

## CUSTODIAN OF MEDICAL RECORDS AGREEMENT

This Custodian of Medical Records Agreement (“Agreement”) is made as of January [●], 2019 (“Effective Date”), by and between St. David’s Ortho, Neuro and Rehab, PLLC (“St. David’s”) and James Studensky, Chapter 7 Trustee (the “Trustee”) for the bankruptcy estates of Little River Healthcare Holdings, LLC, Rockdale Blackhawk, LLC, Little River Healthcare – Physicians of King’s Daughters, LLC, Compass Pointe Holdings, LLC, Timberlands Healthcare, LLC, King’s Daughters Pharmacy, LLC, Cantera Way Ventures, LLC, Little River Healthcare Management, LLC (collectively, the “Debtors”). St. David’s and Trustee may be referred to herein individually as a “Party” and together as the “Parties.”

### RECITALS

WHEREAS, St. David’s sole managing member is Capital Area Specialty Providers, a Texas non-profit corporation certified by the Texas Medical Board as a nonprofit health organization that is legally authorized to employ, and does employ, physicians and other clinical and non-clinical providers;

WHEREAS, as of December 10, 2018, Buyer had employed each of Christopher S. English, M.D., Albert H. Bartschmidt, III, M.D., Charles J. Schwertner, M.D., Lucas Thornton, P.A., and Julia Pickle, P.A. (collectively, the “Practitioners”), each of whom formerly were employed by Little River Medical Group, a Texas non-profit corporation (“LRMG”) at its medical clinic located at 1904 Railroad Avenue, Georgetown, Texas (“Facility”) to provide professional orthopedic medical services in the Georgetown, Texas community;

WHEREAS, one or more of the Debtors and LRMG have operated the Facility and, in conjunction with the operation of Facility’s medical practice, one or more of the Debtors and LRMG have created and maintained certain patient medical records, including electronic copies of patient medical records, relating to patients of the Practitioners (“Medical Records”)<sup>1</sup>;

WHEREAS, Trustee has decided to sell certain of the Debtors’ assets relating to the Facility to St. David’s pursuant to that certain Asset Purchase Agreement and Bill of Sale dated [●], by and between St. David’s and Trustee (“Asset Purchase Agreement” and “Bill of Sale,” respectively);

WHEREAS, pursuant to a Sale Order and Lease Rejection Order dated [●] (the “Sale Order”), Trustee is to provide to St. David’s either copies of, or access to, the Medical Records;

WHEREAS, it is reasonable to assume that, following the execution of the Asset Purchase Agreement, Bill of Sale, and Sale Order, patients treated by one or more of the Practitioners at the Facility may receive care from St. David’s and/or the Practitioners; and

WHEREAS, in order to promote continuity of care, and otherwise promote the convenience and best interests of the patients, the Parties have agreed to transfer the Medical Records to St. David’s, subject to Trustee’s right of access described herein, and subject to the other terms and conditions set forth in this Agreement.

### AGREEMENT

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<sup>1</sup> So long as the Medical Records relate solely to patients of the Practitioners, no HIPAA issues should arise. We have therefore not included a Business Associate Agreement, as the Medical Records can be provided pursuant to the Treatment, Payment and Health Care Operations exceptions to HIPAA. If needed, additional security provisions can be included as required to be in a BAA, but these are likely not required as St. David’s and Practitioners are “covered entities” under HIPAA and therefore required to maintain the privacy and security of records.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, Trustee and St. David's agree as follows:

1. **Establishment of Custodianship.** Trustee designates St. David's as the custodian of the Medical Records, and by executing this Agreement agrees to transfer possession of the Medical Records to St. David's within 15 days of the Effective Date, subject to Trustee's right of access described herein. St. David's hereby accepts the Medical Records and agrees to maintain the Medical Records in conformance with applicable federal and state laws, including the HIPAA Privacy and Security Rules. The term of this Agreement shall start on the Effective Date and continue until the latter to occur of (a) the date on which the last of the Medical Records is properly destroyed, (b) expiration of the applicable retention periods identified in applicable state and federal laws, or (c) the date on which the last of the Medical Records is delivered to patients. For purposes of clarity, the Parties agree and acknowledge that copying information from the Medical Records into current records of St. David's or a Practitioner in ordinary course shall not cause such current records to be deemed included within the Medical Records or delay expiration of this Agreement.

2. **Access to Medical Records.**

(a) St. David's hereby grants to Trustee and its affiliates, upon reasonable advance notice and during normal business hours, the permanent and unrestricted right to inspect and obtain copies of any or all such Medical Records for the purposes of treatment, payment or healthcare operations (which shall include defense of any medical malpractice claim). St. David's additionally agrees to make the contents of the Medical Records available to all third-party payors upon request and in accordance with applicable law, to provide copies of the Medical Records to all third-party payors, and to ensure any charges for Medical Records are consistent with applicable law.

(b) Notwithstanding anything herein to the contrary, St. David's shall not access, use or disclose the Medical Records except in compliance with applicable law including, without limitation, HIPAA. As custodian, St. David's shall make available the Medical Records to patients and other individuals as required by HIPAA and applicable state law.

3. **Indemnification.** St. David's will indemnify, defend and hold harmless Trustee from and against any claim, liability, obligation, loss, damage, assessment, judgment, cost or expense, including, without limitation, reasonable attorneys' fees, incurred by Trustee as a result of any breach by St. David's of this Agreement.

4. **Compliance.** The Parties will each perform this Agreement in compliance with all applicable laws. Furthermore, the Parties intend and in good faith believe that this Agreement complies with all applicable laws. If any Party reasonably believes that any provision of this Agreement is contrary to the provisions of said laws or any regulation or government interpretation thereof, then the Parties will in good faith attempt to reform this Agreement. Further, St. David's represents and warrants that St. David's is neither currently nor has ever been temporarily or permanently debarred, excluded or determined ineligible from participation in governmental payor programs (e.g., Medicare, Medicaid).

5. **Term and Termination.** The term of this Agreement shall begin on the Effective Date and end as set forth in Section 1 above. Either Party may terminate this Agreement upon written notice to the other upon a material breach by the other Party, provided such breach has not been cured within 30 days after the breaching Party receives notice of the breach. Either Party may terminate this Agreement without cause upon 90 days' written notice to the other.

6. **General Terms.** This Agreement will be governed by the laws of the State of Texas. The invalidity or unenforceability of any term or provision hereof will in no way affect the validity or enforceability of any other term or provision of this Agreement. This Agreement contains the entire agreement between the Parties relating to the rights herein granted and obligations herein assumed. No modifications, change or discharge of this Agreement may occur orally, but only by further written agreement of the Parties. A waiver by either of the Parties of any provision hereof will not waive any other provision. No person or entity, except the Parties, will be beneficiaries of any kind of the terms of this Agreement. The Parties may execute this Agreement in counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**ST. DAVID’S:**

ST. DAVID’S ORTHO, NEURO AND REHAB, PLLC,  
a Texas professional limited liability company

By: CAPITAL AREA SPECIALTY PROVIDERS,  
a Texas non-profit corporation

By: \_\_\_\_\_  
Kelly Shifflett,  
President

**TRUSTEE:**

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JAMES STUDENSKY, CHAPTER 7 TRUSTEE