust Beneficiaries of record as of the close of business on the fifteenth business day prior to the Distribution Date (the “Distribution Record Date”) by (a) mailing such distribution to the Litigation Trust Beneficiary at the address of such Litigation Trust Beneficiary as listed in the Schedules, or any proof of claim filed by the Litigation Trust Beneficiary, or as listed in the Litigation Trust Register, or at such other address as such Litigation Trust Beneficiary shall have specified for payment purposes in a written notice to the Litigation Trustee and the Litigation Trust Registrar at least 20 days before the Distribution Date, or (b) making such distribution by wire or such other method as the Litigation Trustee deems appropriate under the circumstances. Prior to receiving any distributions, all Litigation Trust Beneficiaries, at the Litigation Trustee’s request, must provide to the Litigation Trustee written notification of their respective Federal Tax Identification Number(s) or Social Security Number(s).

**7.6 De Minimis Payments.** The Litigation Trustee shall not be required to make a distribution on account of any Allowed Claim or Interest if the aggregate amount of all distributions authorized to be made on such date is less than \$20,000, in which case such distributions shall be deferred to the next Distribution Date, unless such distribution constitutes the final distribution to the Litigation Trust Beneficiaries.

**7.7 Unclaimed or Undeliverable Distributions.** In the event (1) a Litigation Trust Beneficiary entitled to payments from the Litigation Trust fails to provide the Litigation Trustee its Federal Tax Identification Number or Social Security Number within sixty (60) days after the date of the Litigation Trustee’s written request, (2) a check issued to a Litigation Trust Beneficiary remains uncashed for sixty (60) days after its issuance date, or (3) a distribution or other payment is returned as undeliverable (provided that the Litigation Trustee shall use commercially reasonable efforts to determine the current address of such Litigation Trust Beneficiary), then the distribution or payment and any related Claim or obligation shall be deemed waived, such Litigation Trust Beneficiary shall no longer be entitled to receive distributions or payments unless and until the Litigation Trust Beneficiary provides its Federal Tax Identification Number(s) or Social Security Number(s), and such unclaimed or undeliverable distribution or payment shall be distributed on the next Distribution Date to the holders of Litigation Trust Interests as if such distribution were Available Cash. Without further Court order, unclaimed funds in an amount of \$10,000 per Litigation Trust Beneficiary or less held by the Litigation Trust on the later of (a) the entry of the final decree closing the Chapter 11 Cases and (b) the termination of the Litigation Trust may be donated to a charity selected by the Litigation Trustee and the Reorganized Debtors.

Litigation Trust Beneficiaries who change addresses (including email addresses) must notify the Litigation Trustee of such change of address in writing by any of the methods set forth in Section 10.1 below.

**7.8 No Distribution in Excess of Allowed Amount of Claim.** Notwithstanding anything to the contrary herein, no holder of a Litigation Trust Interest shall receive, after taking into account payments from third parties, in respect of such Litigation Trust Interest any distribution in excess of the

Allowed amount of such Litigation Trust Beneficiary's Allowed Claim or Interest against the Debtors. For the avoidance of doubt, no holder of a Litigation Trust Interest shall receive, in the aggregate, distributions from the Litigation Trust Assets in excess of such Litigation Trust Beneficiary's Allowed Claim or Interest against the Debtors. Notwithstanding the foregoing in this Section 7.8, following the Effective Date, holders of Litigation Trust Interests shall accrue interest on an annual basis at the federal judgment rate in effect as of the Effective Date on the Allowed amount of such Litigation Trust Beneficiary's Allowed Claim against the Debtors to the extent such Allowed Claim remains unpaid.

## **ARTICLE 8**

### **TAX MATTERS**

**8.1 Tax Treatment.** For all federal income tax purposes, all relevant parties (including, without limitation, the Debtors, the Litigation Trustee and the Litigation Trust Beneficiaries) shall treat the transfer of the Litigation Trust Assets to the Litigation Trust for the benefit of the Litigation Trust Beneficiaries, whether the applicable Claims or Interests are Allowed on or after the Effective Date, including any amounts or other assets subsequently transferred to the Litigation Trust (but only at such time as actually transferred) as (i) a transfer of the Litigation Trust Assets (subject to any obligations relating to such Litigation Trust Assets) directly to the Litigation Trust Beneficiaries and, to the extent the Litigation Trust Assets are allocable to Disputed Claims or Interests that are the responsibility of the Litigation Trust to resolve, to the Disputed Claims Reserve, followed by (ii) the transfer by the Litigation Trust Beneficiaries to the Litigation Trust of the Litigation Trust Assets (other than the Litigation Trust Assets allocable to the Disputed Claims Reserve) in exchange for Litigation Trust Interests. Accordingly, the Litigation Trust Beneficiaries shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective undivided share of the Litigation Trust Assets (other than such Litigation Trust Assets that are allocable to the Disputed Claims Reserve). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

**8.2 Tax Treatment of Disputed Claims Reserve.** Subject to contrary definitive guidance from the Internal Revenue Service or a court of competent jurisdiction (including the receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Litigation Trustee), the Litigation Trustee may (A) timely elect to treat any Disputed Claims reserve as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9 and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Litigation Trustee and the Litigation Trust Beneficiaries) shall report for U.S. federal, state and local income tax purposes consistently with the foregoing.

**8.3 Tax Returns and Statements.** The "taxable year" of the Litigation Trust shall be the "calendar year" as such terms are defined in section 441 of the IRC. The Litigation Trustee shall file tax returns for the Litigation Trust treating the Litigation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this Section 8.3. The Litigation Trustee also will annually send to each Litigation Trust Beneficiary a separate statement setting forth the Litigation Trust Beneficiary's share of items of income, gain, loss, deduction or credit (including the receipts and expenditures of the Litigation Trust) as relevant for U.S. federal income tax purposes and will instruct all such holders to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such holder's underlying beneficial holders with instructions to utilize such information in preparing their U.S. federal income tax returns. The Litigation Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Litigation Trust that is required by any governmental unit.

**8.4 Payment of Taxes.** With respect to any Litigation Trust Assets and any other income or gain of the Litigation Trust allocable to Disputed Claims or Disputed Interests, the Litigation Trustee shall cause the Litigation Trust to pay any taxes imposed on the Litigation Trust by any federal, state or local, or any non-U.S. tax law. The amount of such taxes paid by the Litigation Trust with respect to a Disputed Claim or Disputed Interest (i) will reduce the amount distributed with respect to such Disputed Claim or Disputed Interest to the extent it becomes an Allowed Claim or Allowed Interest and (ii) to the extent such Disputed Claim or Disputed Interest does not become an Allowed Claim or Allowed Interest, will reduce distributions ratably to all holders in the same Class as such Disputed Claim or Disputed Interest; *provided, however*, that any taxes that reduce distributions pursuant to the foregoing clauses (i) and (ii) shall, for all purposes of this Litigation Trust Agreement, be treated as amounts distributed to those holders of Claims whose distributions are so reduced.

**8.5 Allocations of Litigation Trust Taxable Income.** Allocations of Litigation Trust taxable income among the Litigation Trust Beneficiaries shall be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (without regard to any restrictions on distributions described herein) if, immediately prior to such deemed distribution, the Litigation Trust had distributed all its assets (valued at their tax book value) to the Litigation Trust Beneficiaries, in each case up to the tax book value of the assets treated as contributed by the Litigation Trust Beneficiaries, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Litigation Trust. Taxable loss of the Litigation Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the Litigation Trust Assets. The tax book value of the Litigation Trust Assets for this purpose shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the IRC, the applicable tax regulations, and other applicable administrative and judicial authorities and pronouncements. For purposes of this Section 8.5, “taxable income” means aggregate items of income and gain realized for U.S. federal income tax purposes and “taxable loss” means aggregate items of loss and deduction realized for U.S. federal income tax purposes, all such items determined on a gross, rather than net, basis.

**8.6 Withholding.** The Litigation Trustee may withhold and pay to the appropriate tax authority all amounts required to be withheld pursuant to any federal, state, local or non-U.S. tax law with respect to any payment or distribution to the Litigation Trust Beneficiaries. All such amounts withheld and paid to the appropriate tax authority shall be treated as amounts distributed to such Litigation Trust Beneficiaries for all purposes of this Litigation Trust Agreement. The Litigation Trustee shall be authorized to collect such tax information from the Litigation Trust Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as it, in its sole discretion, deems necessary to effectuate the Plan, the Confirmation Order and this Litigation Trust Agreement. In order to receive distributions under the Plan, all Litigation Trust Beneficiaries will need to identify themselves to the Litigation Trustee and provide tax information and the specifics of their holdings, to the extent the Litigation Trustee deems appropriate, including a taxpayer identification number (“TIN”) as assigned by the Internal Revenue Service or, in the case of Litigation Trust Beneficiaries that are not United States persons for federal income tax purposes, certification of foreign status on the appropriate IRS Form W-8. This identification requirement may, in certain cases, extend to holders who hold their securities in street name. The Litigation Trustee may refuse to make a distribution to any Litigation Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered; *provided, however*, that, upon the delivery of such information by a Litigation Trust Beneficiary, the Litigation Trustee shall make such distribution to which the Litigation Trust Beneficiary is entitled, without interest; and, *provided, further*, that, if the Litigation Trustee fails to withhold in respect of amounts received or distributable with respect to any such holder and the Litigation Trustee is later held liable for the amount of such withholding, such holder shall reimburse the Litigation Trustee for such liability.

**8.7 Valuation.** As soon as possible after the Effective Date, the Litigation Trustee shall make a good-faith valuation of the Litigation Trust Assets, and such valuation shall be made available from time to time, in writing, to the Litigation Trust Beneficiaries and shall be used consistently by all parties (including, without limitation the Litigation Trustee and the Litigation Trust Beneficiaries) for all federal income tax purposes. In connection with the preparation of the valuation contemplated by the Plan and this Litigation Trust Agreement, the Litigation Trust shall be entitled to retain such professionals and advisors as the Litigation Trust shall determine to be appropriate or necessary with the consent of the majority of the Litigation Trust Oversight Board, and the Litigation Trustee shall take such other actions in connection therewith as it determines to be appropriate or necessary. The Litigation Trust shall bear all of the reasonable costs and expenses incurred in connection with determining such value, including the fees and expenses of any professionals retained in connection therewith.

**8.8 Expedited Determination of Taxes.** The Litigation Trustee may request an expedited determination of taxes of the Litigation Trust, including any Disputed Claims reserve, under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Litigation Trust for all taxable periods through the dissolution of the Litigation Trust.

## **ARTICLE 9** **TERMINATION**

The Litigation Trust shall terminate when (a) all Litigation Trust Assets have been distributed in accordance with the Plan, including the 9019 Settlement, and all Litigation Trust Causes of Action have been resolved or abandoned pursuant to, and in accordance with, this Litigation Trust Agreement, (b) the Litigation Trustee and each of the members of the Litigation Trust Oversight Board determine that the administration of the Litigation Trust is not likely to yield sufficient additional proceeds to justify the pursuit of the Litigation Trust Causes of Action, and (c) either (i) the Litigation Trustee and a majority of the Litigation Trust Oversight Board determine that the administration of the Litigation Trust is not likely to yield sufficient additional proceeds to justify the pursuit of reconciling and resolving all Disputed Medical Malpractice Claims, Subordinated Claims (including TRA Claims), Disputed General Unsecured Claims, Disputed Subordinated Claims, and Disputed Equity Interests or (ii) all Disputed Medical Malpractice Claims, Disputed Subordinated Claims (including TRA Claims), Disputed General Unsecured Claims, Disputed Subordinated Claims, and Disputed Equity Interests have been resolved and all Allowed Medical Malpractice Claims, Subordinated Claims (including TRA Claims), General Unsecured Claims, Subordinated Claims and Existing Equity Interests have been paid in full in accordance with the Plan; *provided, however*, that the term of the Litigation Trust shall not exceed five (5) years after the date this Litigation Trust is created. Notwithstanding the foregoing, the Bankruptcy Court, upon motion by the Litigation Trustee with the consent of a majority of the Litigation Trust Oversight Board, within six (6) months before the expiration of the original term or any extended term, may extend the term of the Litigation Trust for one or more finite terms based upon the particular facts and circumstances at that time, if it is in the best interest of the Litigation Trust Beneficiaries and an extension is necessary to the liquidating purpose of the Litigation Trust. If permitted under applicable law and not contrary to the classification of the Litigation Trust as a liquidating trust and a pass-through entity under applicable income tax law, and if in the best interests of the Litigation Trust Beneficiaries, the Litigation Trustee may distribute interests in the Litigation Trust Assets or distribute the Litigation Trust Assets to another Person and then distribute interests in such Person to the Litigation Trust Beneficiaries. If at any time the Litigation Trustee determines, in reliance upon such professionals as the Litigation Trustee may retain, in consultation with the Litigation Trust Oversight Board, that the expense of administering the Litigation Trust so as to make a final distribution to the Litigation Trust Beneficiaries is likely to exceed the value of the assets remaining in the Litigation Trust, the Litigation Trustee may apply to the Bankruptcy Court for authority to (1) both before and in connection with termination, reserve any amount necessary to dissolve the Litigation Trust, (2)(i) distribute any balance to the Litigation Trust

Beneficiaries or (ii) donate any balance to a charitable organization (A) described in section 501(c)(3) of the IRC, (B) exempt from U.S. federal income tax under section 501(a) of the IRC, (C) not a “private foundation” as defined in section 509(a) of the IRC, and (D) that is unrelated to the Reorganized Debtors, the Litigation Trustee, and any insider of the Litigation Trustee, and (3) dissolve the Litigation Trust. After all liabilities of the Litigation Trust have been satisfied or duly provided for, such remaining Litigation Trust Assets shall be distributed to Litigation Trust Beneficiaries as a final distribution. The Litigation Trust may not be terminated at any time by the Litigation Trust Beneficiaries.

**ARTICLE 10**  
**MISCELLANEOUS**

**10.1 Notices.** Any notice required to be given by this Litigation Trust Agreement to all Litigation Trust Beneficiaries shall be in writing and shall be sent by first class mail, or in the case of mailing to a non-United States address, air mail, postage prepaid. All other notices, requests or other communications required or permitted to be made in accordance with this Litigation Trust Agreement shall be in writing and shall be delivered by overnight mail, signature required, or U.S. certified mail, return receipt requested, to:

- (a) If to the Litigation Trustee:

Drivetrain Advisors  
Attn: Alan J. Carr  
630 Third Avenue, 21st Floor  
New York, NY 10017

- (b) if to any Litigation Trust Beneficiary in such Litigation Trust Beneficiary’s capacity as a Litigation Trust Beneficiary, at such Litigation Trust Beneficiary’s address as listed in the Litigation Trust Register or as identified in a written request for notice delivered to the Litigation Trustee.

- (c) If to the Reorganized Debtors:

Adeptus Health, LLC  
Attn: Timothy Mueller, General Counsel  
2941 Lake Vista Drive  
Lewisville, TX 75067

And

Norton Rose Fulbright US LLP  
Attn: Lou Strubeck, Esq.  
Attn: John N. Schwartz, Esq.  
Attn: Liz Boydston, Esq.  
2200 Ross Avenue, Suite 3600  
Dallas, TX 75201

(d) If to the Litigation Trust Oversight Board:

Deerfield Management  
Attn: Bryan Sendrowski  
780 Third Avenue, 37th floor  
New York, NY 10017

PIRINATE Consulting Group, LLC  
Attn: Eugene I. Davis  
5 Canoe Brook Drive  
Livingston, NJ 07039

Wexford Capital LP  
Attn: Arthur H. Amron  
Wexford Plaza  
411 West Putnam Avenue  
Greenwich, CT 06830

Notice mailed shall be effective on the date mailed. All other notices shall be effective on the date of delivery. Any Person may change the address at which it is to receive notices under this Litigation Trust Agreement by furnishing written notice pursuant to the provisions of this Section 10.1 to the entity to be charged with knowledge of such change.

**10.2 Amendment.** The Litigation Trustee may, with the approval of each member of the Litigation Trust Oversight Board, modify, supplement, or amend this Litigation Trust Agreement in any way that is not inconsistent with the Plan without further order of the Bankruptcy Court, including to: (i) cure any ambiguity, omission, defect, or inconsistency in this Litigation Trust Agreement; *provided*, that such amendments, supplements or waivers shall not adversely affect the U.S. federal income tax status of the Litigation Trust as a “liquidating trust”; (ii) comply with any requirements in connection with the U.S. federal income tax status of the Litigation Trust as a “liquidating trust”; (iii) comply with any requirements in connection with maintaining that the Litigation Trust is not subject to registration or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act of 1939, or the Investment Company Act of 1940; (iv) make the Litigation Trust a reporting entity and, in such event, to comply with or seek relief from any requirements in connection with satisfying the registration or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act of 1939, or the Investment Company Act of 1940; and (v) add or revise provisions related to the rights and obligations of the Litigation Trustee; *provided, however*, that no change may be made to this Litigation Trust Agreement without the prior approval of the Bankruptcy Court (upon notice and an opportunity for a hearing) that would (a) adversely affect (i) the Reorganized Debtors in any material respect (unless the Litigation Trustee receives prior written consent to such change from the Reorganized Debtors), (ii) disproportionately the distributions to any of the Litigation Trust Beneficiaries, or (iii) the U.S. federal income tax status of the Litigation Trust as a “liquidating trust,” (b) require any Litigation Trust Beneficiary to furnish or advance funds to the Litigation Trustee or entail any personal liability or the surrender of any individual right on the part of any Litigation Trust Beneficiary except with the written consent of such Litigation Trust Beneficiary, (c) expand, add to, or modify the original stated purpose of the Litigation Trust (as described in the Plan and this Litigation Trust Agreement), or (d) otherwise be in contravention of the Plan. Notwithstanding this Section 10.2, any amendments to this Litigation Trust Agreement shall not be inconsistent with the purpose and intention of the Litigation Trust to liquidate in an expeditious but orderly manner the Litigation Trust Assets in accordance with Treasury Regulation section 301.7701-4(d). In the event that the Litigation Trustee, the Deerfield Parties and the Litigation Trust Oversight Board are unable to reach a consensus regarding a proposed modification, supplement, or

amendment, either party may seek Bankruptcy Court approval of any such modification, supplement, or amendment.

**10.3 No Waiver.** No failure by the Litigation Trust or the Litigation Trustee to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

**10.4 Counterparts.** This Litigation Trust Agreement may be executed in one or more Counterparts, all of which shall be taken together to constitute one and the same instrument.

**10.5 Governing Law; Severability.** This Litigation Trust Agreement shall be governed by construed under and interpreted in accordance with the laws of the State of Texas. If a court of competent jurisdiction determines that any provision of this Litigation Trust Agreement is invalid or unenforceable under such applicable law, such invalidity or unenforceability shall not invalidate the entire Litigation Trust Agreement. In that case, this Litigation Trust Agreement shall be construed so as to limit any term or provision so as to make it enforceable or valid within the requirements of applicable law, and, if such term or provision cannot be so limited, this Litigation Trust Agreement shall be construed to omit such invalid or unenforceable provisions, provided that such construction, to the maximum extent possible, shall give effect to the purposes of the Plan.

**10.6 Headings.** Sections, subheadings and other headings used in this Litigation Trust Agreement are for convenience only and shall not affect the construction of this Litigation Trust Agreement.

**10.7 Relationship to Plan.** The Litigation Trustee shall be bound by the terms of the Plan. In the event of a conflict between the Plan (excluding this Litigation Trust Agreement) and this Litigation Trust Agreement, the Plan shall govern.

**10.8 Consent to Jurisdiction.** Each of the parties hereto (and each Litigation Trust Beneficiary by virtue of the benefits provided pursuant to the Plan and the Litigation Trust created hereunder) consents and submits to the jurisdiction of and venue in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division for all purposes of this Litigation Trust Agreement, including, without limitation, any action or proceeding instituted for the enforcement of any right, remedy, obligation, or liability arising under or by reason hereof.

**10.9 Waiver of Jury Trial.** ANY AND ALL RIGHT TO TRIAL BY JURY IS HEREBY WAIVED, AND THERE SHALL BE NO RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS LITIGATION TRUST AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**10.10 References to Reorganized Debtors.** If the Reorganized Debtors no longer exist at any time during the terms of this Litigation Trust, then the Litigation Trustee shall take all actions under this Litigation Trust Agreement without regard to requirements that it meet with, consult with, or seek approval from the Reorganized Debtors.

**10.11 No Suits by Creditors.** No Creditor or Interest holder shall have any right by virtue of any provision of this Litigation Trust Agreement to institute any action or proceeding in law or in equity against any party other than the Litigation Trustee on or under or with respect to the Litigation Trust Assets.

**10.12 Irrevocability.** The Litigation Trust is irrevocable, but is subject to amendment as provided for herein.

**10.13 Enforcement and Administration.** The Bankruptcy Court shall enforce and administer the provisions of this Litigation Trust Agreement, as set forth in the Plan and herein.

**10.14 Third Party Beneficiaries.** This Litigation Trust Agreement is not intended to and shall not be construed to give any Person (other than the parties to this Litigation Trust Agreement) any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby, except that the Litigation Trust Beneficiaries and the Indemnified Parties are third-party beneficiaries and are entitled, as applicable to such Persons, to the rights and benefits hereunder and may enforce the provisions applicable to such Persons as if they were parties hereto.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Litigation Trust Agreement or have caused this Litigation Trust Agreement to be duly executed by duly authorized officers as of the day and year first above written.

**LITIGATION TRUSTEE**

By: \_\_\_\_\_  
Alan J. Carr  
Litigation Trustee

**ADEPTUS HEALTH COLORADO HOLDINGS LLC  
ADEPTUS HEALTH INC.  
ADEPTUS HEALTH LLC  
ADEPTUS HEALTH MANAGEMENT LLC  
ADEPTUS HEALTH PHOENIX HOLDINGS LLC  
ADEPTUS HEALTH VENTURES LLC  
ADPT COLUMBUS HOLDINGS LLC  
ADPT DFW HOLDINGS LLC  
ADPT HOUSTON HOLDINGS LLC  
ADPT NEW ORLEANS HOLDINGS LLC  
ADPT NEW ORLEANS MANAGEMENT LLC  
ADPT-AZ MPT HOLDINGS LLC  
ADPT-AZ RE HOLDINGS LLC  
ADPT-CO MPT HOLDINGS LLC  
ADPT-CO RE HOLDINGS LLC  
ADPT-COLUMBUS MPT HOLDINGS LLC  
ADPT-COLUMBUS RE HOLDINGS LLC  
ADPT-DFW MPT HOLDINGS LLC  
ADPT-DFW RE HOLDINGS LLC  
ADPT-HOUSTON MPT HOLDINGS LLC  
ADPT-HOUSTON RE HOLDINGS LLC  
ADPT-LA MPT HOLDINGS LLC  
ADPT-LA RE HOLDINGS LLC  
AJNH MEDICAL CENTER LLC  
ALAMO HEIGHTS SA MEDICAL CENTER LLC  
ALGIERS MEDICAL CENTER LLC  
ALVIN MEDICAL CENTER LLC  
ANTHEM MEDICAL CENTER LLC  
ANTOINE MEDICAL CENTER LLC  
ARIZONA GENERAL ER LLC  
ATASCOCITA 1960 MEDICAL CENTER LLC  
AUSTIN BRODIE MEDICAL CENTER LLC  
BAYTOWN MEDICAL CENTER LLC  
BELLA TERRA MEDICAL CENTER LLC  
BENDER'S LANDING MEDICAL CENTER LLC**

**BLACKLICK WOODS MEDICAL CENTER LLC  
BRIAR FOREST-ELDRIDGE MEDICAL CENTER  
LLC  
BROAD WAGONER MEDICAL CENTER LLC  
BRUSHY CREEK MEDICAL CENTER LLC  
CAMELBACK 83RD MEDICAL CENTER LLC  
CEDAR PARK LAKELINE MEDICAL CENTER LLC  
CENTENNIAL MEDICAL CENTER LLC  
CENTER STREET DP MEDICAL CENTER LLC  
CHANDLER GERMANN MEDICAL CENTER LLC  
CHANDLER HEIGHTS MEDICAL CENTER LLC  
CINCO RANCH MEDICAL CENTER LLC  
COLONIAL LAKES MEDICAL CENTER LLC  
COLORADO GENERAL HOSPITAL LLC  
CONROE MEDICAL CENTER LLC  
CONVERSE MEDICAL CENTER LLC  
COPPERWOOD MEDICAL CENTER LLC  
CREEKSIDE FOREST MEDICAL CENTER LLC  
CULEBRA-TEZEL MEDICAL CENTER LLC  
DE ZAVALA MEDICAL CENTER LLC  
DUBLIN MEDICAL CENTER LLC  
EAGLES NEST MEDICAL CENTER LLC  
EAST MESA MEDICAL CENTER LLC  
EAST PFLUGERVILLE MEDICAL CENTER LLC  
EAST RIVERSIDE MEDICAL CENTER LLC  
ECC MANAGEMENT, LLC  
FCER MANAGEMENT, LLC  
FIRST CHOICE ER, LLC  
FIRST TEXAS HOSPITAL CY-FAIR LLC  
FOUR POINTS MEDICAL CENTER LLC  
FRIENDSWOOD MEDICAL CENTER LLC  
FTH HOUSTON PARTNERS LLC  
GARLAND CENTERVILLE MEDICAL CENTER LLC  
GILBERT MEDICAL CENTER LLC  
GLEANNLOCH FARMS MEDICAL CENTER LLC  
GLENDALE MEDICAL CENTER LLC  
GOODYEAR MEDICAL CENTER LLC  
GREENVILLE STACY MEDICAL CENTER LLC  
GUADALUPE RIVER MEDICAL CENTER LLC  
HAMPDEN TOWER MEDICAL CENTER LLC  
HELOTES MEDICAL CENTER LLC  
HILLIARD MEDICAL CENTER LLC  
HOUSTON 9520 JONES MEDICAL CENTER LLC  
HOUSTON FM 1960 MEDICAL CENTER LLC  
KATY ER CENTER LLC  
KELLER MEDICAL CENTER LLC  
KINGWOOD MEDICAL CENTER LLC  
KUYKENDAHL MEDICAL CENTER LLC  
LA PORTE MEDICAL CENTER LLC  
LAKEWOOD FOREST MEDICAL CENTER LLC  
LEAGUE CITY MEDICAL CENTER LLC**

LEGACY TRAILS MEDICAL CENTER LLC  
LEWIS CENTER MEDICAL CENTER LLC  
LITCHFIELD PARK MEDICAL CENTER LLC  
LOUETTA MEDICAL CENTER LLC  
MARRERO MEDICAL CENTER LLC  
MEADOWBROOK HEIGHTS MEDICAL CENTER  
LLC  
MEDICAL CENTER OF CROSBY LYNCHBURG LLC  
MEDICAL CENTER OF SPRING RAYFORD  
RICHARDS LLC  
MESA TIERRA MEDICAL CENTER LLC  
MIDLOTHIAN MEDICAL CENTER LLC  
MOUNTAIN PARK RANCH MEDICAL CENTER LLC  
NATIONAL MEDICAL PROFESSIONALS OF  
ARIZONA LLC  
NATIONAL MEDICAL PROFESSIONALS OF OHIO  
LLC  
NEW ORLEANS EAST MEDICAL CENTER LLC  
NORTHWEST HARRIS COUNTY MEDICAL  
CENTERLLC  
OHIO GENERAL ER LLC  
OHIO GENERAL HOSPITAL LLC  
OPFREE LICENSING LP  
OPFREE RE INVESTMENTS, LTD.  
OPFREE, LLC  
PEARLAND 518 MEDICAL CENTER LLC  
PEARLAND PARKWAY MEDICAL CENTER LLC  
PEARLAND SUNRISE MEDICAL CENTER LLC  
PFLUGERVILLE MEDICAL CENTER LLC  
POTRANCO MEDICAL CENTER LLC  
PROVINCES MEDICAL CENTER LLC  
QUEEN CREEK MEDICAL CENTER LLC  
ROSENBERG MEDICAL CENTER LLC  
ROY RICHARD MEDICAL CENTER LLC  
SAN ANTONIO NACOGDOCHES MEDICAL  
CENTER LLC  
SAN TAN VALLEY MEDICAL CENTER LLC  
SEGUIN FOSTER MEDICAL CENTER LLC  
SIENNA PLANTATION MEDICAL CENTER LLC  
SOUTH BEND MEDICAL CENTER LLC  
SOUTH CARRIER MEDICAL CENTER LLC  
SOUTH GREEN OAKS MEDICAL CENTER LLC  
SPANISH OAKS MEDICAL CENTER LLC  
SPRING 2920 MEDICAL CENTER LLC  
SPRING GREEN MEDICAL CENTER LLC  
SSH MEDICAL CENTER LLC  
STERLING RIDGE MEDICAL CENTER II LLC  
STERLING RIDGE MEDICAL CENTER LLC  
SUMMERWOOD MEDICAL CENTER LLC  
SURPRISE MEDICAL CENTER LLC  
SW CHANDLER MEDICAL CENTER LLC

**SYCAMORE SCHOOL MEDICAL CENTER LLC  
TEMPE MCCLINTOCK BASELINE MEDICAL  
CENTER LLC  
TEMPE RURAL-BASELINE MEDICAL CENTER  
LLC  
TEXAS REGIONAL HOSPITAL LLC  
VICTORY LAKES MEDICAL CENTER LLC  
WADSWORTH-BELLEVIEW MEDICAL CENTER  
LLC  
WATERSIDE MEDICAL CENTER LLC  
WHITE SETTLEMENT MEDICAL CENTER LLC  
WILDERNESS-HARDY OAK MEDICAL CENTER  
LLC  
WILLIAM CANNON MEDICAL CENTER LLC**

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

**Schedule 1 – List of Debtors**

ADEPTUS HEALTH COLORADO HOLDINGS LLC  
ADEPTUS HEALTH INC.  
ADEPTUS HEALTH LLC  
ADEPTUS HEALTH MANAGEMENT LLC  
ADEPTUS HEALTH PHOENIX HOLDINGS LLC  
ADEPTUS HEALTH VENTURES LLC  
ADPT COLUMBUS HOLDINGS LLC  
ADPT DFW HOLDINGS LLC  
ADPT HOUSTON HOLDINGS LLC  
ADPT NEW ORLEANS HOLDINGS LLC  
ADPT NEW ORLEANS MANAGEMENT LLC  
ADPT-AZ MPT HOLDINGS LLC  
ADPT-AZ RE HOLDINGS LLC  
ADPT-CO MPT HOLDINGS LLC  
ADPT-CO RE HOLDINGS LLC  
ADPT-COLUMBUS MPT HOLDINGS LLC  
ADPT-COLUMBUS RE HOLDINGS LLC  
ADPT-DFW MPT HOLDINGS LLC  
ADPT-DFW RE HOLDINGS LLC  
ADPT-HOUSTON MPT HOLDINGS LLC  
ADPT-HOUSTON RE HOLDINGS LLC  
ADPT-LA MPT HOLDINGS LLC  
ADPT-LA RE HOLDINGS LLC  
AJNH MEDICAL CENTER LLC  
ALAMO HEIGHTS SA MEDICAL CENTER LLC  
ALGIERS MEDICAL CENTER LLC  
ALVIN MEDICAL CENTER LLC  
ANTHEM MEDICAL CENTER LLC  
ANTOINE MEDICAL CENTER LLC  
ARIZONA GENERAL ER LLC  
ATASCOCITA 1960 MEDICAL CENTER LLC  
AUSTIN BRODIE MEDICAL CENTER LLC  
BAYTOWN MEDICAL CENTER LLC  
BELLA TERRA MEDICAL CENTER LLC  
BENDER'S LANDING MEDICAL CENTER LLC  
BLACKLICK WOODS MEDICAL CENTER LLC  
BRIAR FOREST-ELDRIDGE MEDICAL CENTER LLC  
BROAD WAGONER MEDICAL CENTER LLC  
BRUSHY CREEK MEDICAL CENTER LLC  
CAMELBACK 83RD MEDICAL CENTER LLC  
CEDAR PARK LAKELINE MEDICAL CENTER LLC  
CENTENNIAL MEDICAL CENTER LLC  
CENTER STREET DP MEDICAL CENTER LLC  
CHANDLER GERMANN MEDICAL CENTER LLC  
CHANDLER HEIGHTS MEDICAL CENTER LLC

CINCO RANCH MEDICAL CENTER LLC  
COLONIAL LAKES MEDICAL CENTER LLC  
COLORADO GENERAL HOSPITAL LLC  
CONROE MEDICAL CENTER LLC  
CONVERSE MEDICAL CENTER LLC  
COPPERWOOD MEDICAL CENTER LLC  
CREEKSIDE FOREST MEDICAL CENTER LLC  
CULEBRA-TEZEL MEDICAL CENTER LLC  
DE ZAVALA MEDICAL CENTER LLC  
DUBLIN MEDICAL CENTER LLC  
EAGLES NEST MEDICAL CENTER LLC  
EAST MESA MEDICAL CENTER LLC  
EAST PFLUGERVILLE MEDICAL CENTER LLC  
EAST RIVERSIDE MEDICAL CENTER LLC  
ECC MANAGEMENT, LLC  
FCER MANAGEMENT, LLC  
FIRST CHOICE ER, LLC  
FIRST TEXAS HOSPITAL CY-FAIR LLC  
FOUR POINTS MEDICAL CENTER LLC  
FRIENDSWOOD MEDICAL CENTER LLC  
FTH HOUSTON PARTNERS LLC  
GARLAND CENTERVILLE MEDICAL CENTER LLC  
GILBERT MEDICAL CENTER LLC  
GLEANNLOCH FARMS MEDICAL CENTER LLC  
GLENDALE MEDICAL CENTER LLC  
GOODYEAR MEDICAL CENTER LLC  
GREENVILLE STACY MEDICAL CENTER LLC  
GUADALUPE RIVER MEDICAL CENTER LLC  
HAMPDEN TOWER MEDICAL CENTER LLC  
HELOTES MEDICAL CENTER LLC  
HILLIARD MEDICAL CENTER LLC  
HOUSTON 9520 JONES MEDICAL CENTER LLC  
HOUSTON FM 1960 MEDICAL CENTER LLC  
KATY ER CENTER LLC  
KELLER MEDICAL CENTER LLC  
KINGWOOD MEDICAL CENTER LLC  
KUYKENDAHL MEDICAL CENTER LLC  
LA PORTE MEDICAL CENTER LLC  
LAKEWOOD FOREST MEDICAL CENTER LLC  
LEAGUE CITY MEDICAL CENTER LLC  
LEGACY TRAILS MEDICAL CENTER LLC  
LEWIS CENTER MEDICAL CENTER LLC  
LITCHFIELD PARK MEDICAL CENTER LLC  
LOUETTA MEDICAL CENTER LLC  
MARRERO MEDICAL CENTER LLC  
MEADOWBROOK HEIGHTS MEDICAL CENTER LLC

MEDICAL CENTER OF CROSBY LYNCHBURG LLC  
MEDICAL CENTER OF SPRING RAYFORD RICHARDS LLC  
MESA TIERRA MEDICAL CENTER LLC  
MIDLOTHIAN MEDICAL CENTER LLC  
MOUNTAIN PARK RANCH MEDICAL CENTER LLC  
NATIONAL MEDICAL PROFESSIONALS OF ARIZONA LLC  
NATIONAL MEDICAL PROFESSIONALS OF OHIO LLC  
NEW ORLEANS EAST MEDICAL CENTER LLC  
NORTHWEST HARRIS COUNTY MEDICAL CENTER LLC  
OHIO GENERAL ER LLC  
OHIO GENERAL HOSPITAL LLC  
OPFREE LICENSING LP  
OPFREE RE INVESTMENTS, LTD.  
OPFREE, LLC  
PEARLAND 518 MEDICAL CENTER LLC  
PEARLAND PARKWAY MEDICAL CENTER LLC  
PEARLAND SUNRISE MEDICAL CENTER LLC  
PFLUGERVILLE MEDICAL CENTER LLC  
POTRANCO MEDICAL CENTER LLC  
PROVINCES MEDICAL CENTER LLC  
QUEEN CREEK MEDICAL CENTER LLC  
ROSENBERG MEDICAL CENTER LLC  
ROY RICHARD MEDICAL CENTER LLC  
SAN ANTONIO NACOGDOCHES MEDICAL CENTER LLC  
SAN TAN VALLEY MEDICAL CENTER LLC  
SEGUIN FOSTER MEDICAL CENTER LLC  
SIENNA PLANTATION MEDICAL CENTER LLC  
SOUTH BEND MEDICAL CENTER LLC  
SOUTH CARRIER MEDICAL CENTER LLC  
SOUTH GREEN OAKS MEDICAL CENTER LLC  
SPANISH OAKS MEDICAL CENTER LLC  
SPRING 2920 MEDICAL CENTER LLC  
SPRING GREEN MEDICAL CENTER LLC  
SSH MEDICAL CENTER LLC  
STERLING RIDGE MEDICAL CENTER II LLC  
STERLING RIDGE MEDICAL CENTER LLC  
SUMMERWOOD MEDICAL CENTER LLC  
SURPRISE MEDICAL CENTER LLC  
SW CHANDLER MEDICAL CENTER LLC  
SYCAMORE SCHOOL MEDICAL CENTER LLC  
TEMPE MCCLINTOCK BASELINE MEDICAL CENTER LLC  
TEMPE RURAL-BASELINE MEDICAL CENTER LLC  
TEXAS REGIONAL HOSPITAL LLC  
VICTORY LAKES MEDICAL CENTER LLC  
WADSWORTH-BELLEVIEW MEDICAL CENTER LLC  
WATERSIDE MEDICAL CENTER LLC

WHITE SETTLEMENT MEDICAL CENTER LLC  
WILDERNESS-HARDY OAK MEDICAL CENTER LLC  
WILLIAM CANNON MEDICAL CENTER LLC  
62879959 v2

**Exhibit 1**  
**Litigation Trustee Compensation Schedule**

The compensation for the Litigation Trustee as set forth in Section 3.9 shall be agreed upon by members of the Litigation Trust Oversight Board.

**LTOB Compensation Schedule**

As set forth in Section 3.16, each member of the Litigation Trust Oversight Board shall be compensated as follows: (a) \$50,000 for the first year and (b) \$40,000 per year for each successive year, with such compensation earned and paid quarterly. In addition, each member of the Litigation Trust Oversight Board shall be reimbursed for the actual and necessary expenses that are incurred as a result of serving on the Litigation Trust Oversight Board.