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

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In re:	:	
	:	Chapter 11
SAINT VINCENTS CATHOLIC MEDICAL	:	
CENTERS OF NEW YORK d/b/a SAINT VINCENT	:	Case No.: 05-14945 (CGM)
CATHOLIC MEDICAL CENTERS, <i>et al.</i> ,	:	
	:	(Jointly Administered)
Debtors.	:	
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**NOTICE OF HEARING ON MOTION OF THE MEDMAL TRUST MONITOR FOR
ENTRY OF ORDER HOLDING SVC MC IN CONTEMPT OF CONFIRMATION
ORDER AND GRANTING REMEDIAL RELIEF**

PLEASE TAKE NOTICE that a hearing to consider the relief requested in the motion of the MedMal Trust Monitor for entry of an order holding SVC MC in contempt of the Confirmation Order (the "Motion")¹ shall be held before the Honorable Cecelia G. Morris, United States Bankruptcy Judge, on **February 18, 2010 at 2:30 p.m. (New York time)** or as soon thereafter as counsel may be heard, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 1004 (Room 701 or such other room as scheduled by the Court).

¹ Capitalized terms shall have the meanings ascribed in the Motion.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion must be in writing, conform to the Bankruptcy Rules and the Local Rules of Bankruptcy Court, set forth the legal factual basis therefore and be filed with the Bankruptcy Court electronically in accordance with General Order M-242 (General Order M-242 and the User's Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court), by registered users of the Bankruptcy Court's case filing system and, by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format (with a hard-copy delivered directly to Chambers), and be served in accordance with General Order M-242 upon (i) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Tracy Hope Davis, Esq.); (ii) FTI Consulting, 3 Times Square, 9th Floor, New York, New York 10036 (Attn: Michael E. Katzenstein), the MedMal Trust Monitor; (iii) Cooley Godward Kronish LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Richard S. Kanowitz, Esq. and Seth Van Aalten, Esq.), counsel to the MedMal Trust Monitor; (iv) Christiana Bank & Trust Company, 300 Delaware Avenue, Suite 714, Wilmington, Delaware 19801 (Attn: James Young), the MedMal Trustee; (v) Christiana Bank & Trust Company, 1314 King Street, Wilmington, Delaware 19801 (Attn: Louis W. Geibel), the MedMal Trustee; (vi) The Bayard Firm, P.A., 222 Delaware Avenue, Suite 900, P.O. Box 25130, Wilmington, Delaware 19801 (Attn: Marla Hirshman Norton, Esq.), counsel to the MedMal Trustee; (vii) Gray & Associates, LLC, 20 South Charles Street, Suite 402, Baltimore, Maryland 21201 (Attn: G. Richard Gray), the Litigation Trustee; (viii) Saint Vincents Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers, 130 W. 12th Street, Martin Payne, 1G, New York, New York 10011 (Attn: Chief Executive Officer and General Counsel); (ix) Cadwalader, Wickersham &

Taft LLP, One World Financial Center, New York, New York 10281 (Attn: Deryck A. Palmer, Esq. and Andrew M. Troop, Esq.), counsel to SVCMC; and (x) all other parties required to receive notice, so as to be received by no later than **February 10, 2010 at 4:00 p.m. (New York time)**.

Dated: January 27, 2010
New York, New York

COOLEY GODWARD KRONISH LLP

By: /s/ Richard S. Kanowitz
Richard S. Kanowitz
Seth Van Aalten

Counsel for the MedMal Trust Monitor

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SAINT VINCENTS CATHOLIC MEDICAL	:	
CENTERS OF NEW YORK d/b/a SAINT VINCENT	:	Case No.: 05-14945 (CGM)
CATHOLIC MEDICAL CENTERS, <i>et al.</i> ,	:	
	:	(Jointly Administered)
Debtors.	:	
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**MOTION OF THE MEDMAL TRUST MONITOR FOR ENTRY OF ORDER
HOLDING SVCMC IN CONTEMPT OF CONFIRMATION ORDER
AND GRANTING REMEDIAL RELIEF**

TO THE HONORABLE CECELIA G. MORRIS,
UNITED STATES BANKRUPTCY JUDGE:

Michael E. Katzenstein, in his capacity as the MedMal Trust Monitor¹ of Saint Vincents Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers (“SVCMC”) *et al.*, by and through his counsel Cooley Godward Kronish LLP, hereby moves the Court, pursuant to 11 U.S.C. § 105(a) and Bankruptcy Rules 9014, 9020 and 9021, for entry of an order (i) holding SVCMC in civil contempt of the confirmation order signed by United States

¹ All capitalized terms defined herein.

Bankruptcy Judge Hardin on July 27, 2007 and entered on even date which confirmed the first amended chapter 11 plan dated June 5, 2007 of SVCMC, (ii) directing SVCMC's immediate compliance with its past due obligations owed to the MedMal Trusts under the Confirmation Order, Chapter 11 Plan and MedMal Trust Agreements, (iii) entering judgment against SVCMC in the amount of \$10 million for actual damages sustained by the MedMal Trusts as the direct cause of SVCMC's willful default of its obligations under the Confirmation Order, Chapter 11 Plan and MedMal Trust Agreements; (iv) enjoining SVCMC from making any further transfer of any asset or encumbering any asset unless and until such time as SVCMC complies with its past due obligations to the MedMal Trusts on a full and final basis, (v) directing SVCMC to provide the MedMal Trust Monitor with a full accounting of SVCMC's assets, liabilities, current cash position and all payments previously made or to be made to creditors, including notice of any default or anticipated default on any of SVCMC's other material obligations or of other undertakings under the Chapter 11 Plan, and (vi) granting such other and/or further remedial relief as the Court deems just and proper. In support of this Motion, the MedMal Trust Monitor respectfully represents as follows:

PRELIMINARY STATEMENT

SVCMC was obligated under the MedMal Trust Funding Schedule to contribute \$10 million to the MedMal Trusts on or before August 30, 2009 – the second anniversary of the Chapter 11 Plan's Effective Date. No such payment was received by this date or, for that matter, in the nearly six months that have since passed. SVCMC has not disputed the existence of – or its failure to cure – this \$10 million default. The performance of SVCMC's obligations under the MedMal Trust Funding Schedule are not subject to any condition or contingency under the Chapter 11 Plan, the MedMal Trust Agreements, the Confirmation Order or any other subsequent agreement or Court order.

Indeed, the MedMal Trust Monitor is aware of correspondence between the MedMal Trustee and SVCMC indicating that SVCMC does not intend to comply with the Confirmation Order, Chapter 11 Plan and MedMal Trust Agreements. In an email dated September 29, 2009, Steven Deluca, a representative of SVCMC in charge of administering the liquidation and allowance of tort claims against SVCMC, advised the MedMal Trustee, Christiana Bank & Trust Company, that SVCMC's payment of the \$10 million past due would not be made because **“[i]t is part of [SVCMC's] operational plan to fund the trust when funds are available.”**² SVCMC apparently believes that it may operate its business without regard for the express terms of this Court's Confirmation Order and the timely payment of its obligations due thereunder.

SVCMC's willful violation is truly unconscionable given that the Chapter 11 Plan is the product of months of protracted, good faith, arms' length negotiations between SVCMC and its various creditor constituencies, including the Creditors' Committee, the Tort Committee and the PBGC, and took millions of dollars in legal fees and other expenses to implement. The record in the Chapter 11 Cases is clear – SVCMC's emergence from chapter 11 simply would not have been possible without the numerous compromises and considerable sacrifices made by its tort creditors. Specifically, holders of MedMal Claims agreed to deferred distributions to allow the tort claims to be liquidated in state court and paid upon allowance, all in an effort to provide SVCMC with the liquidity it needed to emerge from chapter 11 as a going-concern health care service provider. In contrast, SVCMC's cash and non-core assets were immediately made available to pay other general unsecured creditors almost 80% of their allowed claim amounts on the Effective Date.³ It is now time for SVCMC to make good on its Court ordered obligations.

² A copy of Mr. Deluca's e-mail dated September 29, 2009 is annexed hereto as **Exhibit A** (the “Deluca Email”).

³ See Disclosure Statement at page 6.

The MedMal Trust Monitor has reason to believe that SVCMC will not voluntarily comply with the Confirmation Order. On January 19, 2010, SVCMC's newly substituted restructuring counsel e-mailed counsel for the MedMal Trust Monitor to confirm that SVCMC will not cure its willful default because of liquidity issues. No support for this position was offered by SVCMC's substitute counsel and all further inquiries by the MedMal Trust Monitor and its counsel have been ignored. As disclosed in its post-confirmation report filed with the Court in mid-January, SVCMC has made distributions totaling approximately \$18.6 million to holders of non-MedMal Claims subsequent to its Chapter 11 Plan default and has done so without notice to the MedMal Trust Monitor and without providing an accounting of the source of these distributed funds or any other information concerning SVCMC's current financial position.

Moreover, as recently reported by several news outlets, including *The New York Post* in its January 26, 2010 article titled "Code Red Looms For St. Vinny's,"⁴ SVCMC has apparently begun the process of soliciting offers for the sale of all or a substantial portion of its business and/or assets – a process that appears to be supported by SVCMC's lenders, including GE Capital and TD Bank. SVCMC has made no attempt to involve or even advise the MedMal Trustee and the MedMal Trust Monitor of this sale process even though (i) the MedMal Trusts have liens on the Staff House and the Westchester Land securing, in part, SVCMC's funding obligations and (ii) the MedMal Trusts are entitled to accelerated payments under the MedMal Trust Funding Schedule from the proceeds of the disposition of SVCMC's assets, including the disposition of the Manhattan Real Estate. Accordingly, the MedMal Trust Monitor is compelled to seek the intervention of this Court to address SVCMC's willful default, disregard of the

⁴ A copy of this article is annexed hereto as **Exhibit B**.

Confirmation Order and the remedial relief necessary to restore the MedMal Trusts to their bargained-for position.

BACKGROUND

A. Appointment of Tort Committee

1. On July 5, 2005, SVCMC, CMC Physician Services, P.C., CMC Radiological Services P.C., CMC Cardiology Services P.C., Medical Service of St. Vincent's Hospital and Medical Center, P.C. and Surgical Service of St. Vincent's, P.C. (collectively, the "Debtors") and, as reorganized or liquidated, as applicable, the "Post-Effective Date Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the Southern District of New York (the "Chapter 11 Cases").

2. On March 29, 2006, a hearing was held before this Court to address the treatment of medical malpractice claims against the Debtors and other related issues, including the pending lift stay motions filed by such claimants. At the conclusion of that hearing, the Court directed the U.S. Trustee to move expeditiously to determine whether to appoint an official committee of tort claimants.

3. On March 31, 2006, the law firm of Kronish Lieb Weiner & Hellman LLP⁵ ("KLWH"), representing the Jacob D. Fuchsberg Law Firm, LLP (the "Fuchsberg Firm"), one of the medical malpractice law firms representing 20 holders of medical malpractice claims in excess of \$140 million against certain of the Debtors, requested in writing that the U.S. Trustee appoint an official committee of tort claimants. On the same day, the U.S. Trustee forwarded KLWH's letter to counsel for the Debtors and the official committee of unsecured creditors (the "Creditors' Committee") and asked for their position on the request. The U.S. Trustee directed

⁵ Effective as of October 1, 2006, the law firm of Kronish Lieb Weiner & Hellman LLP merged with the law firm of Cooley Godward LLP to form Cooley Godward Kronish LLP.

the Debtors and the Creditors' Committee to respond to the KLWH letter on or before April 14, 2006.

4. On April 14, 2006, both the Debtors and the Creditors' Committee submitted letters to the U.S. Trustee in opposition to the request to form an official committee of tort claimants. On April 20, 2006, the U.S. Trustee advised KLWH that it would not appoint an official committee of tort claimants. On that same day, the Fuchsberg Firm, along with nine other law firms⁶ representing similarly situated medical malpractice claimants, filed the *Motion of Counsel for Medical Malpractice Claimants for Appointment of Official Committee of Tort Claimants Pursuant to Section 1102(a)(2) of the Bankruptcy Code* (the "Appointment Motion") (Doc #1402). On April 24, 2006, the U.S. Trustee (Doc #1420), the Debtors (Doc #1423) and the Creditors' Committee (Doc #1421) each filed oppositions to the Appointment Motion.

5. On April 25, 2006, having heard oral argument with respect to the issues presented in the Appointment Motion and the oppositions filed with respect thereto, the Court granted the relief requested in the Appointment Motion and directed the parties opposing the Appointment Motion to confer with KLWH on orders implementing the relief granted. On May 2, 2006, the Court entered the *Order Directing the U.S. Trustee to Appoint an Official Committee of Tort Claimants* (the "Tort Committee") (Doc #1454).

6. On May 17, 2006, the Tort Committee was appointed by the U.S. Trustee, consisting of the following five members: (i) Ms. Elizabeth Evans and Mr. Mark McCord, Co-Guardians *ad Litem* for Michelle McCord, c/o Annmarie Bondi-Stoddard, Esq. of Pagalis &

⁶ The nine similarly situated law firms were as follows: Rosenberg Minc Falkoff & Wolff LLP, 9 claims alleging a total of approximately \$45 million; Sanocki Newman & Turret, LLP, 14 claims alleging a total of approximately \$65 million; Belluck & Fox, LLP, 1 claim alleging approximately \$1.5 million; Rheingold, Valet, Rheingold, Shkolnik & McCartney, 1 claim alleging \$5 million; Tantleff, Cohen & Tantleff, P.C., 2 claims alleging a total of approximately \$10.5 million; Wilentz, Goldman & Spitzer, P.A., 1 claim alleging approximately \$7.5 million; Ressler & Ressler, 1 claim alleging approximately \$10 million; Fitzgerald & Fitzgerald, P.C., 11 claims alleging a total of \$11 million; and Samuel & Ott, 2 claims alleging a total of approximately \$1.5 million.

Erickson, LLC; (ii) Ms. Barbara Vaccaro, c/o Charles H. Burger, Esq.; (iii) Resham Singh, by his attorney-in-fact, Parminder Kaur, c/o Joan Lieberman, Esq. of The Jacob D. Fuchsberg Law Firm, LLP; (iv) Mr. Alberto Cruz, c/o Trolman, Glaser & Lichtman, P.C.; and (v) Ms. Edeline Dodard, c/o Ellen Werther, Esq. of Ressler & Ressler, Attorneys at Law. That same day, the Tort Committee met and decided to employ KLWH as its counsel to represent it in the Chapter 11 Cases.

B. Chapter 11 Plan and Treatment of MedMal Claims

7. On February 9, 2007, the Debtors filed that (i) *Chapter 11 Plan of Reorganization of Saint Vincents Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers, and Chapter 11 Plans of Liquidation of Medical Service of St. Vincent's Hospital and Medical Center, P.C., Surgical Service of St. Vincent's, P.C., CMC Cardiology Services P.C., CMC Physician Services P.C., and CMC Radiological Services P.C.* (Doc #2756) (as amended on June 1, 2007 (Doc #3180) and June 5, 2007 (Doc #3207), the "Chapter 11 Plan") and (ii) *Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for Chapter 11 Plan of Reorganization of Saint Vincents Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers, and Chapter 11 Plans of Liquidation of Medical Service of St. Vincent's Hospital and Medical Center, P.C., Surgical Service of St. Vincent's, P.C., CMC Cardiology Services P.C., CMC Physician Services P.C., and CMC Radiological Services P.C.* (Doc #2757) (as amended on June 1, 2007 (Doc #3179) and June 5, 2007 (Doc #3206), the "Disclosure Statement").

8. On June 4, 2007, the Court held a hearing at which, subject to minor additional modifications as reported at that hearing, it approved the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code. Subsequently, on June 5, 2007, the Court entered an order, *inter alia*, (i) approving the Disclosure Statement, (ii)

establishing July 18, 2007 as the deadline for voting on the Plan, (iii) scheduling a hearing to consider confirmation of the Plan for July 27, 2007, and (iv) approving the form of support letters for the Plan from each of the Official Committees urging their respective constituents to vote in favor of the Plan (Doc #3205).

9. On July 27, 2007, the Court issued its *Findings of Fact and Conclusions of Law in connection with the Chapter 11 Plan* (Doc #3489) and entered that *Order Confirming Debtors' First Amended Chapter 11 Plans of Reorganization and Liquidation* (Doc #3490) (the "Confirmation Order"), representing the culmination of protracted, good-faith, arms'-length negotiations among the Debtors, the Creditors' Committee, the Tort Committee and certain individual creditors with respect to the terms of a consensual reorganization or liquidation, as applicable, of the Debtors' estates. Approximately 94% of those holders of claims alleged to be for medical malpractice which voted, voted in favor of the Plan, demonstrating the Tort Committee's essential role in these cases.

10. The Plan became effective according to its terms on August 30, 2007 (the "Effective Date"). *See Notice of Occurrence of Effective Date of Debtors' First Amended Plans of Reorganization and Liquidation*, dated September 4, 2007 (Doc. No. 3638).

11. Prepetition medical malpractice claims against SVCMC ("MedMal Claims") are divided into three separate classes under the Chapter 11 Plan: (i) "MedMal-BQ Claims" (Class 4), which are MedMal Claims relating to an incident that allegedly occurred at one of the Brooklyn/Queens Hospitals, (ii) "MedMal-MW Claims" (Class 5), which are MedMal Claims relating to an incident that allegedly occurred at the Manhattan Hospital or the Westchester Hospital, and (iii) "MedMal-SI Claims" (Class 6), which are MedMal Claims relating to an incident that allegedly occurred at one of the Staten Island Hospitals or certain related facilities.

12. A separate MedMal Trust was established under the Plan with respect to each of these three classes of MedMal Claims (collectively, the “MedMal Trusts”). The MedMal Trusts were specifically established under the Chapter 11 Plan and Confirmation Order for the purposes of, *inter alia*, holding trust assets and distributing such assets only to holders of allowed MedMal Claims. Holders of timely filed MedMal Claims are currently liquidating their claims in state court and once such claims are liquidated by final trial verdict or settlement, and thus allowed, the claimants seek satisfaction of those allowed claims from the proceeds of applicable insurance policies and/or the applicable MedMal Trust to the extent there are no insurance proceeds available.

13. Section 6.6(g) of the Chapter 11 Plan provides for the appointment of the MedMal Trust Monitor to, among other things, monitor the assets of the MedMal Trusts, provide reports on creditor distributions made from those assets, respond to creditor inquiries concerning such assets and distributions and, to the extent necessary, enforce the liens granted to the MedMal Trusts to secure SVCMC’s payment obligations under the Chapter 11 Plan. Michael E. Katzenstein was appointed as MedMal Trust Monitor for each of the MedMal Trusts pursuant to (i) the SVCMC MedMal-BQ Trust Agreement, (ii) the SVCMC MedMal-MW Trust Agreement, and (iii) the SVCMC MedMal-SI Trust Agreement (collectively, the “MedMal Trust Agreements”).⁷ Cooley Godward Kronish LLP, formerly counsel to the Tort Committee, was retained as counsel to the MedMal Trust Monitor under section 6.6(g)(ii) of the Chapter 11 Plan and the MedMal Trust Agreements.

⁷ Except as to the separate classes of MedMal Claims to which they govern, the MedMal Trust Agreements are substantively identical. As set forth in section 2.4 of the MedMal Trust Agreements, the purpose of the MedMal Trust Agreements is to aid in the implementation of the Chapter 11 Plan and the Confirmation Order and the MedMal Trust Agreements incorporate by reference the provisions of the Chapter 11 Plan and the Confirmation Order. For the Court’s reference, a copy of the MedMal-BQTrust Agreement is annexed hereto as **Exhibit C**.

14. Section 6.6(e) of the Chapter 11 Plan provides for the appointment of the MedMal Trustee to, among other things, hold, manage, sell or invest, as appropriate, the assets held in the MedMal Trusts for the benefit of holders of MedMal Claims. Christiana Bank & Trust Company was appointed as MedMal Trustee for each of the MedMal Trusts pursuant to the MedMal Trust Agreements.

15. Section 6.6(c) of the Plan addresses the initial funding of the MedMal Trusts by SVCMC, as well as SVCMC's post-Effective Date contribution obligations, including, without limitation, the obligation to make additional contributions to the MedMal Trusts in accordance with a fixed and non-contingent trust funding schedule (the "MedMal Trust Funding Schedule").⁸ The MedMal Trust Funding Schedule is set forth in section 1.102 of the Chapter 11 Plan and page 4 of the Disclosure Statement.⁹ SVCMC's obligation to fund the MedMal Trusts in accordance with the MedMal Trust Funding Schedule is not subject to any condition or contingency under the Chapter 11 Plan, the MedMal Trust Agreements, the Confirmation Order or any other subsequent agreement or Court order.

C. SVCMC's Unabated Chapter 11 Plan Default

16. SVCMC was obligated under the MedMal Trust Funding Schedule to contribute \$10 million to the MedMal Trusts by August 30, 2009 – the second anniversary of the Effective

⁸ The MedMal Trust Funding Schedule requires funding in excess of \$173 million to satisfy the estimated \$77 million to \$116 million in MedMal Claims.

⁹ As set forth in section 6.6(o) of the Chapter 11 Plan and detailed on pages 9 and 10 of the Disclosure Statement, SVCMC is also obligated under the Chapter 11 Plan to make contributions to the MedMal Trusts upon the occurrence of certain contingent liquidity events (which may reduce SVCMC's funding obligations under the MedMal Trust Funding Schedule), including the sale of SVCMC's Manhattan Real Estate (defined in section 1.90 of the Chapter 11 Plan to mean the real estate currently occupied by St. Vincent's Hospital and Medical Center of New York, located on 12th Street east of Seventh Avenue in New York, New York, other than the Martin Payne Building located at 130 West 12th Street).

Date of the Plan. No such payment was received by this date or in the nearly six months that have since passed. SVCMC has not disputed the existence of, or its failure to cure, this default.

17. Pursuant to section 8.2(a) of the MedMal Trust Agreements, the MedMal Trust Monitor is authorized to enforce the payment obligations of SVCMC to the MedMal Trusts. Section 6.6(w) of the Chapter 11 Plan and section 4.10 of the MedMal Trust Agreements provide that, in the event of an alleged default by SVCMC with respect to any of its obligations under the Chapter 11 Plan related to the treatment of allowed MedMal Claims, any and all litigation arising out of or relating to such alleged default shall be brought by the MedMal Trust Monitor before this Court.

18. Pursuant to section 6.6(r) of the Plan, SVCMC's post-Effective Date obligations to each of the MedMal Trusts are secured by liens (the "MedMal Liens") on certain of SVCMC's real property, including the Staff House and the Westchester Land.¹⁰ Mortgages were filed to this effect. Section 6.6(r) of the Plan also entitles the MedMal Trust Monitor to enforce the MedMal Liens on behalf of each of the MedMal Trusts if, after the MedMal Trust Monitor has provided SVCMC with notice of the failure of SVCMC to make a payment required under the Plan, SVCMC has failed to satisfy the obligation. It is undisputed that SVCMC has failed to cure its default in whole or in part and the MedMal Trust Monitor is presently authorized to enforce the MedMal Liens.

19. Subsequent to the Chapter 11 Plan default, SVCMC has made distributions of approximately \$18.6 million to holders of non-MedMal Claims under the Chapter 11 Plan. The MedMal Trust Monitor learned of these post-default transfers by way of the recent post-

¹⁰ The "Staff House" is defined in section 1.170 of the Plan to mean SVCMC's real property located at 555 6th Avenue, New York, New York 10011 (mailing address) / 101 W 15th Street, New York, New York 10011 (deed). The "Westchester Land" is defined in section 1.188 of the Plan to mean the land owned by SVCMC adjacent to the Westchester Hospital.

confirmation report filed by SVCMC on January 15, 2010.¹¹ The MedMal Trust Monitor has not been provided with an accounting by SVCMC of the source of these distributed funds or any other information concerning SVCMC's current financial position.

JURISDICTION AND STATUTORY PREDICATES

20. The Court has jurisdiction to consider this Application pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are section 105(a) of the Bankruptcy Code and Bankruptcy Rules 9014, 9020 and 9021.

REQUESTED RELIEF AND REASONS THEREFOR

A. This Court Is Authorized To Hold SVCMC In Contempt Of The Confirmation Order

21. Courts have inherent power to enforce compliance with their lawful orders through civil contempt. *In re Chief Executive Officers Clubs, Inc.*, 359 B.R. 527, 533 (Bankr. S.D.N.Y. 2007) (“*CEO Clubs*”) (citing *Spallone v. United States*, 493 U.S. 265 (1990)); *Ex Parte Robinson*, 86 U.S. 505, 510 (1874) (“[T]he power to punish for contempt is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts and, consequently, to the due administration of justice.”). The enforcement of a court order or judgment is ordinarily exercised through a court's contempt power – the power of the court to hold a person in contempt for not obeying an order of the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (“[I]t is firmly established that ‘the power to punish for contempt is inherent in all courts.’”) (citations omitted).

¹¹ See Exhibit B to Eleventh Post-Confirmation Status Report of the Post-Effective Date Debtors Pursuant to Section 1106(a)(7) of the Bankruptcy Code, Local Bankruptcy Rule 3021-1 and the Post-Confirmation Order, dated January 15, 2010 (Doc. No. 4245) (the “Eleventh Postconfirmation Report”).

22. Civil contempt is the failure to obey a court order issued for another party's benefit and such sanctions are coercive or remedial in nature. *CEO Clubs*, 359 B.R. at 534. For example, a debtor's failure to comply with the terms of a bankruptcy court's confirmation order constitutes a form of contempt. See *In re Fatsis*, 396 B.R. 579 (Bankr. D. Mass. 2008) (granting chapter 7 trustee's motion to hold debtor in contempt for violation of confirmation order and fixing sanctions), *aff'd*, 405 B.R. 1 (1st Cir. BAP 2009) ("Section 105(a) of the Bankruptcy Code provides the bankruptcy court with broad authority to exercise its equitable powers to ensure compliance with its own orders.").

23. It is well settled that bankruptcy courts have inherent power to enter civil contempt orders. *CEO Clubs*, 359 B.R. at 534 (citing *In re MarketXT Holdings Corp.*, Case No. 04-12078, 2006 Bankr. LEXIS 3951, 2006 WL 408317 (Bankr. S.D.N.Y. Jan. 27, 2006) ("It is well accepted, in light of the 2001 amendments to Rule 9020, that bankruptcy courts have the power to enter civil contempt orders.")); *In re Johns-Manville Corp., et al.*, 97 B.R. 174, 181-82 (Bankr. S.D.N.Y. 1989) ("This Court has already determined that it has the constitutional authority to issue an order of civil contempt and an appropriate sanction."). Bankruptcy Rule 9020 expressly provides that "[Bankruptcy] Rule 9014 governs a motion for an order of contempt made by the United States Trustee or a party in interest." Fed. R. Bankr. P. 9020. Accordingly, pursuant to Bankruptcy Rules 9014 and 9020, a contempt proceeding is a contested matter through which relief is properly sought by motion. Fed. R. Bankr. P. 9014(a) ("In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought.").

24. Distinct from a bankruptcy court's inherent contempt power to enforce compliance with its lawful orders is the statutory contempt power conferred by section 105(a) of

the Bankruptcy Code to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a); *Bessette v. Avco Financing Services, Inc.*, 230 F.3d 439, 445 (1st Cir. 2000) (“§ 105 provides a bankruptcy court with statutory contempt powers, in addition to whatever inherent contempt powers the court may have.”); *Jove Engineering, Inc. v. I.R.S. (In re Jove Engineering, Inc.)*, 92 F.3d 1539, 1553 (11th Cir. 1996) (“§ 105 creates a statutory contempt power in bankruptcy proceedings, distinct from the court’s inherent contempt powers”); *Kristan v. Turner (In re Kristan)*, 2009 Bankr. LEXIS 719, *4 (1st Cir. BAP Feb. 23, 2009) (“It is well settled that bankruptcy courts are vested with contempt powers. Pursuant to § 105(a), the bankruptcy court ‘may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code.’ This section provides bankruptcy courts with broad authority to ensure compliance with its own orders.”) (citations and quotations omitted); *In re Taub*, 2008 Bankr. LEXIS 810, *19 (Bankr. E.D.N.Y. March 18, 2008) (“This court may exercise civil contempt powers under 11 U.S.C. § 105(a) in order to enforce its orders in core proceedings”).

25. Beyond the Court’s inherent contempt powers and those conferred by section 105(a) of the Bankruptcy Code, section 1142 of the Bankruptcy Code allows the bankruptcy court to issue orders necessary for consummation of a plan or to enforce the provisions of a confirmation order. 11 U.S.C. 1142(b) (“The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.”); *In re Johns-Manville Corp.*, 97 B.R. at 180 (noting that “courts have relied on §1142(b) to supply a basis for general post-confirmation jurisdiction”); *In re Continental Airlines, Inc., et al.*, 236 B.R. 318, 326 (Bankr. D. Del. 1999) (“In the bankruptcy context, courts have

specifically, and consistently, held that the bankruptcy court retains jurisdiction, *inter alia*, to enforce its confirmation order.”) (citing among other authorities *North American Car Corp. v. Peerless Weighing & Vending Machine Corp.*, 143 F.2d 938, 940 (2d Cir. 1944) (“We have, therefore, pointed out the existence of such complementary and auxiliary jurisdiction of the court to protect its original confirmation decree, prevent interferences with the execution of the plan, and otherwise aid in its operation.”). Furthermore, Bankruptcy Rule 3020(d) provides that “[n]otwithstanding the entry of an order of confirmation, the court may issue any other order necessary to administer the estate.” Fed. R. Bankr. P. 3020(d).

26. Pursuant to Article X of the Chapter 11 Plan, this Court retains jurisdiction, *inter alia*, to hear and determine disputes arising in connection with the enforcement of the Chapter 11 Plan and to issue such orders in aid of implementation of the Chapter 11 Plan. Additionally, section 4.10 of the MedMal Trust Agreements provides that in the event of an alleged default by SVCMC with respect any of its Chapter 11 Plan obligations to the MedMal Trusts, any and all litigation arising out of or relating to such default shall be brought by the MedMal Trust Monitor before this Court. Moreover, even without a specific retention provision in a plan, this Court has previously held that its jurisdiction continues post-confirmation as to fundamental questions of interpretation and administration of a plan. *In re Johns-Manville Corp.*, 91 B.R. 225, 228 (Bankr. S.D.N.Y. 1988).

27. Accordingly, based on the foregoing, this Court is well authorized and empowered to enter an order holding SVCMC in civil contempt of the Confirmation Order for its violation of the terms of the Confirmation Order, the Chapter 11 Plan and MedMal Trust Agreements.

**B. SVCMC's Refusal To Comply With This Court's Confirmation Order
Justifies A Finding of Contempt**

28. A court's civil contempt powers may be exercised when "(1) the order the party allegedly failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the party has not diligently attempted in a reasonable manner to comply." *CEO Clubs*, 359 B.R. at 535 (citing *King v. Allied Vision, Ltd.*, 65 F.3d 1051, 1058 (2d Cir. 1995)); *Huber v. Marine Midland Bank*, 51 F.3d 5 (2d Cir. 1995) (same).

29. "Clear and unambiguous" means that the clarity of the order must be such that it enables the enjoined party to "ascertain from the four corners of the order precisely what acts are forbidden." *CEO Clubs*, 359 B.R. at 535 (quoting *Monsanto Co. v. Haskell Trading, Inc.*, 13 F.Supp. 2d 349, 363 (E.D.N.Y. 1998); *New York State National Organization for Women, et al. v. Terry, et al.*, 886 F.2d 1339, 1351-52 (2d Cir. 1989) ("*Terry*") (finding that prior order could serve as foundation for contempt because it was sufficiently clear as to what acts were proscribed by the order to enable defendants to ascertain precisely what they could and could not do). There can be no dispute that the Confirmation Order requires SVCMC's compliance with the obligations undertaken in the Chapter 11 Plan and the MedMal Trust Agreements. Nor can SVCMC dispute that its contribution obligations under the MedMal Trust Funding Schedule are clearly and unambiguously delineated in the Chapter 11 Plan, Disclosure Statement and MedMal Trust Agreements. *See e.g.*, section 1.102 of the Chapter 11 Plan, page 4 of the Disclosure Statement and section 4.1 of the MedMal Trust Agreements.

30. In the context of civil contempt, the "clear and convincing" standard requires a quantum of proof adequate to demonstrate 'reasonable certainty' that a violation occurred. *CEO Clubs*, 359 B.R. at 535 (quoting *Levin v. Tiber Holding Corp.*, 277 F.3d 243, 250 (2d Cir. 2002)). The \$10 million non-contingent funding contribution due on or before August 30, 2009 under the

MedMal Trust Funding Schedule has not been made by SVCMC, which has not disputed – and indeed has acknowledged – the existence of this default and its failure to cure.

31. Where contempt is found, the defendant must not have diligently attempted to comply with the order. *CEO Clubs*, 359 B.R. at 535 (citing *Terry*, 886 F.2d at 1351 (finding that defendants did not diligently attempt to comply with court order in a reasonable manner). Importantly, a finding of bad faith, willfulness, or substantial fault is not a prerequisite to a finding of civil contempt. *Id.* at 535 (citing 11A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 2960 (3d ed. 2006) (“A violation of the decree need not be willful for a party to be held in civil contempt.”)); *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949) (“The absence of willfulness does not relieve from civil contempt. Civil as distinguished from criminal contempt is a sanction to enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of noncompliance. Since the purpose is remedial, it matters not with what intent the defendant did the prohibited act.”). SVCMC has clearly failed to “diligently” comply with its obligations under the Confirmation Order, Chapter 11 Plan and MedMal Trust Agreements. **Moreover, although the MedMal Trust Monitor is not required to establish bad faith, willfulness or substantial fault on the part of SVCMC as a prerequisite to a finding of civil contempt, the Deluca Email clearly evidences SVCMC’s willful refusal to comply with its obligations as part of an “operational plan to fund the trust when funds are available.” See Deluca Email. SVCMC apparently believes that it may operate its business without regard for the express terms of this Court’s Confirmation Order and the timely payment obligations due thereunder.**

32. SVCMC, by its own admission, has failed to diligently comply with its clear and unambiguous obligations under the Confirmation Order, Chapter 11 Plan and MedMal Trust

Agreements. Accordingly, this Court is justified in exercising its civil contempt powers to grant such remedial relief as it deems necessary and appropriate under the circumstances.

C. This Court Has Broad Discretion To Grant Such Remedial Relief As Necessary To Compel SVCMC's Compliance With The Confirmation Order And Compensate the MedMal Trusts For SVCMC's Default

33. The purpose of civil contempt is to compel a reluctant party to do what a court requires of him. *CEO Clubs*, 359 B.R. at 534 (citing *Badgley v. Santacroce*, 800 F.2d 33, 36 (2d Cir. 1986)); *Jove Engineering, Inc. v. I.R.S. (In re Jove Engineering, Inc.)*, 92 F.3d 1539, 1557 (11th Cir. 1996) (“The purpose of civil contempt sanctions is to (1) compensate the complainant for losses and expenses it incurred because of the contemptuous act, and (2) coerce the contemnor into complying with the court order.”).

34. Section 105(a) of the Bankruptcy Code empowers bankruptcy courts to enter any type of order, whether injunctive, compensatory or punitive, as long as it is necessary or appropriate to carry out the provisions of the Bankruptcy Code. *See Jove Engineering, Inc.*, 92 F.3d at 1554. As the Eleventh Circuit explained in the context of a contempt proceeding:

Section 105(a) states ‘the court may issue *any* order, process or judgment that is necessary or appropriate to carry out the provisions of this title. Sovereign immunity aside, § 105 uses the broad term ‘any’ which encompasses all forms of orders including those that award monetary relief. The term ‘any’ should be given this broad construction under the ‘settled rule that a statute must, if possible, be construed in such fashion that every word has some operative effect.’ The broad term ‘any’ is only limited to those orders that are ‘necessary or appropriate’ to carry out the Bankruptcy Code. Therefore, the plain meaning of § 105(a) encompasses any type of order, whether injunctive, compensative or punitive, as long as it is ‘necessary or appropriate’ to carry out the provisions of the Bankruptcy Code.

Id. at 1554 (emphasis in original) (citations omitted); *see also Hardy v. United States (In re Hardy)*, 97 F.3d 1384, 1389-90 (11th Cir. 1996) (“§ 105(a) grants courts independent statutory contempt powers to award monetary damages and other relief as “necessary and appropriate” to

carry out the provisions of the Bankruptcy Code.”); *Cherry, III v. Arendall (In re Cherry III)*, 247 B.R. 176, 187 (Bankr. E.D. Va. 2000) (“The measure of the court’s power in civil contempt proceedings is determined by the requirements of the full remedial relief.”).

35. The various forms of relief requested by the MedMal Trust Monitor are, without exception, remedial in nature. Indeed, the MedMal Trust Monitor is not seeking to punish SVCMC for its Chapter 11 Plan default, but rather seeks only that relief which is necessary to restore the MedMal Trusts to their bargained-for position. To this end, the MedMal Trust Monitor requests the Court to enter an order (i) holding SVCMC in civil contempt of the Confirmation Order, (ii) directing SVCMC’s immediate compliance with its past due obligations owed to the MedMal Trusts under the Confirmation Order, Chapter 11 Plan and MedMal Trust Agreements, (iii) entering judgment against SVCMC in the amount of \$10 million for actual damages sustained by the MedMal Trusts as the direct cause of SVCMC’s willful default of its obligations under the Confirmation Order, Chapter 11 Plan and MedMal Trust Agreements;¹² (iv) enjoining SVCMC from making any further transfer of any asset or encumbering any asset unless and until such time as SVCMC complies with its past due obligations to the MedMal Trusts on a full and final basis, (v) directing SVCMC to provide the MedMal Trust Monitor with a full accounting of SVCMC’s assets, liabilities, current cash position and all payments previously made or to be made to creditors, including notice of any default or anticipated default on any of SVCMC’s other material obligations or undertakings under the Chapter 11 Plan, and (vi) granting such other and/or further relief as the Court deems just and proper under the circumstances.

¹² Pursuant to Bankruptcy Rule 9021, the MedMal Trust Monitor respectfully requests the entry of a separate judgment fixing SVCMC’s liability to the MedMal Trusts.

36. The MedMal Trust Monitor respectfully submits that the foregoing relief is necessary and appropriate under the circumstances and is narrowly tailored to compel SVCMC's performance of its Chapter 11 Plan obligations to the extent necessary to restore the MedMal Trusts to their pre-default positions.

NOTICE AND PRIOR APPLICATION

37. Notice of this Motion is being given pursuant to section 12.18 of the Chapter 11 Plan and section 13.7 of the MedMal Trust Agreements. In addition, a copy of this Motion will be provided to the Office of the United States Trustee for the Southern District of New York and the Litigation Trustee appointed under the Chapter 11 Plan. The MedMal Trust Monitor respectfully submits that the foregoing constitutes good and sufficient notice and that no other or further notice of this Motion need be given.

30. No prior application has been made in this or any other Court.

31. This Motion does not raise any novel issues of law. Accordingly, the MedMal Trust Monitor respectfully requests that the Court waive the requirement contained in Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York that a separate memorandum of law be submitted.

WHEREFORE, the MedMal Trust Monitor, on behalf of the MedMal Trusts, respectfully requests that the Court enter an order granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: January 27, 2010
New York, New York

COOLEY GODWARD KRONISH LLP

By: /s/ Richard S. Kanowitz
Richard S. Kanowitz
Seth Van Aalten

Counsel for the MedMal Trust Monitor

From: Deluca, Steven [mailto:sdeluca@svcmcnny.org]
Sent: Tuesday, September 29, 2009 10:03 AM
To: Goldsborough, Raye
Cc: Lutes, Deborah; Armiger, Scott
Subject: Re: SVCMC Trusts

It is part of our operational plan to fund the trust when funds are available. In the interim there are sufficient assets to cover our current obligation which is good news. Will advise and update further. Thank you, Steve

From: Goldsborough, Raye
To: Deluca, Steven
Cc: Lutes, Deborah ; Armiger, Scott
Sent: Tue Sep 29 08:57:40 2009
Subject: SVCMC Trusts

Good morning Mr. Deluca I hope all is well. Please let us know the status of the additional funding for the MedMal Trusts.

Thank you

Raye

Raye D. Goldsborough, Assistant Vice President
Corporate Trust Administration
Christiana Management Services
p. 302.888.7580
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e. rgoldsborough@christianatrust.com



Updated: Wed., Jan. 27, 2010, 6:31 AM

Code red looms for St. Vinny's

By CARL CAMPANILE

Last Updated: 6:31 AM, January 27, 2010

Posted: 2:45 AM, January 26, 2010

A rival, powerhouse medical group has proposed taking over and shuttering the 160-year-old St. Vincent's Hospital in Greenwich Village, which would spell the end of the city's only remaining Catholic hospital.

Continuum Health Partners -- which operates Beth Israel, St. Luke's and Roosevelt hospitals -- submitted a plan to assume control of the financially struggling, 727-bed St. Vincent's, sources said.

The new corporate operator would "close all acute care" units -- such as inpatient beds and operating rooms -- within 90 days, according to a source involved in the discussions.

The proposal has real muscle behind it.

Two holders of a combined \$300 million St. Vincent's debt -- GE Capital and TD Bank -- have agreed to the plan with the tacit approval of the state, sources said.

State Health Commissioner Richard Daines previously served as CEO of Continuum's St. Vincent's. Under the proposal, St. Vincent's would be converted from a hospital to a community health center with Continuum's management.

Patients eventually would be rerouted to other city hospitals for surgical and in-patient care, sources said.

The plan also would severely scale back St. Vincent's regional trauma and emergency care services.

Under the proposal, Continuum would continue to operate ambulatory care or outpatient services at St. Vincent's, and possibly expand such services.

The proposal was spelled out in a letter sent by Continuum CEO Stan Brezenoff last week to St. Vincent's board of directors.

The death of St. Vincent's would leave the lower West Side without a full-service hospital. Nearby are New York Downtown Hospital, Beth Israel, NYU and Bellevue on the East Side, and Roosevelt Hospital on 58th Street.

St. Vincent's also serves special populations. It is one of the state's designated AIDS care hospitals and has 79 licensed beds.

"St. Vincent's is an outpost of health care on the West Side. There's nothing else near it," said state Sen. Tom Duane, who represents the area.

"You can't control what kind of emergency treatment people need. Remember what happened to the hospital on 125th Street," he said.

Kevin Finnegan, political director of 1199 SEIU United Healthcare Workers East, said, "I don't want to even entertain offers to close the only hospital that services hundreds of thousands of people on the West Side of Manhattan below 59th Street."

It's unclear what would happen to some of the vacant or unused space, although it could be sold. St. Vincent's has \$700 million in debt, sources said.

The proposal throws into doubt St. Vincent's existing plan to build a new medical facility Co. for \$300 million to erect a condo complex.

The hospital had only just gotten the go-ahead from the city's Landmarks Preservation C proceed with its \$1.6 billion modernization project after years of protests.

There is still an ongoing lawsuit over the project.

Under financial pressure, St. Vincent's had shuttered its Midtown hospital in 2007 and ur Continuum and St. Vincent's declined comment.

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SVCMC MEDMAL-BQ TRUST AGREEMENT

THIS SVCMC MEDMAL-BQ TRUST AGREEMENT (the “Trust Agreement”), dated as of August 29, 2007, by and between (i) Saint Vincents Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers (“SVCMC”), (ii) Christiana Bank & Trust Company, as trustee for the qualified settlement trust established pursuant to the Plan and this Trust Agreement (the “MedMal-BQ Trustee”), (iii) Michael E. Katzenstein, as MedMal Trust Monitor, and (iv) the official committee of tort claimants appointed in SVCMC’s Chapter 11 Case (the “Tort Claimants’ Committee”), is executed to facilitate the implementation of the First Amended Chapter 11 Plan of Reorganization for Saint Vincents Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers (as the same may be amended, modified or supplemented from time to time in accordance with the terms and provisions thereof, the “Plan”) that provides for the establishment of the trust created hereby (the “MedMal-BQ Trust”).

W I T N E S S E T H

WHEREAS, on July 5, 2005 (the “Commencement Date”), SVCMC, a New York not-for-profit corporation, and its affiliated debtors and debtors in possession (the “Debtors”) each commenced a voluntary case (the “Cases”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”);

WHEREAS, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Creditors’ Committee”) on July 18, 2005, and an official committee of tort claimants (the “Tort Claimants’ Committee”) on May 17, 2006;

WHEREAS, on February 9, 2007, the Debtors filed the initial Plan with the Bankruptcy Court, and filed an amended Plan on June 5, 2007;

WHEREAS, the Bankruptcy Court entered the Confirmation Order confirming the Plan on July 27, 2007, and the Plan is scheduled to become effective on August 30, 2007;

WHEREAS, the Plan provides for, among other things, the transfer of the MedMal-BQ Trust Initial Assets to the MedMal-BQ Trust created hereby, and the distribution of funds held by the MedMal-BQ Trustee as provided for herein;

WHEREAS, the MedMal-BQ Trust is established and intended to be treated as (i) a “qualified settlement fund” within the meaning of Treasury Regulation section 1.468B-1 for the sole purpose of (a) managing, selling and investing the MedMal-BQ Trust Assets, (b) distributing the MedMal-BQ Trust Assets (as defined below) for the benefit of the holders of Allowed MedMal-BQ Claims against SVCMC (whether Allowed on or after the Effective Date), (c) holding and enforcing the MedMal Lien granted by SVCMC to the MedMal-BQ Trust, (d) advancing or taking out MedMal Loans, and (e) performing such other functions as are provided for in the Plan, and with no objective to continue or engage in the conduct of any trade or business; and (ii) a “grantor trust” within the meaning of Treasury Regulation section 1.468B-1(k) with respect to which SVCMC is the owner for applicable federal income tax purposes;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. For all purposes of this Trust Agreement, capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in Annex A attached hereto, and shall be subject to the rules of usage set forth at the beginning thereof. Unless otherwise specified, Article, Section and Paragraph references herein are to Articles, Sections and Paragraphs of this Trust Agreement.

ARTICLE II

ESTABLISHMENT OF THE MEDMAL-BQ TRUST

2.1 Establishment of MedMal-BQ Trust and Appointment of MedMal-BQ Trustee.

(a) Pursuant to the Plan, SVCMC, the Tort Claimants' Committee and the MedMal-BQ Trustee hereby establish a trust which shall be known as the "SVC MC MedMal-BQ Trust" on behalf of the MedMal-BQ Trust Beneficiaries.

(b) The MedMal-BQ Trustee is hereby appointed as trustee of the MedMal-BQ Trust effective as of the Effective Date of the Plan (the "Effective Date") and agrees to accept and hold the assets of the MedMal-BQ Trust in trust for the MedMal-BQ Trust Beneficiaries subject to the terms of the Plan and this Trust Agreement. The MedMal-BQ Trustee and each successor trustee serving from time to time hereunder shall have all the rights, powers and duties set forth herein.

(c) Any action by the MedMal-BQ Trustee, SVC MC and/or Reorganized SVC MC which affects the interest of more than one MedMal-BQ Trust Beneficiary shall, if made in good faith, be binding and conclusive on all MedMal-BQ Trust Beneficiaries, even if such MedMal-BQ Trust Beneficiaries have differing or conflicting interests and no Person shall have recourse against the MedMal-BQ Trustee, the MedMal Trust Monitor, SVC MC, the Tort Claimants' Committee or Reorganized SVC MC with respect to any such action.

2.2 Transfer of Assets to the MedMal-BQ Trust. Pursuant to the Plan, as of the Effective Date, Reorganized SVC MC hereby assigns and transfers to the MedMal-BQ Trust all of SVC MC's right, title and interest in and to the MedMal-BQ Trust Initial Assets free and clear of any liens, claims and encumbrances, and no other entity, including the Debtors or the Post-Effective Date Debtors shall have any interest, legal, beneficial, or otherwise, in the MedMal-BQ Trust or the assets of the MedMal-BQ Trust upon their assignment and transfer to the MedMal-BQ Trust. Except as otherwise provided herein, all further transfers by or obligations of SVC MC or Reorganized SVC MC to the MedMal-BQ Trust shall be in accordance with the MedMal-BQ Trust's Pro Rata Share. Notwithstanding any other provision of this Trust Agreement, except for the proceeds of the MedMal-BQ Trust Assets, the proceeds of the MedMal Collateral, MedMal Loans and the MedMal-BQ Trust Policy, the MedMal-BQ Trust shall not accept any money or property from any Person other than Reorganized SVC MC.

2.3 Nature and Purpose of the MedMal-BQ Trust.

(a) Purpose. The MedMal-BQ Trust is organized and established as a trust pursuant to which the MedMal-BQ Trustee, subject to the terms and conditions contained herein and in the Plan, is to (i) manage, sell and invest the MedMal-BQ Trust Assets, (ii) distribute the MedMal-BQ Trust Assets for the benefit of the holders of Allowed MedMal-BQ Claims against SVCMC (whether Allowed on or after the Effective Date), (iii) enforce the MedMal Lien granted by SVCMC to the MedMal-BQ Trust, (iv) advance or take out MedMal Loans, and (v) otherwise act in accordance with the provisions of this Trust Agreement and the Plan, with no objective to continue or engage in the conduct of a trade or business.

(b) Relationship. This Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The MedMal-BQ Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the MedMal-BQ Trustee, the MedMal Trust Monitor, Reorganized SVCMC, the Tort Claimants' Committee or the MedMal-BQ Trust Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the MedMal-BQ Trust Beneficiaries to the MedMal-BQ Trustee shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Trust Agreement.

2.4 Relationship to, and Incorporation of, the Plan. The principal purpose of this Trust Agreement is to aid in the implementation of the Plan and the Confirmation Order, and therefore this Trust Agreement incorporates the provisions of the Plan and the Confirmation Order by this reference. To that end, the MedMal-BQ Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan, and to seek any orders from the Bankruptcy Court in furtherance of implementation of the Plan and this Trust Agreement. If any provisions of this Trust Agreement are found to be inconsistent with the provisions of the Plan or the Confirmation Order, each such document shall have controlling effect in the following rank order: (i) the Confirmation Order; (ii) this Trust Agreement and (iii) the Plan.

ARTICLE III

MEDMAL-BQ TRUST INTERESTS

3.1 MedMal-BQ Trust Interests. Beneficial interests in the MedMal-BQ Trust ("MedMal-BQ Trust Interests") will be represented by book entries on the books and records of the MedMal-BQ Trust.

3.2 Interests Beneficial Only. The ownership of a MedMal-BQ Trust Interest shall not entitle any MedMal-BQ Trust Beneficiary to any title in or to the assets of the MedMal-BQ Trust as such (which title shall be vested in the MedMal-BQ Trustee) or to any right to call for a partition or division of the assets of the MedMal-BQ Trust or to require an accounting.

3.3 Identification of Holders of MedMal-BQ Trust Interests. The MedMal-BQ Trust will not issue any certificate or certificates to evidence any MedMal-BQ Trust Interests. The record holders of MedMal-BQ Trust Interests shall be recorded and set forth in a register maintained by the MedMal-BQ Trustee based on information provided by Reorganized SVCMC expressly for such purpose. Such register shall be updated monthly with information provided by Reorganized SVCMC as MedMal-BQ Claims become Allowed. All references in this Trust Agreement to holders of MedMal-BQ Trust Interests shall be read to mean holders of record as set forth in the official register maintained by the MedMal-BQ Trustee and shall not mean any beneficial owner not recorded on such official registry. The distribution of MedMal-BQ Trust Assets to a holder of MedMal-BQ Trust Interests shall be accomplished as set forth herein and in the Plan.

3.4 Non-Transferability of MedMal-BQ Trust Interests. No transfer, assignment, pledge or hypothecation of any MedMal-BQ Trust Interest, either in whole or in part, shall be permitted except with respect to a transfer by will or under the laws of descent and distribution. Any transfer permitted under this Section 3.4 will not be effective until and unless the MedMal-BQ Trustee receives written notice of such transfer.

3.5 Exemption from Registration. The parties hereto intend that the rights of the MedMal-BQ Trust Beneficiaries arising under this MedMal-BQ Trust shall not be “securities” under applicable laws, but none of the parties hereto represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemption from registration provided by section 1145 of the Bankruptcy Code and under any exemption from registration under any applicable securities laws to apply to their issuance under the Plan. The MedMal-BQ Trustee shall have no obligation to take any steps to confirm the status of the MedMal-BQ Trust Interests under state or federal securities laws or, subject to Section 6.10(a) hereof, to take any steps to register the MedMal-BQ Trust Interests.

ARTICLE IV

ADDITIONAL FUNDING OF THE MEDMAL-BQ TRUST AND CERTAIN OTHER OBLIGATIONS OF SVCMC

4.1 Additional Contributions. Reorganized SVCMC shall make additional contributions to the MedMal-BQ Trust (i) in accordance with the MedMal-BQ Trust’s Pro Rata Share of the amounts set forth on the MedMal Trust Funding Schedule, (ii) to the extent necessary, to satisfy all of Reorganized SVCMC’s obligations to make Shortfall Payments and payments under the Additional Funding Schedule, (iii) on the first Effective Date Anniversary, a portion of the Post-Effective Date Available Cash Reconciliation Account equal to the amount that would have been paid to the MedMal-BQ Trust, if any, as if the amounts in the Post-Effective Date Available Cash Reconciliation Account had been included in the calculation of Available Cash on the Effective Date, provided, however, that Reorganized SVCMC shall be obligated to contribute such amount to the MedMal-BQ Trust only if the aggregate amount of the Secured Obligation has been paid in full by Reorganized SVCMC as of such date and net of any amounts to be split as prepayments of the Unsecured Obligation, and (iv) as otherwise required

under the Plan. Reorganized SVCMC will identify the character of the additional contributions made.

4.2 Application of Certain Payments in Satisfaction of Obligations under the MedMal Trust Funding Schedule. All (i) payments, if any, made to the MedMal Trusts on account of Available Cash on the Effective Date or from the Post-Effective Date Available Cash Reconciliation Account on the first Effective Date Anniversary exceeding an amount equal to 85% of the Total Trade Claims, (ii) payments made to the MedMal Trusts pursuant to the Litigation Distribution Schedule, (iii) payments made to the MedMal Trusts pursuant to the Liquidity Event Distribution Schedule, (iv) payments made to the MedMal Trusts on account of sale or refinancing of the MedMal Collateral, and (v) Shortfall Payments made to the MedMal Trusts for amounts other than Reimbursable Costs shall be applied, in inverse order of maturity, to the payments called for in the MedMal Trust Funding Schedule and shall reduce, dollar-for-dollar, Reorganized SVCMC's obligations to make the payments called for in the MedMal Trust Funding Schedule. Until the aggregate of Shortfall Payments exceeds \$25 million, Shortfall Payments shall be presumed to have been for other than Reimbursable Costs. Shortfall payments in excess of \$25 million shall be allocated between Reimbursable Costs and an insufficiency to pay Allowed MedMal Claims to reflect the actual cause of the shortfall. Such payments shall reduce or satisfy the payments called for by the MedMal Trust Funding Schedule in inverse order of those payments maturity dates.

4.3 Shortfall Payments. Subject to Section 4.5 hereof, if at any point in time, the funds in the MedMal-BQ Trust from any source, including proceeds recoverable on account of the MedMal-BQ Trust Policy or a MedMal Loan, shall be insufficient to pay all unpaid Allowed MedMal-BQ Claims and all unpaid Reimbursable Costs, Reorganized SVCMC shall, within thirty (30) days of receiving a written notice signed by the MedMal-BQ Trustee, remit to the MedMal-BQ Trust a Shortfall Payment as necessary to cure such deficiency unless a MedMal Loan is obtained by the MedMal-BQ Trust to cover such deficiency; provided, however, that Reorganized SVCMC's obligations to make Shortfall Payments shall not, in the aggregate, exceed the sum of (A) the MedMal-BQ Trust's Pro Rata Share of \$25 million plus (B) any accrued or paid Reimbursable Costs for the MedMal-BQ Trust; and provided, further, however that Reorganized SVCMC's obligations to make Shortfall Payments for all MedMal Trusts shall not, in the aggregate, exceed the sum of (Y) \$25 million plus (Z) the aggregate of any accrued or paid Reimbursable Costs for all MedMal Trusts. For the avoidance of doubt, nothing herein shall obligate any MedMal Trust to fund or obtain a MedMal Loan at any time.

4.4 Trust's Obligation to Advance Reimbursable Costs. The obligations of the MedMal-BQ Trust to advance the Reimbursable Costs on behalf of Reorganized SVCMC shall be a financial accommodation as such term is used in section 365(c)(2) of the Bankruptcy Code. In the event of a subsequent bankruptcy or other insolvency event of Reorganized SVCMC, except for (i) unpaid fees and expenses (including expenses to which the indemnification provisions of Section 9.2 hereof are applicable) of the MedMal-BQ Trustee accrued in advance of such insolvency event provided that the MedMal-BQ Trustee's fees and expenses have been billed regularly in accordance with Section 7.2 hereof and (ii) fees and expenses of the MedMal-BQ Trustee accrued from and after such insolvency event until the MedMal-BQ Trustee is replaced in accordance with Article 7 hereof (which fees and expenses in each case shall continue to be payable by the MedMal-BQ Trust in accordance with Section 7.2 hereof), (A) the

MedMal-BQ Trust shall have no further obligation to fund any Reimbursable Cost, and neither Reorganized SVCMC nor any party claiming to be a beneficiary of Reorganized SVCMC, the MedMal-BQ Trust and/or the transactions contemplated hereby shall have any claim for or any interest in any Reimbursable Costs, (B) all funds in the MedMal-BQ Trust shall be for the exclusive benefit of the holders of the MedMal-BQ Claims, (C) Reorganized SVCMC shall reimburse the MedMal-BQ Trust for all costs and expenses, including attorneys' fees, incurred in defending against claims for the Reimbursable Costs, and (D) Reorganized SVCMC shall indemnify and hold harmless the MedMal-BQ Trust against any claims for Reimbursable Costs. For the avoidance of doubt, in the event of a subsequent bankruptcy or other insolvency event of Reorganized SVCMC, (i) nothing herein shall preclude the MedMal-BQ Trust from interposing one or more claims against Reorganized SVCMC for reimbursement of Reimbursable Costs, and (ii) indemnification claims of the MedMal-BQ Trustee shall not be payable from the MedMal-BQ Trust but shall constitute claims against Reorganized SVCMC.

4.5 Milestones. Following (i) a 50% Milestone Triggering Event or (ii) a 75% Milestone Triggering Event, Reorganized SVCMC may, at its sole discretion and expense, cause an additional estimation of the Claims remaining in the MedMal-BQ Trust and the other MedMal Trusts. If (A) following the 50% Milestone Triggering Event, such additional estimation determines that the 50% Milestone has occurred or (B) following the 75% Milestone Triggering Event, such additional estimation determines that the 75% Milestone has occurred, Reorganized SVCMC may, in its sole discretion, either suspend payment of the MedMal-BQ Trust's Pro Rata Share of the periodic payments it is obligated to make pursuant to the MedMal Trust Funding Schedule and/or Additional Funding Schedule (as applicable) or receive a payment from the MedMal-BQ Trust equal to the amount of such excess; provided, however, that prior to Reorganized SVCMC receiving payment from the MedMal-BQ Trust on account of such excess, the funds in the MedMal-BQ Trust shall be rebalanced in a manner that provides each MedMal Trust with sufficient funds to pay 125% upon the 50% Milestone and 115% upon the 75% Milestone of all remaining MedMal Claims subject to such MedMal Trust plus the estimated MedMal Defense Costs for such Claims; and provided, further, however, that, if at any time, and from time to time prior to the termination or dissolution of the MedMal-BQ Trust, after the 50% Milestone or the 75% Milestone, the MedMal-BQ Trust shall have insufficient funds to pay all unpaid Allowed MedMal-BQ Claims and unpaid Reimbursable Costs of the MedMal-BQ Trust, Reorganized SVCMC shall, prior to making any Shortfall Payment on account of that deficiency, pay to the MedMal-BQ Trust (A) if Reorganized SVCMC elected to suspend making periodic payments to the MedMal-BQ Trust pursuant to the MedMal Trust Funding Schedule and Additional Funding Schedule (if applicable), an amount equal to the lesser of (i) the amount of such deficiency and (ii) the amount equal to the MedMal-BQ Trust's Pro Rata Share of the periodic payments under the MedMal Trust Funding Schedule and Additional Funding Schedule (if applicable) that in fact were suspended (and not contributed to another MedMal Trust) less all amounts previously paid to the MedMal-BQ Trust under this *proviso*; or (B) if Reorganized SVCMC elected to receive a payment of excess funding of the MedMal-BQ Trust as set forth above, an amount equal to the lesser of the amounts of (i) such deficiency and (ii) excess funding actually paid over to Reorganized SVCMC from the MedMal-BQ Trust (and not used to rebalance the level of funding of a different MedMal Trust), less all amounts paid to the MedMal-BQ Trust under this *proviso*. Reorganized SVCMC will direct the MedMal-BQ Trustee with regard to any payment of excess funding of the MedMal-BQ Trust to Reorganized SVCMC as set forth above, and with regard to any rebalancing of funds in the MedMal Trusts as

set forth above, in each case by a written notice provided to the MedMal-BQ Trustee and the MedMal Trust Monitor, and the MedMal-BQ Trustee shall have no obligation to confirm the calculations set forth in such notice. For the avoidance of doubt, (x) no payment required to be made under any of the circumstances described in the last *proviso* of the immediately preceding sentence shall be treated as a Shortfall Payment or be subject to the limitations on Shortfall Payments; (y) to the extent that any portion of such deficiency remains following the payment made under any of the circumstances described in the last *proviso* of the immediately preceding sentence, Reorganized SVCMC shall make a Shortfall Payment to the MedMal-BQ Trust as and to the extent otherwise required under the Plan; and (z) nothing in this Section 4.5 shall relieve Reorganized SVCMC from paying to the MedMal-BQ Trust (i) its Pro Rata Share of the full amount of the MedMal Trust Funding Schedule and Additional Funding Schedule (if applicable) to the extent necessary to pay an Allowed MedMal-BQ Claim and (ii) all Shortfall Payments required hereunder, provided that in no instance shall Reorganized SVCMC be required to pay more than the aggregate of the MedMal Trust Funding Schedule and Additional Funding Schedule (if applicable), plus any payment required to be made by Reorganized SVCMC as a Shortfall Payment other than on account of Reimbursable Costs or from the Post-Effective Date Available Cash Reconciliation Account on account of Allowed MedMal Claims for all MedMal Trusts on a combined basis.

4.6 Collateral for SVCMC Additional Funding Obligations.

(a) The MedMal-BQ Trust shall be granted a MedMal Lien to secure all obligations of Reorganized SVCMC to the MedMal-BQ Trust under the Plan and this Trust Agreement payable on or after the Effective Date, including, without limitation: (A) payments under the MedMal Trust Funding Schedule, (B) payments under the Additional Funding Schedule in the event SVCMC or Reorganized SVCMC does not obtain the MedMal-BQ Trust Policy, and (C) Shortfall Payments. The MedMal Liens on the MedMal Collateral shall be junior only to the liens securing the Sun Life Staff House Secured Claim and the Sun Life Westchester Secured Claim, shall be *pari passu* with the MedMal Liens granted to the other MedMal Trusts, and shall otherwise be senior to any and all liens or encumbrances of any kind whatsoever on the MedMal Collateral. Without limiting the generality of the immediately preceding sentence, the MedMal Liens shall be senior to any lien granted in the MedMal Collateral to secure the Exit Facility. The MedMal Trust Monitor shall be entitled to enforce on behalf of the MedMal-BQ Trust its MedMal Lien in accordance with the governing documents and applicable law if, after the MedMal Trust Monitor has provided Reorganized SVCMC with one hundred and twenty (120) days' written notice of the failure of Reorganized SVCMC to make a payment required under the Plan, Reorganized SVCMC has failed to satisfy the obligation. The MedMal-BQ Trustee shall cooperate with the MedMal Trust Monitor to enable him to enforce the MedMal Liens, but shall not otherwise have any duty to enforce the MedMal Liens; provided, however, that nothing in this Trust Agreement shall alter or affect the duties or obligations of the MedMal-BQ Trust under the relevant loan, security or intercreditor agreements or under applicable law, including without limitation the duties of the MedMal-BQ Trust, as mortgagee, to Reorganized SVCMC, as mortgagor.

(b) Reorganized SVCMC may sell or refinance the MedMal Collateral at any time provided that Reorganized SVCMC promptly pays to the MedMal-BQ Trust and the other MedMal Trusts in accordance with each MedMal Trust's Pro Rata Share all net proceeds (after

satisfaction of the Sun Life Staff House Secured Claim and the Sun Life Westchester Secured Claim and transaction costs) from the MedMal Collateral, minus any Shortfall Payments that were not made on account of Reimbursable Costs funded by Reorganized SVC MC to the MedMal Trusts. Notwithstanding anything to the contrary contained in the Plan, the MedMal Trust Monitor shall instruct the MedMal-BQ Trust whether to consent to such sale or refinancing, if and to the extent consent is required, and such shall not be unreasonably withheld.

(c) On and after the Effective Date, pursuant to the Confirmation Order: (i) each MedMal Lien will be a valid, fully perfected lien on, and security interest in, the MedMal Collateral without the necessity of the execution, delivery and/or filing of any security agreement, pledge agreement, financing statement or other document; (ii) the Plan will be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the MedMal Collateral; and (iii) each and every federal, state, and local governmental agency or department shall accept any and all documents and instruments the MedMal-BQ Trustee deems necessary and appropriate to file, including without limitation a copy of the Confirmation Order, so as to provide notice of the MedMal Lien to third parties.

(d) Reorganized SVC MC shall reasonably cooperate with the MedMal Trust Monitor to provide such reasonable documentation, make such reasonable public filings, in the real estate records and otherwise, and do such other acts as reasonably requested by the MedMal Trust Monitor to (i) evidence the security interest of each MedMal Trust in the MedMal Collateral, (ii) perfect the respective MedMal Liens of the MedMal-BQ Trust and the other MedMal Trusts in the MedMal Collateral, and (iii) delineate the events of default, remedies of the respective MedMal Trusts and the opportunities for Reorganized SVC MC and the holder of the Sun Life Staff House Secured Claim and the Sun Life Westchester Secured Claim to cure with respect to the MedMal Liens and the obligations they secure. Without limiting the generality of the foregoing, Reorganized SVC MC and the MedMal Trust Monitor shall cooperate in causing the execution and delivery of such loan, security and intercreditor agreements as the MedMal Trust Monitor shall reasonably request to accomplish the objective specified in the immediately preceding sentence.

4.7 MedMal-BQ Trust Policy. Prior to the Effective Date, SVC MC and the Tort Claimants' Committee, or after the Effective Date, Reorganized SVC MC and the MedMal Trust Monitor, may cooperate reasonably and in good faith to cause the procurement of MedMal-BQ Trust Policy reasonably acceptable to SVC MC and the Tort Claimants' Committee or Reorganized SVC MC and the MedMal Trust Monitor, as applicable. At SVC MC or Reorganized SVC MC's sole discretion, in consultation with the Tort Claimants' Committee or the MedMal Trust Monitor, as applicable, SVC MC or Reorganized SVC MC will either (i) acquire a MedMal-BQ Trust Policy for the MedMal-BQ Trust, with a coverage limit equal to at least 25% of the greater of the Caronia Estimate and the Mercer Estimate for the MedMal-BQ Trust, (ii) acquire a single MedMal Trust Policy for all of the MedMal Trusts (which shall

constitute the MedMal-BQ Trust Policy for purposes of this Trust Agreement) in an amount equal to at least 25% of the greater of the Caronia Estimate and the Mercer Estimate, or (iii) elect not to procure a MedMal-BQ Trust Policy, in which case Reorganized SVCMC shall make payments pursuant to the Additional Funding Schedule; provided however, that SVCMC or Reorganized SVCMC may only elect not to procure a MedMal-BQ Trust Policy if procurement of such policy or policies is, in SVCMC's or Reorganized SVCMC's discretion, after consultation with the Tort Claimants' Committee, if prior to the Effective Date, or the MedMal Trust Monitor, if on or after the Effective Date, impossible or financially unreasonable. The premiums on the MedMal-BQ Trust Policy, if any, shall be paid by the MedMal-BQ Trust and constitute Reimbursable Costs, subject to Reorganized SVCMC's obligations to make Shortfall Payments.

4.8 Cooperation by Reorganized SVCMC. Reorganized SVCMC shall provide the MedMal-BQ Trustee with all information reasonably requested by the MedMal-BQ Trustee or the MedMal Trust Monitor to enable each to carry out its respective duties under this Trust Agreement and the Plan.

4.9 Reports. Reorganized SVCMC shall provide to the MedMal Trust Monitor and to the Trade Claims Monitor quarterly reports with respect to the MedMal-BQ Trust within 30 days after the close of each quarter. These reports will include information on MedMal-BQ Trust Assets, distributions out of the MedMal-BQ Trust on account of MedMal-BQ Claims or otherwise and a summary of which Disputed MedMal-BQ Claims, if any, have become Allowed MedMal-BQ Claims during the quarter that is the subject of the report.

4.10 Litigation. In the event of an alleged default by Reorganized SVCMC with respect to any of its obligations under the Plan related to the treatment of Allowed MedMal-BQ Claims, any and all litigation arising out of or relating to such alleged default shall be brought by the MedMal Trust Monitor before the Bankruptcy Court. In the event that the Chapter 11 Cases are closed as of such time that the MedMal Trust Monitor seeks to initiate any such litigation, the MedMal Trust Monitor may file a motion with the Bankruptcy Court seeking to re-open the Chapter 11 Cases for the purpose of pursuing any such litigation before the Bankruptcy Court, and Reorganized SVCMC and the MedMal-BQ Trustee shall not be, and hereby agree that they shall not be, and the Litigation Trustee has agreed in the Plan that it shall not be, entitled to object to any such motion.

ARTICLE V

DISTRIBUTIONS

5.1 Distribution of MedMal-BQ Trust Assets. The MedMal-BQ Trustee, when and as directed by Reorganized SVCMC, shall make all distributions to holders of Allowed MedMal-BQ Claims in accordance with the Plan and this Trust Agreement. MedMal-BQ Trust Assets shall be distributed to holders of Allowed MedMal-BQ Claims in accordance with the Plan and the following procedures:

(a) Distributions in respect of Allowed MedMal-BQ Claims. Each holder of an Allowed MedMal-BQ Claim shall receive in full and complete satisfaction, settlement and

release of and in exchange for its Allowed MedMal-BQ Claim, except to the extent such holder agrees to less favorable treatment, (i) (A) if such MedMal-BQ Claim is Allowed on the Effective Date, as soon as practicable after the Effective Date, or (B) if such MedMal-BQ Claim is not Allowed on the Effective Date, as soon as practicable after the date such MedMal-BQ Claim becomes Allowed, Cash up to the amount of its Allowed MedMal-BQ Claim to the extent there remains Distributable Cash in the MedMal-BQ Trust on such date, such Cash to be distributed to all Allowed MedMal-BQ Claims in proportion to the unpaid portion of each Allowed MedMal-BQ Claim (including accrued MedMal Interest, if any), and (ii) within 30 days after each date that the MedMal-BQ Trust receives a payment from Reorganized SVC MC, the Litigation Trust or the MedMal-BQ Trust Policy, to the extent that there is Distributable Cash in the MedMal-BQ Trust, Cash equal to such holder's proportionate share of the available Distributable Cash based on the amount of the unpaid portion of its Allowed MedMal-BQ Claim (including accrued MedMal Interest, if any) relative to the unpaid portions of all other Allowed MedMal-BQ Claims (including accrued MedMal Interest, if any) existing on that date, until such holder receives the full Allowed amount of its Claim (including accrued MedMal Interest, if any).

(b) Distributions of Cash. Any payment of Cash made by the MedMal-BQ Trustee pursuant to the Plan may be made at the option of the MedMal-BQ Trustee either by check drawn on a domestic bank or by wire transfer from a domestic bank.

(c) Timing of Distributions. Unless otherwise provided herein, any distribution to be made by the MedMal-BQ Trustee shall be made to the extent and at the time provided in Section 5.1(a) hereof and in the Plan. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

(d) Delivery of Distributions. Subject to Bankruptcy Rule 9010, all distributions to any holder of an Allowed MedMal-BQ Claim shall be made at the address of such holder as set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the MedMal-BQ Trustee.

(e) Distributions to Holders as of Record Date. The MedMal-BQ Trustee shall not have any obligation to recognize any transfer of any MedMal-BQ Claim occurring after the Record Date; provided, however, that the MedMal-BQ Trustee shall recognize transfers of MedMal-BQ Claims made after the entry of an order approving the Disclosure Statement but before the Confirmation Date for distribution purposes. Except as set forth in the prior sentence, the MedMal-BQ Trustee shall instead be entitled to recognize and deal for all purposes hereunder and under the Plan with only those record holders of MedMal-BQ Claims stated on the applicable claims register at the close of business on the Record Date.

(f) Undeliverable and Unclaimed Distributions. If any MedMal-BQ Claim holder's distribution is returned as undeliverable, no further distributions to such holder shall be made unless and until the holder notifies the MedMal-BQ Trustee in writing of such holder's then-current address, at which time all missed distributions shall be made as soon as is practicable to such holder, without interest; provided, however, that no holder of any MedMal-BQ Claim for which any undeliverable distribution has been deemed unclaimed property under

section 347(b) of the Bankruptcy Code shall be entitled to any other or further distribution from the MedMal-BQ Trust on account of such Claim. Checks issued by the MedMal-BQ Trustee in respect of Allowed MedMal-BQ Claims shall be null and void if not negotiated within one hundred and twenty (120) days after the date of issuance thereof. Requests for re-issuance of any check shall be made in accordance with the notice provisions of Section 12.18 of the Plan to the MedMal-BQ Trustee by the holder of the Allowed MedMal-BQ Claim to whom such check originally was issued. All claims for undeliverable distributions or voided checks shall be made on or before one hundred and twenty (120) days after the date such undeliverable distribution was initially made. After such dates, all such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and shall become unencumbered Cash of the MedMal-BQ Trust.

(g) Setoffs. To the extent permitted under the Plan and applicable law, the MedMal-BQ Trustee may set off against or recoup from any Allowed MedMal-BQ Claim and the distributions to be made hereunder pursuant to the Plan on account of such Allowed MedMal-BQ Claim (before any distribution is made on account of such Allowed MedMal-BQ Claim), the claims, rights and causes of action of any nature that the Debtors have asserted in writing against the holder of such Allowed MedMal-BQ Claim, including, without limitation, any rights under section 502(d) of the Bankruptcy Code.

5.2 Excess Insurance. Notwithstanding anything to the contrary herein, Reorganized SVCMC and the MedMal Trust Monitor shall reasonably cooperate to ensure that, if the threshold trigger for receipt of payment from Excess Insurance is met at any point for any insurance year, then the medical malpractice claims of holders of Allowed MedMal-BQ Claims shall be paid from proceeds of the Excess Insurance to the extent available rather than from MedMal-BQ Trust Assets. Further distributions to holders of Allowed MedMal-BQ Claims in accordance with Section 4.8 of the Plan and hereunder are (and shall be deemed to be) payments by SVCMC or Reorganized SVCMC, as appropriate, against any self-insured retention, inter-aggregate buffer, or similar payment with respect to, and as required by, any third-party insurance that might be available for an Allowed MedMal-BQ Claim, including Excess Insurance, as and to the extent made.

5.3 Interest on Allowed MedMal-BQ Claims. To the extent and only to the extent a holder of an Allowed MedMal-BQ Claim is not paid in full within thirty (30) days of its MedMal-BQ Claim becoming an Allowed Claim, then such holder shall be entitled to receive MedMal Interest on the unpaid portion of its Allowed MedMal-BQ Claim from the date the Claim is Allowed until the full principal amount of its Allowed MedMal-BQ Claim is paid. The MedMal-BQ Trustee shall give notice to any holder of an Allowed MedMal-BQ Claim that is entitled to MedMal Interest that it is being provided with MedMal Interest until its Allowed MedMal-BQ Claim is paid in full.

5.4 Proceeds of MedMal-BQ Trust Policy. If the MedMal-BQ Trust Policy has been obtained and at any time after the ninth (9th) Effective Date Anniversary, the MedMal-BQ Trust does not possess sufficient Distributable Cash to pay all holders of Allowed MedMal-BQ Claims the full Allowed amount of their Claim, the MedMal Trust Monitor or Reorganized SVCMC, acting on behalf of the MedMal-BQ Trustee, shall exercise all of the powers available in its reasonable discretion, to collect from the MedMal-BQ Trust Policy and, as soon as reasonably

practicable after receipt of proceeds from the MedMal-BQ Trust Policy, the MedMal-BQ Trustee shall transfer to each holder of an unpaid Allowed MedMal-BQ Claim the lesser of (A) an amount of Cash sufficient to pay its Allowed MedMal-BQ Claim and any MedMal Interest accrued thereon and (B) its pro rata portion of Distributable Cash remaining in the MedMal-BQ Trust.

5.5 Final Distributions.

(a) When all Disputed MedMal-BQ Claims have been resolved and all Allowed MedMal-BQ Claims have been paid in full, (A) Reorganized SVCMC's obligations to make additional payments to the MedMal-BQ Trust shall cease and (B) the MedMal-BQ Trustee shall make a final distribution of all remaining assets in the MedMal-BQ Trust as described in Section 5.5(b) below.

(b) When the MedMal-BQ Trust is making a final distribution of the assets of the MedMal-BQ Trust (pursuant to paragraph (a) of this section 5.5 or upon dissolution), the MedMal-BQ Trustee shall, after causing the repayment of any outstanding MedMal Loans and reserving an amount of Cash that the MedMal-BQ Trustee in good faith believes will be reasonably likely to be sufficient to cover the wind-down expenses of the MedMal-BQ Trust (including any taxes due thereon), make a distribution of all assets in the MedMal-BQ Trust to the remaining MedMal Trusts, if any, in proportion to the estimated unpaid Allowed MedMal Claims of each such MedMal Trust pursuant to the last estimate thereof. In the event there are no remaining MedMal Trusts, or if Reorganized SVCMC elects to cause an additional estimation, in its sole discretion and at its sole expense, of the Claims remaining in each of the remaining MedMal Trusts, and in such estimation, it is determined that the funds in each remaining MedMal Trust exceed 125% (if such estimation occurs subsequent to the 50% Milestone Triggering Event and prior to the 75% Milestone Triggering Event) or 115% (if such estimation occurs subsequent to the 75% Milestone Triggering Event) of all then remaining MedMal Claims subject to each such MedMal Trust plus the estimated MedMal Defense Costs for such claims at such time, then any excess funds in the MedMal-BQ Trust shall be remitted to Reorganized SVCMC.

ARTICLE VI

RIGHTS, POWERS AND DUTIES OF MEDMAL-BQ TRUSTEE

6.1 Role of the MedMal-BQ Trustee. In furtherance of and consistent with the purpose of the MedMal-BQ Trust and the Plan, the MedMal-BQ Trustee shall, as instructed by Reorganized SVCMC, (i) manage, sell and invest the MedMal-BQ Trust Assets, (ii) distribute the MedMal-BQ Trust Assets to MedMal-BQ Trust Beneficiaries, including without limitation holders of Allowed MedMal-BQ Claims against SVCMC (whether Allowed on or after the Effective Date), in accordance with the Plan and this Trust Agreement, and (iii) otherwise act in accordance with the provisions of this Trust Agreement and the Plan. Subject to the specific terms hereof, the MedMal-BQ Trustee shall also reasonably cooperate with the MedMal Trust Monitor to enable it to carry out its duties and responsibilities under this Trust Agreement and the Plan. The MedMal-BQ Trustee shall be responsible for all decisions and duties with respect to the MedMal-BQ Trust and the MedMal-BQ Trust Assets. In all circumstances, the MedMal-

BQ Trustee shall act in the best interests of all beneficiaries of the MedMal-BQ Trust and in furtherance of the purpose of the MedMal-BQ Trust.

6.2 Retention of Counsel and Other Professionals. Subject to obtaining the prior written approval of Reorganized SVCMC, the MedMal-BQ Trustee may (i) retain such independent experts and advisors (including, but not limited to, legal counsel, tax advisors, consultants, or other professionals) as the MedMal-BQ Trustee deems necessary to aid it in the performance of its duties and responsibilities hereunder and under the Plan and to perform such other functions as may be appropriate in furtherance of the intent and purpose of this Trust Agreement, and (ii) commit the MedMal-BQ Trust to provide such professional persons or entities reasonable compensation and reimbursement from the MedMal-BQ Trust Assets for services rendered and expenses incurred. The MedMal-BQ Trustee will make all reasonable and customary arrangements for payment or reimbursement of such compensation and expenses, which shall be paid as Reimbursable Costs in accordance with the provisions of Section 6.3 of this Trust Agreement and Section 6.6(k) of the Plan. No approval of the Bankruptcy Court shall be required for the retention or compensation of any professionals of the MedMal-BQ Trustee.

6.3 MedMal-BQ Trust Expenses. The MedMal-BQ Trustee may incur reasonable and necessary expenses in administering the MedMal-BQ Trust.

(a) MedMal Defense Costs. The MedMal Defense Costs of the MedMal-BQ Trust up to its Pro Rata Share of \$3 million per year shall be paid by the MedMal-BQ Trust, subject to Reorganized SVCMC's obligations to make Shortfall Payments. The MedMal Trusts shall have no obligation to pay any MedMal Defense Costs in excess of \$3 million per year in the aggregate. Any MedMal Defense Costs incurred by the MedMal-BQ Trust in excess of its Pro Rata Share of \$3 million per year shall be an obligation of Reorganized SVCMC under the Plan and shall be timely paid directly by Reorganized SVCMC.

(b) Other Costs and Expenses of the MedMal-BQ Trust. All reasonable fees, costs, and expenses of the MedMal-BQ Trust, including the fees, expenses, bonding and insurance of the MedMal-BQ Trustee and its retained professionals, shall be paid out of the MedMal-BQ Trust Assets (including the proceeds, if any, of the MedMal-BQ Trust Policy) and shall constitute Reimbursable Costs, subject to Reorganized SVCMC's obligations to make Shortfall Payments, other than with respect to (i) reasonable fees and expenses of the MedMal Trust Monitor up to an aggregate of \$75,000 a year and (ii) MedMal Defense Costs in excess of \$3 million a year, each of which shall be paid directly by Reorganized SVCMC as set forth herein and in the Plan; provided, however, that for the avoidance of doubt, payments made to holders of Allowed MedMal-BQ Claims on account of such Claims, other than payments on account of MedMal Interest, shall not constitute Reimbursable Costs.

6.4 MedMal Loans.

(a) Borrowing. The MedMal-BQ Trust shall have the ability, but not the obligation, to borrow a MedMal Loan from another MedMal Trust up to the amount due from Reorganized SVCMC to the MedMal-BQ Trust under the MedMal Trust Funding Schedule on the next Effective Date Anniversary. The MedMal-BQ Trust, as borrower, shall repay, on or prior to the next Effective Date Anniversary, any amounts borrowed under a MedMal Loan.

Additional terms of any MedMal Loan shall be negotiated between the MedMal-BQ Trustee and the respective lending MedMal Trustee.

(b) Lending. The MedMal-BQ Trust shall have the ability, but not the obligation, to make a MedMal Loan to another MedMal Trust (up to the amount due from Reorganized SVCMC to the borrower MedMal Trust under the MedMal Trust Funding Schedule on the next Effective Date Anniversary) if the MedMal-BQ Trustee, in its sole discretion, reasonably believes that it has sufficient funds in the MedMal-BQ Trust to pay all MedMal-BQ Claims that it estimates will be Allowed prior to the next Effective Date Anniversary, plus all accrued and unpaid MedMal Interest and any other costs for which the MedMal-BQ Trust will be responsible prior to the next Effective Date Anniversary. The borrower MedMal Trust shall repay, on or prior to the next Effective Date Anniversary, any amounts borrowed under a MedMal Loan. Additional terms of any MedMal Loan shall be negotiated between the MedMal-BQ Trustee and the respective borrowing MedMal Trustee.

6.5 Management of MedMal-BQ Trust Assets.

(a) Except as otherwise provided in this Trust Agreement, the Plan or the Confirmation Order, and subject to the retained jurisdiction of the Bankruptcy Court as provided for in the Plan, but without prior or further authorization, the MedMal-BQ Trustee may with the written consent of Reorganized SVCMC control and exercise authority over the MedMal-BQ Trust Assets, over the acquisition, management and disposition thereof and over the management and conduct of the MedMal-BQ Trust, in each case, to the extent necessary to enable the MedMal-BQ Trustee to fulfill the intents and purposes of this Trust Agreement. No Person dealing with the MedMal-BQ Trust will be obligated to inquire into the authority of the MedMal-BQ Trustee in connection with the acquisition, management or disposition of the MedMal-BQ Trust Assets.

(b) In connection with the management of the MedMal-BQ Trust Assets, except as otherwise expressly limited in this Trust Agreement, the Plan or the Confirmation Order, the MedMal-BQ Trustee will have, in addition to any powers conferred upon the MedMal-BQ Trustee by any other provision of this Trust Agreement, the power to take any and all actions as, in the MedMal-BQ Trustee's discretion, subject to the written consent of Reorganized SVCMC, as are necessary or advisable to effectuate the primary purposes of the MedMal-BQ Trust, including, without limitation, the power and authority to (i) distribute the MedMal-BQ Trust Assets to MedMal-BQ Trust Beneficiaries in accordance with the terms of this Trust Agreement and the Plan, (ii) pay all expenses of the MedMal-BQ Trust, (iii) sell, convey, transfer, assign, liquidate or abandon the MedMal-BQ Trust Assets, or any part thereof or any interest therein, upon such terms and for such consideration as may be commercially reasonable, (iv) endorse the payment of notes or other obligations of any Person or to make contracts with respect thereto, (v) exercise, by and through the MedMal Trust Monitor and Reorganized SVCMC, all powers available to collect from the MedMal-BQ Trust Policy in accordance with the Plan and this Trust Agreement, and (vi) borrow such sums of money (in addition to the loans contemplated by this Trust Agreement), at any time and from time to time, for such periods of time, upon such terms and conditions, from such Persons, and for such purposes as may be commercially reasonable. The MedMal-BQ Trustee will not at any time, on behalf of the MedMal-BQ Trust or the MedMal-BQ Trust Beneficiaries, enter into or engage in

any trade or business, and no part of the MedMal-BQ Trust Assets will be used or disposed of by the MedMal-BQ Trustee in furtherance of any trade or business.

(c) Upon obtaining the written consent of Reorganized SVCMC, to the extent necessary, all decisions and actions taken by the MedMal-BQ Trustee under the authority of this Trust Agreement will be binding upon all of the MedMal-BQ Trust Beneficiaries and the MedMal-BQ Trust.

6.6 Investment of Cash. The MedMal-BQ Trustee may invest any Cash (including any earnings thereon or proceeds therefrom) as permitted by section 345 of the Bankruptcy Code. Sections 11-2.3, 11-2.3-A and 11-2.4 of the Estates, Powers and Trusts Law of New York shall be inapplicable to the MedMal-BQ Trust.

6.7 Additional Powers of the MedMal-BQ Trustee. In addition to any and all of the powers enumerated above, and except as otherwise provided in this Trust Agreement, the Plan or the Confirmation Order, and subject to the Treasury Regulations governing qualified settlement funds and grantor trusts and the retained jurisdiction of the Bankruptcy Court as provided for in the Plan, the MedMal-BQ Trustee, in consultation with and at the direction of Reorganized SVCMC, shall be empowered to:

(a) hold legal title to any and all rights of the holders of the MedMal-BQ Trust Interests in or arising from the MedMal-BQ Trust Assets, including, but not limited to, the right to collect any and all money and other property belonging to the MedMal-BQ Trust;

(b) protect and enforce the rights of the MedMal-BQ Trust to the MedMal-BQ 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;

(c) determine and satisfy any and all liabilities created, incurred or assumed by the MedMal-BQ Trust;

(d) setoff against or recoup from any Allowed MedMal-BQ Claim and the distributions to be made hereunder pursuant to the Plan on account of such Allowed MedMal-BQ Claim (before any distribution is made on account of such Allowed MedMal-BQ Claim), any claims, rights and causes of action of any nature that the Debtors or the MedMal-BQ Trust has asserted in writing against the holder of such Allowed MedMal-BQ Claim;

(e) assert or waive any privilege or defense on behalf of the MedMal-BQ Trust;

(f) make all payments relating to the MedMal-BQ Trust Assets;

(g) obtain insurance coverage with respect to the liabilities and obligations of the MedMal-BQ Trust under this Trust Agreement (in the form of an errors and omissions policy or otherwise);

(h) file, if necessary, any and all tax and information returns with respect to the MedMal-BQ Trust and pay taxes properly payable by the MedMal-BQ Trust, if any;

(i) request any appropriate tax determination with respect to the MedMal-BQ Trust, including, without limitation, a determination pursuant to section 505 of the Bankruptcy Code;

(j) retain and reasonably compensate for services rendered and expenses incurred an accounting firm or financial consulting firm to perform such reviews and/or audits of the financial books and records of the MedMal-BQ Trust as may be appropriate in the MedMal-BQ Trustee's discretion and to prepare and file any tax returns or information returns for the MedMal-BQ Trust as may be required;

(k) take or refrain from taking any and all actions the MedMal-BQ Trustee reasonably deems necessary for the continuation, protection, and maximization of the MedMal-BQ Trust Assets consistent with the purposes hereof;

(l) take all steps and execute all instruments and documents necessary to effectuate the MedMal-BQ Trust;

(m) take all actions necessary to comply with the Plan and this Trust Agreement and the obligations thereunder and hereunder; and

(n) exercise such other powers as may be vested in the MedMal-BQ Trustee pursuant to an order of the Bankruptcy Court or this Trust Agreement, or as deemed by Reorganized SVC MC to be necessary and proper to carry out the obligations of the MedMal-BQ Trust.

6.8 Limitations on Power and Authority of the MedMal-BQ Trustee.
Notwithstanding anything in this Trust Agreement to the contrary, the MedMal-BQ Trustee will not have the authority to do any of the following:

(a) take any action in contravention of this Trust Agreement, the Plan or the Confirmation Order;

(b) take any action which would make it impossible to carry on the activities of the MedMal-BQ Trust;

(c) possess property of the MedMal-BQ Trust or assign the MedMal-BQ Trust's rights in specific property for other than MedMal-BQ Trust purposes;

(d) engage in any trade or business; or

(e) engage in any investments or activities inconsistent with the treatment of the MedMal-BQ Trust as a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1.

6.9 Books and Records.

(a) Maintenance. The MedMal-BQ Trustee shall maintain in respect of the MedMal-BQ Trust and the holders of MedMal-BQ Trust Interests books and records relating to the MedMal-BQ Trust Assets and income of the MedMal-BQ Trust and the payment of, expenses of, and liabilities of claims against or assumed by, the MedMal-BQ Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the MedMal-BQ Trust. Nothing in this Trust Agreement requires the MedMal-BQ Trustee to file any accounting or seek approval of any court with respect to the administration of the MedMal-BQ Trust, or as a condition for managing any payment or distribution out of the MedMal-BQ Trust Assets.

(b) Access. The MedMal-BQ Trustee shall provide Reorganized SVCMC and, subject to section 6.10(d) below, the MedMal Trust Monitor with reasonable access to its books and records and be available during regular business hours, upon reasonable advance notice, to answer Reorganized SVCMC's and the MedMal Trust Monitor's questions relating to MedMal-BQ Claims and the finances of the MedMal-BQ Trusts. Other holders of MedMal-BQ Trust Interests and their duly authorized representatives shall have the right, upon thirty (30) days' prior written notice delivered to the MedMal-BQ Trust, to inspect such books and records (including financial statements), subject to the MedMal-BQ Trustee's right to deny access in a reasonable effort to preserve privileged or confidential information or protect litigation or other strategies; provided that, if so requested by the MedMal-BQ Trustee, such holder shall have entered into a confidentiality agreement satisfactory in form and substance to Reorganized SVCMC.

6.10 Reports.

(a) Securities Reports. Under section 1145 of the Bankruptcy Code, the issuance of MedMal-BQ Trust Interests under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and applicable state and local laws requiring registration of securities. If the MedMal-BQ Trustee determines, with the advice of counsel, that the MedMal-BQ Trustee is required to comply with the registration and reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the MedMal-BQ Trustee shall take any and all actions to comply with such registration and reporting requirements and file periodic reports with the Securities and Exchange Commission.

(b) Financial and Status Reports. On each Effective Date Anniversary, and as soon as practicable upon termination of the MedMal-BQ Trust, the MedMal-BQ Trustee shall make available to the MedMal Trust Monitor and upon request to holders of MedMal-BQ Trust Interests appearing on its records as of the end of such period or such date of termination a written report including: (i) financial statements of the MedMal-BQ Trust for such period, and, if the end of a calendar year, a report (which may be prepared by an independent certified public accountant employed by the MedMal-BQ Trustee) reflecting the result of such agreed upon procedures relating to the financial accounting administration of the MedMal-BQ Trust as proposed by the MedMal-BQ Trustee; (ii) a description of any action taken by the MedMal-BQ

Trustee in the performance of its duties which materially affects the MedMal-BQ Trust and of which notice has not previously been given to the MedMal Trust Monitor and the holders of MedMal-BQ Trust Interests; and (iii) a description of the progress of making distributions to holders of MedMal-BQ Trust Interests and any other material non-confidential information relating to the MedMal-BQ Trust Assets and the administration of the MedMal-BQ Trust. The MedMal-BQ Trustee may post any such report on a Website maintained by the MedMal-BQ Trustee in lieu of actual notice to the MedMal Trust Monitor and the holders of MedMal-BQ Trust Interests (unless otherwise required by law).

(c) Annual Plan and Budget. If instructed by Reorganized SVCMC, the MedMal-BQ Trustee shall prepare and submit to Reorganized SVCMC and the MedMal Trust Monitor for approval an annual plan and budget prior to the commencement of each fiscal year of the MedMal-BQ Trust; provided, however, that the first such report shall be submitted no later than sixty (60) days after the Effective Date. Such annual plan and budget shall set forth in reasonable detail the anticipated expenses, including professional fees, associated with conducting the affairs of the MedMal-BQ Trust. Such annual plan and budget shall be updated and submitted to the MedMal Trust Monitor and Reorganized SVCMC for review and approval on a quarterly basis, and each such quarterly update shall reflect the differences between the anticipated actions described in the annual report and actual operations of the MedMal-BQ Trustee to date. All actions by the MedMal-BQ Trustee must be consistent with the plan and budget, as updated on a quarterly basis.

(d) Reports to and Communications with Reorganized SVCMC and the MedMal Trust Monitor. The MedMal-BQ Trustee shall provide to Reorganized SVCMC and, subject to the following sentence, to the MedMal Trust Monitor such information and other data about the MedMal-BQ Trust as such parties shall reasonably request. To the extent the MedMal-BQ Trustee is required to communicate with Reorganized SVCMC or the MedMal Trust Monitor under this Trust Agreement, (i) the MedMal-BQ Trustee may direct all communications to counsel for the relevant party (if such counsel exists), (ii) the MedMal-BQ Trustee may require that Reorganized SVCMC or the MedMal Trust Monitor maintain as confidential any confidential or proprietary information, and (iii) the MedMal Trust Monitor shall have entered into a confidentiality agreement reasonably satisfactory in form and substance to Reorganized SVCMC; provided, however, that:

(i) information concerning the MedMal-BQ Trust solely on an aggregate basis shall not be confidential;

(ii) notwithstanding any confidentiality obligations, the MedMal Trust Monitor may use any information received to enforce (1) payment obligations of Reorganized SVCMC to the MedMal-BQ Trust under the Plan or this Trust Agreement or (2) the cap on MedMal-BQ Trust expenses described in the Plan; and

(iii) the MedMal Trust Monitor may share information provided by the Med Mal-BQ Trustee to the Med Mal Trust Monitor with its counsel and with holders of MedMal-BQ Trust Interests provided such holders agree to be bound by the confidentiality obligations described in this section 6.10(d) and the

confidentiality agreement between the Med Mal-BQ Trustee and the MedMal Trust Monitor; provided, however, whether or not any holder of a MedMal-BQ Trust Interest has agreed to be bound by such confidentiality obligations, that the MedMal Trust Monitor may not share with holders of MedMal-BQ Trust Interests (1) any personal health information that is protected under the Health Insurance Portability and Accountability Act of 1996, (2) any non-public information regarding any particular MedMal-BQ Claim, or (3) any other information that Reorganized SVC MC or the MedMal-BQ Trustee reasonably requests not be shared with holders of MedMal-BQ Trust Interests.

6.11 Compliance with Laws. Any and all distributions of MedMal-BQ Trust Assets and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, but not limited to, applicable federal and state securities laws.

ARTICLE VII

THE MEDMAL-BQ TRUSTEE

7.1 Independent Trustee. The MedMal-BQ Trustee may not be a MedMal-BQ Trust Beneficiary or a related party (within the meaning of sections 267(b) or 707(b)(1) of the Internal Revenue Code of 1986, as amended (the “Tax Code”)) or a related or subordinate party (within the meaning of section 672(c) of the Tax Code) to any MedMal-BQ Trust Beneficiary. The same Person may serve as the MedMal Trustee for two or more MedMal Trusts with the consent of the Tort Claimants’ Committee.

7.2 Trustee’s Compensation and Reimbursement. The MedMal-BQ Trustee shall receive compensation from the MedMal-BQ Trust as follows:

(a) Compensation. The MedMal-BQ Trustee shall receive such reasonable and customary compensation as determined by Reorganized SVC MC and consistent with that of similar functionaries in similar types of bankruptcy cases. Compensation for the initial MedMal-BQ Trustee shall be as set forth on Annex B hereto.

(b) Expenses. In addition, the MedMal-BQ Trust shall reimburse the MedMal-BQ Trustee (out of MedMal-BQ Trust Assets) for all reasonable, out-of-pocket expenses incurred by the MedMal-BQ Trustee in connection with the performance of its duties hereunder and under the Plan, which expenses shall be Reimbursable Costs under the Plan.

(c) Payment. The fees and expenses payable to the MedMal-BQ Trustee shall be paid to the MedMal-BQ Trustee upon approval of such fees by Reorganized SVC MC and the MedMal Trust Monitor without necessity for review or approval by the Bankruptcy Court or any other Person. The MedMal-BQ Trustee shall provide monthly bills in respect of its fees and expenses to Reorganized SVC MC and the MedMal Trust Monitor, and Reorganized SVC MC and the MedMal Trust Monitor shall have 30 days after receipt to object in writing to all or any portion of such bills. Such bills, or portions thereof, as to which no objection has been made by Reorganized SVC MC or the MedMal Trust Monitor at the end of such period shall be

immediately payable. The Bankruptcy Court shall retain jurisdiction to adjudicate any dispute regarding the fees, incentive compensation, and expenses of the MedMal-BQ Trustee.

(d) Modification of Compensation Terms. Reorganized SVCMC may, without application to or approval by the Bankruptcy Court, subject to the consent of the MedMal-BQ Trustee, reasonably modify the MedMal-BQ Trustee's compensation and other terms regarding the retention of the MedMal-BQ Trustee.

7.3 Resignation. The MedMal-BQ Trustee may resign by giving not less than ninety (90) days' prior written notice thereof to Reorganized SVCMC. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice, and (ii) the appointment of a successor by Reorganized SVCMC as provided in Section 7.5 hereof and the acceptance by such successor of such appointment. If a successor MedMal-BQ Trustee is not appointed or does not accept its appointment within ninety (90) days following delivery of notice of resignation, the MedMal-BQ Trustee may petition any court of competent jurisdiction for the appointment of a successor MedMal-BQ Trustee.

7.4 Removal.

(a) The MedMal-BQ Trustee may be removed by Reorganized SVCMC, after consultation with the MedMal Trust Monitor, without any necessity for any showing of cause upon ninety (90) days' prior written notice thereof to the MedMal-BQ Trustee (such removal, a "Without Cause Removal"). In addition to Without Cause Removals, the MedMal Trust Monitor and/or any MedMal-BQ Trust Beneficiary can seek to have the MedMal-BQ Trustee removed for Cause. Further, in the event of a subsequent bankruptcy or other insolvency event of Reorganized SVCMC, the MedMal-BQ Trustee may be removed by the MedMal Trust Monitor without any necessity for any showing of cause upon thirty (30) days' prior written notice thereof to the MedMal-BQ Trustee (such removal, an "Insolvency Removal").

(b) For purposes of this Section 7.4, "Cause" shall be defined as: (i) theft or embezzlement or attempted theft or embezzlement of money or tangible or intangible assets or property; (ii) violation of any law (whether foreign or domestic), which results in a felony indictment or similar judicial proceeding; (iii) recklessness, gross negligence, willful misconduct, or knowing violation of law, in each case, in the performance of its duties; or (iv) failure to perform any of its other material duties under this Trust Agreement; provided, however, that a reasonable period shall be given to cure any alleged Cause under clauses (iii) (other than willful misconduct) and (iv).

(c) To the extent there is any dispute regarding the removal of a MedMal-BQ Trustee (including any dispute relating to any compensation or expense reimbursement due under this Trust Agreement), the Bankruptcy Court shall retain jurisdiction to consider and adjudicate any such dispute and may remove a MedMal-BQ Trustee for cause. Notwithstanding the foregoing, the MedMal-BQ Trustee will continue to serve as a trustee after its removal until the earlier of (a) the time when appointment of a successor MedMal-BQ Trustee will become effective in accordance with Section 7.5 of this Trust Agreement or (b) such date as the Bankruptcy Court otherwise orders.

7.5 Appointment of Successor MedMal-BQ Trustee. In the event of the death (in the case of a MedMal-BQ Trustee that is a natural person), dissolution (in the case of a MedMal-BQ Trustee that is not a natural person), resignation, incompetency, or removal (other than an Insolvency Removal) of the MedMal-BQ Trustee, Reorganized SVC MC, after consultation with the MedMal Trust Monitor, shall designate a successor MedMal-BQ Trustee. In the event of an Insolvency Removal, the MedMal Trust Monitor shall designate a successor MedMal-BQ Trustee, and such successor MedMal-BQ Trustee shall take direction consistent with the Plan from the MedMal Trust Monitor and not Reorganized SVC MC. Such appointment shall specify the date on which such appointment shall be effective. Every successor MedMal-BQ Trustee appointed hereunder shall execute, acknowledge, and deliver to the Bankruptcy Court and to the retiring MedMal-BQ Trustee an instrument accepting the appointment under this Trust Agreement and agreeing to be bound thereto, and thereupon the successor MedMal-BQ Trustee, without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of the retiring MedMal-BQ Trustee; provided, however, that a removed or resigning MedMal-BQ Trustee shall, when requested in writing by the successor MedMal-BQ Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor MedMal-BQ Trustee under the MedMal-BQ Trust all the estates, properties, rights, powers, and trusts of such predecessor MedMal-BQ Trustee.

7.6 Effect of Resignation or Removal. The death, resignation, incompetency or removal of the MedMal-BQ Trustee shall not operate to terminate the MedMal-BQ Trust created by this Trust Agreement or to revoke any existing agency created pursuant to the terms of this Trust Agreement or invalidate any action theretofore taken by the MedMal-BQ Trustee or any prior MedMal-BQ Trustee. In the event of the resignation or removal of the MedMal-BQ Trustee, such MedMal-BQ Trustee will promptly (i) execute and deliver such documents, instruments and other writings as may be ordered by the Bankruptcy Court or reasonably requested by the successor MedMal-BQ Trustee to effect the termination of such MedMal-BQ Trustee's capacity under this Trust Agreement, (ii) deliver to the Bankruptcy Court or the successor MedMal-BQ Trustee all documents, instruments, records and other writings related to the MedMal-BQ Trust as may be in the possession of such MedMal-BQ Trustee; provided that such MedMal-BQ Trustee may retain one copy of such documents for archival purposes, and (iii) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor MedMal-BQ Trustee.

7.7 Confidentiality. The MedMal-BQ Trustee shall, during the period that it serves as MedMal-BQ Trustee under this Trust Agreement and for a period of twelve (12) months following the termination of this Trust Agreement or following its removal or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the MedMal-BQ Trust Assets relates or of which it has become aware in its capacity as MedMal-BQ Trustee, except as otherwise required by applicable law or regulation; provided, however, that nothing in this Section 7.7 shall prevent the MedMal-BQ Trustee from sharing with its outside legal counsel or auditors any information required by such legal counsel or auditors to discharge their respective duties in respect of the MedMal-BQ Trustee or the MedMal-BQ Trust.

7.8 Bonding. The MedMal-BQ Trustee shall either provide a bond with respect to the moneys under its control or evidence of Errors and Omissions insurance satisfactory to Reorganized SVCMC and the MedMal Trust Monitor.

ARTICLE VIII

MEDMAL TRUST MONITOR

8.1 The MedMal Trust Monitor. The following person or entity, selected by the Tort Claimants' Committee, with the reasonable consent of SVCMC, shall initially serve as monitor of the MedMal-BQ Trust and the other the MedMal Trusts (the "MedMal Trust Monitor"):

Michael E. Katzenstein.

8.2 Authority and Responsibilities.

(a) The MedMal Trust Monitor shall (i) monitor the operations of the MedMal-BQ Trust and contributions from Reorganized SVCMC, (ii) enforce the payment obligations of Reorganized SVCMC to the MedMal-BQ Trust, (iii) enforce the MedMal Lien of the MedMal-BQ Trust, (iv) oversee the refinancing or other disposition of the MedMal Collateral, (v) enforce the cap on MedMal Defense Costs to be paid by the MedMal-BQ Trust, and (vi) perform other duties as set forth in the Plan, this Trust Agreement, the Plan Supplement or any other related documents.

(b) In addition to any other rights and duties of the MedMal Trust Monitor under this Trust Agreement and the Plan, the MedMal Trust Monitor shall respond to inquiries from holders of MedMal-BQ Claims regarding the Plan and treatment of their claims hereunder.

8.3 Retention of Professionals.

(a) The MedMal Trust Monitor shall have the authority to select and engage such Persons, and select and engage such professional advisors, including, without limitation, any professional previously retained by the Tort Claimants' Committee or SVCMC, in accordance with the terms of the Plan and this Trust Agreement, as the MedMal Trust Monitor deems necessary and desirable to assist the MedMal Trust Monitor in fulfilling its obligations under this Trust Agreement and the Plan, and, to the extent not paid directly by Reorganized SVCMC as required under the Plan, the MedMal-BQ Trust shall pay the reasonable fees of such Persons (including on an hourly, contingency, or modified contingency basis) and reimburse such Persons for their reasonable and documented out-of-pocket costs and expenses consistent with the terms of this Trust Agreement and the Plan, which fees shall constitute Reimbursable Costs under the Plan.

(b) Counsel to the MedMal Trust Monitor shall initially be counsel to the Tort Claimants' Committee. Any replacement counsel for the MedMal Trust Monitor must be reasonably acceptable to Reorganized SVCMC.

8.4 Tenure of the MedMal Trust Monitor. The authority of the MedMal Trust Monitor will be effective as of the Effective Date and will remain and continue in full force and

effect until the MedMal-BQ Trust is terminated in accordance with Article XI hereof. The MedMal Trust Monitor will serve until death or resignation pursuant to Section 8.5 below, or removal pursuant to Section 8.6 below.

8.5 Resignation. The MedMal Trust Monitor may resign by giving not less than ninety (90) days' prior written notice thereof to Reorganized SVCMC, the MedMal-BQ Trustee and the other MedMal Trustees. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice; and (ii) the appointment of a successor in accordance with Section 8.7 below.

8.6 Removal. The MedMal Trust Monitor may be removed by the Tort Claimants' Committee in consultation with Reorganized SVCMC at any time, with or without cause.

8.7 Appointment of a Successor MedMal Trust Monitor.

(a) In the event of a vacancy on the MedMal Trust Monitor (whether by removal, death, or resignation), then (i) if any members of the Tort Claimants' Committee have not been paid the full Allowed amount of their respective Claims or have not had their Claims disallowed by Final Order, counsel to the MedMal Trust Monitor shall contact such members and the successor MedMal Trust Monitor shall be selected based on the majority vote of such members, with the reasonable consent of Reorganized SVCMC (with any tie to be broken by counsel to the MedMal Trust Monitor, with the reasonable consent of Reorganized SVCMC), or (ii) if all members of the Tort Claimants' Committee have been paid the full Allowed amount of their respective Claims and/or have had their Claims disallowed by Final Order, counsel to the MedMal Trust Monitor and Reorganized SVCMC shall jointly select the MedMal Trust Monitor.

(b) The appointment of a successor MedMal Trust Monitor will be evidenced by the MedMal-BQ Trustee's filing with the Bankruptcy Court of a notice of appointment, which notice will include the name, address, and telephone number of the successor MedMal Trust Monitor.

(c) Immediately upon the appointment of any successor MedMal Trust Monitor, all rights, powers, duties, authority, and privileges of the predecessor MedMal Trust Monitor hereunder will be vested in and undertaken by the successor MedMal Trust Monitor without any further act; and the successor MedMal Trust Monitor will not be liable personally for any act or omission of the predecessor MedMal Trust Monitor.

(d) Every successor MedMal Trust Monitor appointed hereunder shall execute, acknowledge and deliver to the MedMal-BQ Trustee and Reorganized SVCMC an instrument accepting the appointment under this Trust Agreement and agreeing to be bound thereto, and thereupon the successor MedMal Trust Monitor without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of the retiring MedMal Trust Monitor.

8.8 Compensation and Reimbursement of Expenses. Reorganized SVCMC shall promptly pay the reasonable fees and expenses of the MedMal Trust Monitor (including the fees and expenses of its legal counsel) up to \$75,000 per year until the dissolution of all MedMal

Trusts. The MedMal-BQ Trust shall pay its Pro Rata Share of Excess Monitor Fees, subject to Reorganized SVCMC's obligations to make Shortfall Payments.

8.9 Reliance by MedMal Trust Monitor on Documents. The MedMal Trust Monitor may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order or other paper or document believed by the MedMal Trust Monitor to be genuine and to have been signed or presented by the proper party or parties.

ARTICLE IX

LIABILITY AND INDEMNIFICATION

9.1 Limitations on Liability.

(a) Each of the MedMal-BQ Trustee, the MedMal Trust Monitor, the Tort Claimants Committee, Reorganized SVCMC and their respective counsel (the "Exculpated Parties") shall not be liable for any action taken or omitted in good faith and reasonably believed by it to be authorized within the discretion or rights or powers conferred upon it in accordance with this Trust Agreement, provided that any such action is taken or omitted in the manner so authorized. Subject to Section 9.1(c)(v) below, in performing its duties under this Trust Agreement, each of the Exculpated Parties shall have no liability for any action it takes in good faith in accordance with the advice of counsel, accountants, appraisers and other professionals retained by such Exculpated Party. Without limiting the generality of the foregoing, each Exculpated Party may rely without independent investigation on copies of orders of the Bankruptcy Court reasonably believed by it to be genuine, and shall have no liability for actions taken in good faith in reliance thereon. None of the provisions of this Trust Agreement shall require the MedMal-BQ Trustee, the MedMal Trust Monitor, the Tort Claimants Committee or (except as expressly provided herein) Reorganized SVCMC to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of their duties hereunder or in the exercise of any of its rights and powers. Each of the Exculpated Parties may rely without inquiry upon writings delivered to it under the Plan which it reasonably believes in good faith to be genuine and to have been given by a proper Person. Each of the provisions of this Section 9.1(a) is subject in all respects to Section 9.1(d) below.

(b) Without limiting the foregoing, subject in all respects to Section 9.1(d) below:

(i) Other than in respect of its gross negligence, bad faith, willful misconduct, breach of fiduciary duty or knowing violation of law, the MedMal-BQ Trustee shall not be personally liable with respect to any action taken, suffered or omitted to be taken in good faith in accordance with the express direction of Reorganized SVCMC in accordance with this Trust Agreement, and may seek the direction of Reorganized SVCMC as appropriate under this Trust Agreement in the performance of its duties.

(ii) Other than in respect of its gross negligence, bad faith, willful misconduct, breach of fiduciary duty or knowing violation of law, the MedMal-BQ Trustee shall not be personally liable for or in respect of the validity or the due execution of this Trust Agreement or any other document as regarding any other party hereto or thereto.

(iii) Other than in respect of its gross negligence, bad faith, willful misconduct, breach of fiduciary duty or knowing violation of law, the MedMal-BQ Trustee shall not be personally liable for or in respect of the form, character, genuineness, sufficiency, value or validity of any of the Trust Assets; the ability of the MedMal-BQ Trust to generate the payments to be distributed hereunder; the validity of any assignment of any Trust Asset to the Trust; the collectibility or value of any receivable owned by the Trust; or any investment of monies in accordance with this Trust Agreement or any loss resulting therefrom.

(iv) Other than in respect of its gross negligence, bad faith, willful misconduct, breach of fiduciary duty or knowing violation of law, the MedMal-BQ Trustee shall not be personally liable for the performance of the obligations of the MedMal-BQ Trust under this Trust Agreement or any other document that are required to be performed by any other Person hereunder.

(v) Other than in respect of its gross negligence, bad faith, willful misconduct, breach of fiduciary duty or knowing violation of law, the MedMal-BQ Trustee shall not be personally liable for the performance of any obligations of Reorganized SVC MC, the MedMal Trust Monitor or any MedMal-BQ Trust Beneficiary under this Trust Agreement or any other document.

(vi) Other than in respect of its gross negligence, bad faith, willful misconduct, breach of fiduciary duty or knowing violation of law, the MedMal-BQ Trustee shall not be personally liable for the default, breach or misconduct of any MedMal-BQ Trust Beneficiary, Reorganized SVC MC, the MedMal Trust Monitor or any other Person (except for the MedMal-BQ Trustee's own agents, attorneys or others acting at its direction or on its behalf) under this Trust Agreement, any other document, or otherwise.

(vii) Other than in respect of its gross negligence, bad faith, willful misconduct, breach of fiduciary duty or knowing violation of law, the MedMal-BQ Trustee shall not be personally liable if, by reason of any provision of any present or future law or regulation thereunder, or by any force majeure event, including but not limited to natural disaster, war or other circumstances beyond its reasonable control, the MedMal-BQ Trustee shall be prevented or forbidden from doing or performing any act or thing which the terms of this Trust Agreement provide shall or may be done or performed.

(c) Subject in all respects to Section 9.1(d) below, except as otherwise provided in this Agreement:

(i) The MedMal-BQ Trustee undertakes to perform such duties, and only such duties, as are specifically set forth in this Trust Agreement and such other duties as are necessary to effectuate the purposes of the MedMal-BQ Trust. The MedMal-BQ Trustee shall not have any duty or obligation to manage, control, prepare, file or maintain any report, license or registration, use, sell, dispose of or otherwise deal with the Trust Assets, or otherwise to take or refrain from taking any action under or in connection with this Trust Agreement or any other document except as expressly required hereby and as necessary to effectuate the purposes of the MedMal-BQ Trust.

(ii) The MedMal-BQ Trustee may rely upon, and shall not be required to independently verify the facts or matters stated in, any resolution, officer's certificate, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other paper or document reasonably believed by it in good faith to be genuine and accurate and to have been signed or presented by the proper party or parties; provided that it shall be obligated to examine each such item specifically required to be furnished to it pursuant to this Trust Agreement to determine whether they conform to the requirements of this Trust Agreement. In particular, whenever any document provides that the MedMal-BQ Trustee shall receive or may rely upon the instructions or directions of any Person, any written instruction or direction purporting to bear the signature of any authorized signatory of such Person reasonably believed by the MedMal-BQ Trustee in good faith to be genuine may be deemed by the MedMal-BQ Trustee to have been signed or presented by the proper party.

(iii) The MedMal-BQ Trustee shall be under no obligation to exercise any of the discretionary rights or powers vested in it by this Trust Agreement, or to institute, conduct or defend any litigation hereunder or in relation hereto or thereto, at the request, order or direction of any Person pursuant to this Trust Agreement or the Plan, if in the reasonable good-faith opinion of the MedMal-BQ Trustee, the MedMal-BQ Trustee does not have reasonable security or indemnity against liability, including reasonable fees and expenses of counsel, that may be incurred therein or thereby.

(iv) The MedMal-BQ Trustee may execute any of the powers or perform any duties under this Trust Agreement or under any other document either directly or by or through agents, attorneys or custodians, provided that the MedMal-BQ Trustee shall use reasonable care in selecting, monitoring and directing such agents, attorneys or custodians. The MedMal-BQ Trustee shall be liable for any gross negligence, bad faith, willful misconduct, breach of fiduciary duty or knowing violation of law by such agents, attorneys and custodians, to the extent that the MedMal-BQ Trustee is liable for the actions of such agents, attorneys and custodians under applicable law.

(v) Other than in respect of its gross negligence, bad faith, willful misconduct, breach of fiduciary duty or knowing violation of law, the MedMal-

BQ Trustee may rely in good faith on the oral or written advice of professionals selected with reasonable care hereunder.

(d) Notwithstanding the foregoing, nothing in this Section 9.1 shall (i) relieve the MedMal-BQ Trustee of its obligation to perform its duties under this Trust Agreement or (ii) relieve any Exculpated Party (including without limitation the MedMal-BQ Trustee) from any liability for any actions or omissions arising out of its gross negligence, bad faith, willful misconduct, breach of fiduciary duty or knowing violation of law.

9.2 Indemnification of the MedMal-BQ Trustee, the MedMal Trust Monitor and Reorganized SVCMC.

(a) To the fullest extent permitted by law, the MedMal-BQ Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless the MedMal-BQ Trustee, the MedMal Trust Monitor, and Reorganized SVCMC and each of their respective directors, members, shareholders, partners, officers, agents or employees (collectively, the “Indemnified Persons”) from and against any and all loss, cost, damage, expense (including, without limitation, fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person) or liability by reason of anything any Indemnified Person did, does or refrains from doing for the business or affairs of the MedMal-BQ Trust, except to the extent that it is finally judicially determined by a court of competent jurisdiction that the loss, cost, damage, expense or liability resulted primarily from the Indemnified Person’s gross negligence, willful misconduct, breach of fiduciary duty or knowing violation of law. To the extent reasonable, the MedMal-BQ Trust will pay in advance or reimburse reasonable expenses (including advancing reasonable costs of defense) incurred by the Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the MedMal-BQ Trust.

(b) The MedMal-BQ Trust, with the approval of all the MedMal-BQ Trust Beneficiaries, may indemnify any of the Indemnified Persons for any loss, cost, damage, expense or liability for which the Indemnified Persons would not be entitled to mandatory indemnification under this Section 9.2.

(c) Any Indemnified Person may waive the benefits of indemnification under this Section 9.2, but only by an instrument in writing executed by such Indemnified Person.

(d) The rights to indemnification under this Section 9.2 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this Section 9.2 will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under any other agreement or instrument to which that Person is a party.

(e) Any amounts paid by the MedMal-BQ Trust on account of its indemnification obligations under this Section 9.2 or otherwise shall be Reimbursable Costs under the Plan.

9.3 MedMal-BQ Trust Liabilities.

(a) All liabilities of the MedMal-BQ Trust, including without limitation indemnity obligations under Section 9.2 of this Trust Agreement, will be liabilities of the MedMal-BQ Trust as an entity. No liability of the MedMal-BQ Trust will be payable in whole or in part by any MedMal-BQ Trust Beneficiary in its capacity as a MedMal-BQ Trust Beneficiary, by the MedMal-BQ Trustee in its capacity as MedMal-BQ Trustee, by the MedMal Trust Monitor in its capacity as MedMal Trust Monitor, by Reorganized SVCMC (except as expressly provided herein), or by any member, partner, shareholder, director, officer, employees, agent, affiliate or advisor of any of the foregoing or any of their respective affiliates.

(b) Except as otherwise provided in this Trust Agreement, and except with respect to losses or damages resulting from the MedMal-BQ Trustee's gross negligence, bad faith, willful misconduct, breach of fiduciary duty or knowing violation of law, (i) no recourse shall be had against the institution serving as MedMal-BQ Trustee in its individual capacity for any claim based on any provision of this Trust Agreement, and (ii) the MedMal-BQ Trustee shall not have any personal obligation, liability or duty whatsoever to any MedMal-BQ Trust Beneficiary or any other Person with respect to any claim based on any provision of this Trust Agreement, and any such claim shall be asserted solely against the Trust Assets or any indemnitor that shall furnish indemnity as provided for in this Trust Agreement or in any other document.

ARTICLE X

TAX MATTERS

10.1 MedMal-BQ Trust Assets Treated as Owned by SVCMC.

(a) The MedMal-BQ Trust is intended to constitute a “qualified settlement fund” within the meaning of Treasury Regulation section 1.468B-1. In connection therewith, the MedMal-BQ Trust is (i) established pursuant to an order of the Bankruptcy Court and is subject to such court’s continuing jurisdiction, (ii) created to resolve or satisfy contested or uncontested claims that have resulted or may result from an event which has given rise to tort claims, and (iii) a trust under applicable state law whose assets are hereby segregated from the transferor’s remaining assets.

(b) SVCMC or Reorganized SVCMC shall timely prepare and execute a “grantor trust election” statement for the MedMal-BQ Trust pursuant to Treasury Regulation section 1.468B-1(k) to treat the MedMal-BQ Trust as a trust all of which is owned by SVCMC for applicable federal income tax purposes, and shall, to the extent permitted by applicable law, report consistently therewith for state and local tax purposes (including making any appropriate elections). The election statement shall (i) affirm that the transferor will treat the qualified settlement fund as a grantor trust and (ii) include the transferor’s name, address and taxpayer identification number and the legend, “1.468B-1(k) Election.” The MedMal-BQ Trustee in respect of the MedMal-BQ Trust or Reorganized SVCMC, as applicable in accordance with the foregoing Treasury Regulation, shall attach such grantor trust election statement to its timely filed income tax return for the taxable year in which the trust is established. If the election statement is required to be attached to the trust’s tax return, Reorganized SVCMC shall timely

deliver to the respective MedMal-BQ Trustee the original executed election statement with respect to such trust.

10.2 Tax Reporting.

(a) The MedMal-BQ Trustee shall timely prepare and file all federal, state, local and foreign tax returns and other tax related statements for the MedMal-BQ Trust treating the MedMal-BQ Trust as a grantor trust in accordance with Treasury Regulation sections 1.468B-1(k) and 1.671-4 and this Section 10.2. For purposes of Treasury Regulation section 1.468B-1, the administrator of the MedMal-BQ Trust shall be the MedMal-BQ Trustee. Before filing any MedMal-BQ Trust tax return or statement, the MedMal-BQ Trustee shall timely provide copies of such return or statement to Reorganized SVCMC for its review and approval.

(b) The MedMal-BQ Trustee shall cooperate with Reorganized SVCMC and any affiliate (including any successor in interest) with respect to the preparation and filing of any tax returns or statements of such person for which information relating to the MedMal-BQ Trust is necessary or appropriate.

(c) The MedMal-BQ Trustee shall cause the payment, out of the MedMal-BQ Trust Assets, of any taxes imposed on such assets or the MedMal-BQ Trust.

(d) The MedMal-BQ Trustee may request an expedited determination of taxes in respect of the MedMal-BQ Trust, under section 505(b) of the Bankruptcy Code, for all tax returns filed for, or on behalf of, such trust for all taxable periods through the dissolution of such trust.

ARTICLE XI

TERMINATION OF MEDMAL-BQ TRUST

11.1 Termination of MedMal-BQ Trust. The MedMal-BQ Trustee and the MedMal-BQ Trust shall be discharged or dissolved, as the case may be, at such time as (i) all Disputed MedMal-BQ Claims have been resolved, and (ii) all distributions required to be made by the MedMal-BQ Trustee under the Plan have been made; provided, however, that if the foregoing conditions have not been met by the fourteenth (14th) Effective Date Anniversary, Reorganized SVCMC or the MedMal Trust Monitor shall, within the six (6) month period prior to the fourteenth (14th) Effective Date Anniversary, file a motion with the Bankruptcy Court for authorization to extend the duration of the MedMal-BQ Trust for a fixed period so as to facilitate or complete the payments to holders of Allowed MedMal-BQ Claims. In the event the foregoing motion is not timely filed or if timely filed the motion is denied, the MedMal-BQ Trust shall be dissolved. Upon dissolution, any remaining assets in the MedMal-BQ Trust shall be distributed in accordance with Section 5.5 hereof.

ARTICLE XII

AMENDMENT AND WAIVER

12.1 Amendment and Waiver. Any substantive provision of this Trust Agreement may be amended or waived by the MedMal-BQ Trustee, upon notice and approval by Reorganized SVCMC and the MedMal Trust Monitor and approval of the Bankruptcy Court. Technical amendments to this Trust Agreement may be made, as necessary to clarify this Trust Agreement or enable the MedMal-BQ Trustee to effectuate the terms of this Trust Agreement, by the MedMal-BQ Trustee with approval by Reorganized SVCMC and the MedMal Trust Monitor; provided, however, that all amendments of this Trust Agreement shall be consistent with the purpose and intention of the MedMal-BQ Trust to hold the MedMal-BQ Trust Assets and distribute such assets to holders of Allowed MedMal-BQ Claims in accordance with Treasury Regulation section 1.468B-1 and Section 2.3 hereof.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 Intention of Parties to Establish MedMal-BQ Trust. This Trust Agreement is intended to create a “qualified settlement fund” within the meaning of Treasury Regulation section 1.468B-1 and a “grantor trust” within the meaning of Treasury Regulation section 1.468B-1(k); and, to the extent provided by law, shall be governed and construed in all respects as such a qualified settlement fund and grantor trust. Notwithstanding anything to the contrary contained herein, any ambiguity herein shall be construed consistent herewith and, if necessary, this Trust Agreement may be amended to comply with such federal income tax laws, which amendments may apply retroactively.

13.2 Effectiveness. This Trust Agreement shall become effective on the Effective Date.

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

13.4 Governing Law. Except to the extent the Bankruptcy Code or Federal Rules of Bankruptcy Procedure are applicable, this Trust Agreement shall be governed by, and construed and enforced in accordance with, the federal laws of the United States and, to the extent there is no applicable federal law, the domestic laws of the state of New York, without giving effect to the principles of conflicts of law thereof.

13.5 Headings. Sections, subheadings and other headings used in this Trust Agreement are for convenience only and shall not affect the construction or interpretation of this Trust Agreement or any provision thereof.

13.6 Severability. If any provision of this Trust Agreement or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Trust Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held

invalid or unenforceable, shall not be affected thereby, and such provisions of this Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

13.7 Notices. All notices, requests or other communications, required or permitted to be made in accordance with this Trust Agreement including any change of address of any MedMal-BQ Trust Beneficiary for the purposes of receiving distributions from the MedMal-BQ Trust shall be in writing and shall be delivered personally or by first class or express mail, return receipt requested. Notices should be mailed to:

- (a) If to the MedMal-BQ Trust or the MedMal-BQ Trustee:

Christiana Bank & Trust Company
Attn: James Young, Vice President
300 Delaware Avenue, Suite 714
Wilmington, DE 19801
Telephone: 302 888-7437
Telecopy: 302 421-3628

and

Christiana Bank & Trust Company
Attn: Louis W Geibel, Vice President
1314 King Street
Wilmington, DE 19801
Telephone: 302 888-7424
Telecopy: 302 421-9015

with copies to:

The Bayard Firm, P.A.
222 Delaware Avenue, Suite 900
P.O. Box 25130
Wilmington, Delaware
Telephone: 302-429-4214
Telecopy: 302-658-6395
Attn: Marla Hirshman Norton, Esq.

- (b) If to the MedMal Trust Monitor:

Michael E. Katzenstein
Principal, CXO, L.L.C.
5956 Sherry Lane, Suite 1000
Dallas, TX 75225
E-mail: mike@cxollc.com
Facsimile: 214-451-6999
Telephone: 214-346-2990

with copies to:

Cooley Godward Kronish LLP
1114 Avenue of the Americas
New York, NY 10036
Telephone: 212-479-6000
Telecopy: 212-479-6275
Attn: Richard S. Kanowitz, Esq.

(c) If to Reorganized SVCMC:

Saint Vincents Catholic Medical Centers Of New York
d/b/a Saint Vincent Catholic Medical Centers
130 W. 12th Street
Martin Payne, 1G
New York, New York 10011
(212) 604-2300
Attn: Chief Executive Officer and General Counsel

with copies to:

Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
(212) 504-6000
Attn: Deryck A. Palmer, Esq., John J. Rapisardi, Esq.
and Andrew M. Troop, Esq.

(d) If to a holder of a MedMal-BQ Trust Interest: To the name and address set forth on the registry maintained by the MedMal-BQ Trustee.

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Trust Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

SAINT VINCENTS CATHOLIC MEDICAL
CENTERS OF NEW YORK D/B/A SAINT
VINCENT CATHOLIC MEDICAL CENTERS

By: _____
Name:
Title:

CHRISTIANA BANK & TRUST COMPANY,
MEDMAL-BQ TRUSTEE OF THE SVCMC
MEDMAL-BQ TRUST ESTABLISHED UNDER
THE MEDMAL-BQ TRUST AGREEMENT
DATED AS OF AUGUST 29, 2007 PURSUANT
TO THE FIRST AMENDED CHAPTER 11 PLAN
OF REORGANIZATION FOR SAINT VINCENTS
CATHOLIC MEDICAL CENTERS D/B/A SAINT
VINCENT CATHOLIC MEDICAL CENTERS

By: _____
Name:
Title:

MICHAEL E. KATZENSTEIN, MEDMAL
TRUST MONITOR UNDER THE FIRST
AMENDED CHAPTER 11 PLAN OF
REORGANIZATION FOR SAINT VINCENTS
CATHOLIC MEDICAL CENTERS D/B/A SAINT
VINCENT CATHOLIC MEDICAL CENTERS

Michael E. Katzenstein, as MedMal Trust Monitor

TORT CLAIMANTS' COMMITTEE

By:_____

Name:

Title:

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

-----	X	
In re:	:	
	:	Chapter 11
SAINT VINCENTS CATHOLIC MEDICAL	:	
CENTERS OF NEW YORK d/b/a SAINT VINCENT	:	Case No.: 05-14945 (CGM)
CATHOLIC MEDICAL CENTERS, <i>et al.</i> ,	:	
	:	(Jointly Administered)
Debtors.	:	
-----	X	

**ORDER GRANTING MOTION OF THE MEDMAL TRUST MONITOR FOR ENTRY
OF ORDER HOLDING SVCMC IN CONTEMPT OF CONFIRMATION ORDER**

Upon the motion (the “Motion”)¹ of the MedMal Trust Monitor for entry of an order holding Saint Vincents Catholic Medical Centers of New York d/b/a Saint Vincent Catholic Medical Centers (“SVCMC”) in contempt of the Confirmation Order and granting certain remedial relief; and this Court having considered the relief requested in the Motion and any and all objections and responses filed thereto; and this Court having held a hearing to consider the Motion on February 18, 2010; and based upon the Motion, all responses and objections with respect thereto and the record of hearing and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby:

ORDERED, that the Motion is granted to the extent set forth herein; and it is further

ORDERED, that SVCMC is hereby held in civil contempt of the confirmation order signed by United States Bankruptcy Judge Hardin on July 27, 2007 and entered on even date which confirmed the first amended chapter 11 plan dated June 5, 2007 of SVCMC (the “Confirmation Order”); and it is further

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

ORDERED, that SVCMC is hereby directed to immediately comply with its past due obligations owed to the MedMal Trusts under the Confirmation Order, Chapter 11 Plan and the MedMal Trust Agreements; and it is further

ORDERED, that SVCMC is hereby directed to provide the MedMal Trust Monitor with a full accounting of SVCMC's assets, liabilities, current cash position and all payments previously made or to be made to creditors, including notice of any default or anticipated default on any of SVCMC's other material obligations or of other undertakings under the Chapter 11 Plan; and it is further

ORDERED, that SVCMC shall be enjoined, pending further order of the Court, from making any further transfer of any asset or encumbering any asset unless and until such time as SVCMC complies with its past due obligations to the MedMal Trusts on a full and final basis; and it is further

ORDERED, ADJUDGED AND DECREED that, pursuant to Fed. R. Bankr. P. 5003 and 9021, judgment in the amount of \$10 million shall be entered by the Clerk of the Court against SVCMC.

Dated: _____, 2010

HONORABLE CECELIA G. MORRIS
UNITED STATES BANKRUPTCY JUDGE