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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	: Case No. 10-11963 (CGM)
CENTERS OF NEW YORK, <u>et al.</u> ,	:
	:
Debtors.	: Jointly Administered
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**MOTION OF THE DEBTORS FOR AN ORDER (I)  
AUTHORIZING THE DEBTORS TO ENTER INTO  
AGREEMENTS RELATING TO TRANSFER OF PROGRAM  
FUNDING AGREEMENTS AND (II) APPROVING  
PROCEDURES FOR PROVIDING NOTICE THEREOF**

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

Saint Vincents Catholic Medical Centers of New York (“**SVCMC**”) and certain of its affiliates, as Chapter 11 debtors and debtors in possession (each a “**Debtor**” and collectively, the “**Medical Centers**” or the “**Debtors**”)<sup>1</sup> in the above-referenced Chapter 11 cases (the “**Chapter 11 Cases**”), hereby file a motion (the “**Motion**”) for an order, substantially in the form attached

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<sup>1</sup> In addition to SVCMC, the Debtors are as follows: (i) 555 6th Avenue Apartment Operating Corporation; (ii) Bishop Francis J. Mugavero Center for Geriatric Care, Inc.; (iii) Chait Housing Development Corporation; (iv) Fort Place Housing Corporation; (v) Pax Christi Hospice, Inc.; (vi) Sisters of Charity Health Care System Nursing Home, Inc. d/b/a St. Elizabeth Ann’s Health Care & Rehabilitation Center; (vii) St. Jerome’s Health Services Corporation d/b/a Holy Family Home; and (viii) SVCMC Professional Registry, Inc. There are certain affiliates of SVCMC who are not Debtors.

hereto as **Exhibit A** (the “**Proposed Order**”), (i) authorizing the Debtors to enter into certain novation and/or transfer agreements attached hereto as **Exhibits B-1–B-9** (the “**Executed Novation/Transfer Agreements**”)<sup>2</sup> relating to clinical studies and programs formerly operated by the Debtors (the “**Clinical Studies and Programs**”), and (ii) approving procedures (the “**Transfer Procedures**”) for the entry into additional novation agreements or other transfer or termination agreements effectuating the transfer of the Clinical Studies and Programs and for providing notice thereof. In support of the Motion, the Debtors respectfully represent as follows:

### **SUMMARY OF RELIEF REQUESTED**

1. One of the important healthcare matters commanding the Debtors’ attention is the orderly transition of clinical studies and outpatient clinic programs to new third party operators. Prior to the Petition Date, the Debtors and/or certain of their physicians entered into contractual relationships with pharmaceutical companies and/or certain federal and state agencies to provide the Debtors with designated funding (i) for physicians employed by the Debtors to conduct clinical studies (e.g., “drug trials” for testing or evaluating certain drugs) using patients treated by the Debtors (the “**Clinical Studies**”) and/or (ii) to subsidize or reimburse the Debtors for operating certain outpatient clinical programs or outpatient programs (“**Clinical Programs**,” with the funding for the Clinical Studies and Clinical Programs being referred to herein as the “**Program Funding**”). For example, the Debtors received certain funding from the New York State Crime Victims Board to cover certain expenses relating to the rape crisis clinic previously operated by the Debtors. In the case of the Clinical Studies, the funding sponsorship allows for the development of potentially life sustaining medical treatments and new medication by the clinical sponsors for the treatment of patients. Whether the funds

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<sup>2</sup> The Executed Novation/Transfer Agreements also include an agreement to provide IRB Services with one of the Substituted Institutions (all as defined herein).

were provided by private companies (in the case of clinical studies or “drug trials”) or government grants and similar funding (in the case of supporting the operation of important clinics, such as the Debtors’ HIV clinic or the rape crisis clinic), the grant and sponsorship funds were intended to cover the costs of the specific Clinical Study or Clinical Program.

2. As a result of the closure of the Manhattan Hospital and the likely closure or transfer of numerous of the Debtors’ outpatient clinics and programs, the Debtors are not (or will not be) eligible to receive Program Funding in the future for these Clinical Studies and/or Clinical Programs (the “**Future Funding**”). This Future Funding does not include payments for costs incurred and services performed by Debtors prior to the Transfer (as defined below) and to which Debtors may have claims to payment.

3. Further, a Clinical Study generally requires a specifically identified physician (known as the “**Principal Investigator**”) to supervise the conduct of the Clinical Study. As these physicians ceased to be employed by the Debtors and relocated their practices to other healthcare providers, the Debtors are no longer eligible to receive the Program Funding to conduct the Clinical Studies or to receive Future Funding for the Clinical Studies. Simply, if the Clinical Study or Clinical Program is no longer under the Debtors’ operations, the Debtors’ right to any Future Funding ceases.

4. However, in many instances, absent an agreement by the Debtors to facilitate the transfer of the Program Funding to a new healthcare provider (“**Substituted Institutions**”), important funding dedicated to on-going clinical studies or patient care programs could be forfeited. While the opportunity for Future Funding has no value to the Debtors’ estates (as they cannot seek to use these monies in their general operations), the loss of the Program Funding harms the patients participating in Clinical Studies or receiving treatment at one of the Clinical

Programs and the physicians conducting Clinical Studies and the Substituted Institutions. In order to protect against the potential harm to patient care, the Debtors have been asked, and expect to continue to be asked from time to time, to enter into various agreements to transfer the rights to receive the Future Funding in the future (e.g., post-Transfer). The “transfer” can take various forms such as (i) a “novation agreement” (which means an agreement to substitute a new party to an existing contractual agreement and discharge the substituted party from its contractual obligations); (ii) an “assignment agreement;” or (iii) an agreement acknowledging that the Debtors simply terminate their rights to seek Future Funding (collectively, the “**Transfer**”). The Debtors are prepared to facilitate the ability of a Substitute Institution operating a Clinical Study and/or Clinical Program to receive Future Funding and facilitate the transfer of Clinical Studies or Clinical Program along with the departure of the Principal Investigator so long as (i) the Transfer does not impose any administrative expense obligation upon the Debtors’ estates and (ii) the Transfer does not waive any claims that the Debtors may have to payment of funds due pre-Transfer.

5. This Motion seeks to establish procedures to permit the Transfer of Program Funding pursuant to orderly procedures described below.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The statutory predicates for the relief requested herein are sections 105(a), 363(b) and 541 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 6004-1 of the

Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”).

### **GENERAL BACKGROUND**

9. On April 14, 2010 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. By order of this Court, the Debtors’ Chapter 11 cases have been consolidated, for procedural purposes only, and shall be jointly administered in accordance with Bankruptcy Rule 1015(b).

10. The Debtors are operating their business as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

11. On April 21, 2010, the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed (i) an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “**Creditors’ Committee**”), (ii) Alan Chapell as consumer privacy ombudsman pursuant to section 332 of the Bankruptcy Code (the “**Consumer Privacy Ombudsman**”), and (iii) Daniel T. McMurray as patient care ombudsman pursuant to section 333 of the Bankruptcy Code (the “**Patient Care Ombudsman**”).

### **THE MEDICAL CENTERS’ HISTORY AND BUSINESS**

12. Founded by the Sisters of Charity in 1849, the Medical Centers are the only remaining Catholic-sponsored, acute-care hospital network in New York City. Dedicated to fulfilling a charitable healthcare mission, the Medical Centers are committed to a mission that demands they give “Respect, Integrity, Compassion and Excellence to all who come to us in need, especially the poor.”

13. Until recently, the Medical Centers’ core business centered around St. Vincent’s Hospital Manhattan (the “**Hospital**”), which is located in the Greenwich Village section of Manhattan. The Medical Centers operate numerous other services, including a

behavioral health facility, nursing homes, continuing care facilities, a hospice, a home health agency and a military health plan serving active duty dependents, retirees, and their families. Additionally, the Medical Centers operated certain physician-related affiliates, provide specialized care across 14 clinical departments, and were affiliated with 18 licensed behavioral health and community medicine programs and six ambulatory care providers in Manhattan, including the Comprehensive Cancer Center, an HIV center, and a wound care center.

14. SVCMC and its then debtor- and non-debtor affiliates emerged from Chapter 11 in the summer of 2007 subject to over \$1 billion of liabilities. After emergence, management attempted to increase their revenue, improve their operations, and reduce costs. Despite these efforts, however, the Medical Centers' revenue remained constant, and the Debtors incurred operating losses of approximately \$43 million in 2008 and approximately \$64 million in 2009. In 2008 and 2009, the Hospital alone had operating losses of approximately \$81 and \$107 million, respectively.

15. The Medical Centers' poor operating results stem from four principal causes:

- The Hospital's large operating footprint and staffing are not properly aligned with the current state of its business, as significant changes in the healthcare industry have reduced the number of hospital admissions. While certified as a 727-bed hospital, and burdened with all of the attendant costs of a larger physical facility, the Hospital, in 2009, used only approximately 340 beds on a daily basis.
- The Medical Centers' patient mix and reimbursement experience limited their revenues. The Hospital had one of the lowest percentages of higher margin private patients of all private Manhattan hospitals and the highest percentage of Medicare and self-pay (i.e., uninsured) discharges per year. In addition, approximately 56% of the Hospital's inpatient admissions come through its Emergency Department, which is required by law to treat patients without regard to their ability to pay. Moreover, as a stand-alone healthcare provider, the Medical Centers have been unable to negotiate reimbursement rates that are competitive with other private area hospitals.

- The profound financial crisis that has gripped New York and the rest of the Nation over the last several years has magnified the financial challenges faced by the Medical Centers. In an effort to balance their budgets, New York State and the federal government have repeatedly reduced hospital reimbursement rates over the last several years, a change that disproportionately impacts the Medical Centers because they have a higher government payor population than other New York medical centers.
- The financial and other obligations assumed in connection with the Prior Chapter 11 Plan resulted in annual payment obligations that exceeded what the current Hospital operations could bear.

16. By the end of 2009, the Debtors faced a severe cash crisis. In response, the Board appointed a Special Restructuring Committee in December 2009, hired a chief restructuring officer in late January and other restructuring professionals shortly thereafter, and took steps to cut costs and assess their restructuring alternatives. Despite these efforts, however, the Debtors' liquidity crisis deepened. By early February 2010, only emergency funding provided by their prepetition lenders and the State of New York enabled the Debtors to make payroll and stave off an immediate bankruptcy filing.

17. The Debtors used the respite provided by this emergency financing, subsequent financial assistance from their prepetition lenders, the State of New York, the Sisters of Charity and a Board member, and wage concessions by employees to explore options for preserving their businesses' long-term viability and maximizing the value of their assets. Among other things, the Debtors worked to identify and negotiate with potential new sponsors to preserve operations at the Hospital and potential purchasers for their non-Hospital services and assets. While these efforts have led to the entry of non-binding letters of intent for the sale of certain non-Hospital services, they did not yield a transaction that will support the continued operation of the Hospital. Despite an extensive marketing process and several serious indications of interest, negotiations concerning the last potential transaction terminated on March

31, 2010. When it became clear that all potential partners had withdrawn from consideration, the Debtors concluded that the continued operation of the Hospital was no longer a viable option.

18. As a result, on April 6, 2010, the Board of Directors of SVCMC voted to approve the closure of the Hospital and the transfer or closure of the outpatient programs and clinics associated with and operated by the Hospital. In accordance with New York State law, the Debtors submitted their proposed plan of closure on April 9, 2010 (the “**Closure Plan**”) (as such may be amended from time to time in consultation with the DOH) to the DOH for approval. Prior to the Petition Date, the Debtors commenced the process of implementing their Closure Plan. By orders dated April 16, 2010 and May 14, 2010 the Court authorized the Debtors to continue implementation of the closure plan during their Chapter 11 Cases.

### **RELIEF REQUESTED**

19. By this Motion, the Debtors seek entry of the Proposed Order pursuant to sections 105(a), 363(b), and 541 of the Bankruptcy Code, to (i) authorize the Debtors to enter into the Executed Novation/Transfer Agreements *nunc pro tunc* to the date of such agreements, and (ii) approve the Transfer Procedures to Transfer the Program Funding and for giving notice thereof.

### ***The Clinical Studies and Programs***

20. The Debtors are a party to approximately 120 agreements (collectively, the “**Program Funding Agreements**”) with various sponsors (collectively, the “**Program Funding Sponsors**”) that provide Program Funding for various Clinical Studies supervised by the Principal Investigators and Clinical Programs operated by the Debtors. The Clinical Studies are sponsored by private third parties, such as pharmaceutical manufacturers, and the Clinical Programs are supported by federal and/or state agencies and/or other funding sources. The Program Funding Agreements require the Debtors to be responsible for the conduct of the



Clinical Studies and Programs and various other activities in coordination with the Principal Investigators, if any, in exchange for the Program Funding Sponsors to pay the Debtors for these activities. The structure of these arrangements was generally that after certain pre-set milestones are satisfied, sometimes on a patient-by-patient basis, the Debtors would submit the appropriate documentation to the Program Funding Sponsor, and the Program Funding Sponsor would pay the Debtors for cost incurred and/or services performed. In 2009, the Debtors received approximately \$2.8 million from Program Funding Sponsors under the Program Funding Agreements.

***The Executed Novation/Transfer Agreements***

21. As a result of the implementation of the Closure Plan and the potential sale and/or closure of certain non-Hospital assets, the Debtors are (or will be) no longer able to perform under the Program Funding Agreements. For example, the Principal Investigators are being or have been employed by other medical institutions and, in certain instances, Program Funding Sponsors have refused to continue providing Future Funding until the Debtors execute novation agreements. The failure to continue the Clinical Studies or continue to operate a Clinical Program puts patients participating in the Clinical Studies at risk of losing access to medical care and medication, and patients participating in the Clinical Programs at risk of losing access to clinical treatment. Accordingly, because of a concern for patient care, and because the Debtors believe that they have no entitlement to Future Funding, the Debtors have entered into Executed Novation/Transfer Agreements relating to the following Clinical Studies and Programs:

<b>Principal Investigator</b>	<b>Program Funding Sponsor</b>	<b>Substituted Institution</b>	<b>Description of Clinical Study/Program</b>	<b>Research Records Custody Agreement</b>
Dr. Sundar Jagannath	Onyx Pharmaceuticals, Inc.	Mount Sinai School of Medicine	Open-Label, Single Arm, Phase 2 Study of Carfilzomib in Patients with Relapsed and	[Yes]

<b>Principal Investigator</b>	<b>Program Funding Sponsor</b>	<b>Substituted Institution</b>	<b>Description of Clinical Study/Program</b>	<b>Research Records Custody Agreement</b>
			Refractory Multiple Myeloma	
Dr. Sundar Jagannath	Onyx Pharmaceuticals, Inc.	Mount Sinai School of Medicine	Open-Label, Single Arm, Phase 2 Study of Carfilzomib in Patients with Relapsed Multiple Myeloma	[Yes]
Dr. Sundar Jagannath	Onyx Pharmaceuticals, Inc.	Mount Sinai School of Medicine	Compassionate Use of Carfilzomib Maintenance Therapy in a Subject Who Previously Participated in a Carfilzomib Treatment Protocol	[Yes]
Dr. Sundar Jagannath	Biotest AG	Mount Sinai School of Medicine	Phase I Dose Escalation Study to Evaluate Maximum Tolerated Dose, Pharmacokinetics, and Safety of BT062 in Subjects with Relapsed/Refractory Multiple Myeloma	[Yes]

<b>Principal Investigator</b>	<b>Program Funding Sponsor</b>	<b>Substituted Institution</b>	<b>Description of Clinical Study/Program</b>	<b>Research Records Custody Agreement</b>
Dr. Sundar Jagannath	Unicorn Pacific Corporation	Mount Sinai School of Medicine	A Phase II Trial of TBL 12 Sea Cucumber Extract in Patients with Untreated Asymptomatic Myeloma	[Yes]
Dr. Sundar Jagannath	Celgene Corporation	Mount Sinai School of Medicine	A Phase 1/2 Multi-Center, Randomized, Open-Label Dose Escalation Study to Determine the Maximum Tolerated Dose, Safety and Efficacy of CC-4047 Alone or in Combination with Low Dose Dexamethasone in Patients with Relapsed and Refractory Multiple Myeloma Who Have Received Prior Treatment that Includes Lenalidomide and Bortezomib	[Yes]
Dr. Sundar Jagannath	Innate Pharma	Mount Sinai School of Medicine	An Open-Label, Dose-Escalation Safety and Tolerability Trial Assessing Multiple Dose Administrations of Anti-KIR(1-7F9) Human Monoclonal Antibody in Subjects with Multiple Myeloma	[Yes]
Dr. Sundar Jagannath	Facet Biotech Corporation	Mount Sinai School of Medicine	A Phase 1b Multicenter, Open-label, Dose-escalation Study of HuLuc63 (Humanized Anti-CS1 Monoclonal IgG1 Antibody) in Combination with Lenalidomide and Dexamethasone in Subjects with Relapsed Multiple Myeloma	[Yes]
N/A	New York State Crime Victims Board	St. Luke's-Roosevelt Hospital Center	Grant for support to support Rape Crisis Program that provides victim/witness assistance. <sup>3</sup>	[Yes]

22. Where feasible, the Debtors contemplate entering into additional agreements (the “**Proposed Novation Agreements**”) for each remaining Clinical Study or Clinical Program that has a third-party sponsor, which may be in a form substantially similar to the one attached hereto as **Exhibit C** (the “**Form Novation Agreement**”). Any such agreement

<sup>3</sup> Pursuant to the grant procedures of the New York State Crime Victims Board, the Debtors have entered into a standard Agreement for Contract Assignment rather than an agreement substantially in the form of the Form Novation Agreement.

will be entered into by (i) the Debtors, (ii) the Program Funding Sponsors, and (iii) the Substituted Institutions. In addition, because the transfer of government sponsored Clinical Studies and Programs often require use of the governmental entities' standard transfer agreement, the Debtors also seek authority to enter into such agreements (the "**Proposed Transfer Agreements**").<sup>4</sup>

23. The Proposed Novation Agreements provide for the Substituted Institutions to perform all of the Debtors obligations under the Program Funding Agreements, while simultaneously discharging any possible claims of the Program Funding Sponsors against the Debtors.<sup>5</sup> Likewise, the Debtors would not waive any rights to pre-Transfer payments due under the Program Funding Agreement for any Proposed Transfer Agreements and any Substituted Institution would be responsible for all post-Transfer obligations under the Program Transfer Agreements. Pursuant to the Proposed Novation Agreements, the Program Funding Sponsors will remain obligated to perform under the Program Funding Agreements and the Substituted Institutions agree to continue to perform the Debtors' obligations under the Program Funding Agreements post-Transfer.

24. In addition, under the Form Novation Agreement, the Debtors reserve their rights to collect any payment from the Program Funding Sponsors for pre-Transfer periods under the Program Funding Agreements. Pursuant to the relief requested herein, the Debtors will be authorized to enter into the Proposed Novation Agreements and the Proposed Transfer

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<sup>4</sup> Depending upon the nature of the Program Funding and whether the sponsor is a private entity or governmental agency, there may be a required form. For example, the New York State Crime Victims Board required a form "assignment agreement" to effectuate the transfer of the Program Funding for the rape crisis center funding to St. Luke's Roosevelt hospital. Thus, the selection of form may be dictated by the agreement used by the Program Funding Sponsor.

<sup>5</sup> The Debtors reserve the right to proceed without a release as a requirement so long as parties' mutual rights are reserved and the transaction does not alter the priority of any alleged claims.

Agreements subject only to the notice procedures provided for in this Motion, and, absent objection, such agreements will be effective on their own terms without the need for further Court approval.

### ***Research Records***

25. In order to minimize the administrative expenses and burden on the Debtors' estates associated with maintaining the research records relating to the Clinical Studies and Programs, and to ensure that the Principal Investigators have access to data pertinent to the Clinical Studies and Programs, the Debtors intend to enter into a research records custody agreement, substantially in the form attached hereto as **Exhibit D** (the "**Research Records Custody Agreements**"), with Substituted Institutions. Pursuant to the Research Records Custody Agreements, the Substituted Institutions will assume custody and responsibility for the research records of the applicable Clinical Studies and Programs. As provided in the Transfer Procedures below, the Debtors will provide the Consumer Privacy Ombudsman and the Patient Care Ombudsman with notice of any Proposed Novation Agreement or Proposed Transfer Agreement involving entry into a Research Records Custody Agreement and will cooperate with any information requests regarding the transfer.

### ***IRB Services***

26. The Debtors anticipate that entry into the Proposed Novation Agreements or Proposed Transfer Agreements will not incur any administrative expense liabilities on their estates. In certain instances, however, the Debtors may be asked to enter into agreements to provide institutional review board services (the "**IRB Services**") to the Substituted Institution to facilitate the Transfer. The IRB Services could include review and approval of amendment to existing protocols relating to the Clinical Studies and Programs; conducting on-going review of approved protocols; review and approval of consent forms; review and approval/disapproval of

the Principal Investigator; monitoring of adverse event reports; and maintenance of required records pursuant to federal regulations. The Debtors will be entitled to compensation for any IRB Services (if any) provided. The Debtors will not enter into any such agreement to provide IRB Services unless the Substituted Institution either agrees to waive or otherwise limit any claims against the Debtors' estates for these transition related services. Where feasible, the Debtors contemplate entering into additional agreements (collectively, the "**IRB Agreements**") for the provision of IRB Services for the Substituted Institutions.

### ***The Transfer Procedures***

27. In order facilitate the above process, the Debtors request that the Court approve the following Transfer Procedures:

- (a) Entry into Novation or Transfer Agreements. Subject to the procedures set forth herein, the Debtors are hereby authorized to enter into (i) Proposed Novation Agreements that substantially conform to the Form Novation Agreement and (ii) Proposed Transfer Agreements that substantially comply with the form customary for such transactions (provided that any such Proposed Transfer Agreement does not impose any administrative expense obligations upon the Debtors' estates).<sup>6</sup>
- (b) Notice of Proposed Novation Agreement. Upon entry into a Proposed Novation Agreement or Proposed Transfer Agreement, the Debtors shall serve notice (the "**Proposed Transfer Notice**") of such Proposed Novation Agreement or Proposed Transfer Agreement by first-class mail, electronic mail, facsimile, overnight delivery or hand delivery on the following parties: (a) the U.S. Trustee; (b) counsel for the postpetition DIP lenders; (c) counsel to the Creditors' Committee; (d) counsel to the Consumer Privacy Ombudsman; and (e) counsel to the Patient Care Ombudsman (collectively, the "**Interested Parties**"). The Proposed Transfer Notice will not be filed with the Court.

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<sup>6</sup> For example, if the required Transfer agreement is an "assignment" form used by the applicable governmental agency, the transfer would be an assignment under applicable non-bankruptcy law with the consent of the Program Funding Sponsor. However, it would **not** be an assumption and assignment under section 365 of the Bankruptcy Code, thereby creating a cure obligation to the Debtors' estates.

- (c) Contents of Proposed Transfer Notice. The Proposed Transfer Notice will include the following information with respect to the Proposed Novation Agreement or Proposed Transfer Agreement: (i) a description of the Clinical Study or Program being novated; (ii) the identity of the Program Funding Sponsor; (iii) the identity of the Substituted Institution; (iv) the identity of the Principal Investigator; and (v) a copy of the Proposed Novation Agreement or Proposed Transfer Agreement.
- (d) Research Records Custody Agreement. The Debtors are authorized to enter into a Research Records Custody Agreement in connection with a Proposed Novation Agreement or Proposed Transfer Agreement; provided however, that the Debtors shall attach a copy of each such Research Records Custody Agreement to the relevant Proposed Transfer Notice. The Debtors shall cooperate with the Consumer Privacy Ombudsman and Patient Care Ombudsman and provide them with all information reasonably requested in connection with the proposed Research Records Custody Agreement.
- (e) IRB Agreement. The Debtors are authorized to enter into an IRB Agreement in connection with a Proposed Novation Agreement or Proposed Transfer Agreement; provided however, that the Debtors shall attach a copy of each such IRB Agreement to the relevant Proposed Transfer Notice.
- (f) Objections. Interested Parties shall have **seven** days from service of the Proposed Transfer Notice to serve any objections to a Proposed Novation Agreement or Proposed Transfer Agreement (the “**Objection Period**”). Any objection to a Proposed Novation Agreement or Proposed Transfer Agreement must (i) be in writing, (ii) state with specificity the grounds for the objection and (iii) be served upon the counsel to the Debtors and the Interested Parties, so as to be received no later than 12:00 p.m. (prevailing Eastern Time) on the final day of the Objection Period (which objection may be served by electronic mail, facsimile, or by hand delivery).
- (g) Consent. The relevant Debtor or Debtors may consummate a Proposed Novation Agreement or Proposed Transfer Agreement prior to expiration of the applicable Objection Period if the Debtor or Debtors obtain(s) each Interested Party’s written consent to the Proposed Novation Agreement or Proposed Transfer Agreement, with such agreement effective *nunc pro tunc* to the date thereof.
- (h) No Objection. If no objection to a Proposed Novation Agreement or Proposed Transfer Agreement is served consistent with these procedures, the Debtors are authorized to consummate such

Proposed Novation Agreement or Proposed Transfer Agreement, with such agreement effective *nunc pro tunc* to the date thereof and may take any actions that are reasonable and necessary to effect such agreement. No further notice or Court approval to consummate the Proposed Novation Agreement or Proposed Transfer Agreement shall be required.

- (i) Resolution of Objections. If an Interested Party serves an objection to a Proposed Novation Agreement or Proposed Transfer Agreement, the Debtors and such objecting party will use good faith efforts to resolve the objection consensually. If the Debtors and the objecting party are unable to resolve the objection consensually, the Debtors may seek relief from the Court to consummate the proposed transaction upon at least five (5) business days written notice, subject to the Court's availability.

### **BASIS FOR RELIEF REQUESTED**

28. The Debtors may (i) enter into the Executed Novation/Transfer Agreements, the Proposed Novation Agreements, the Proposed Transfer Agreements, and the Research Records Custody Agreement, and (ii) provide the IRB Services, as a sound exercise of their business judgment. The "business judgment" test is met when the debtor shows that the proposed use of property would be beneficial to the estate. See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993).

29. Once the debtor articulates a valid business justification, the business judgment rule creates "a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company." Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)) (the business judgment rule is satisfied where the debtor acts "on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.") Thus, "[w]here the debtor articulates a reasonable basis for its business decisions (as



distinct from a decision made arbitrarily or capriciously), courts generally will not entertain objections to the debtor's conduct". Comm. Of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns Manville Corp.), 60 B.R. 612, 616 (Bank. S.D.N.Y. 1986).

30. The debtor's business judgment "should be approved by the court unless it is shown to be 'so manifestly unreasonable that it could not be based upon sound business judgment, but only on bad faith, or whim or caprice.'" In re Aerovox, Inc., 269 B.R. 74, 80 (Bankr. D. Del. 2001) (quoting In re Logical Software, 66 B.R. 683, 686 (Bankr. D. Mass. 1986)); Integrated Resources, 147 B.R. at 656 ("Courts are loath to interfere with corporate decisions absent a showing of bad faith, self interest or gross negligence") (citations omitted).

31. Here, entering into the Executed Novation/Transfer Agreements, the Proposed Novation Agreements, the Proposed Transfer Agreements, and the Research Records Custody Agreements, and providing the IRB Services, represent a sound exercise of the Debtors' business judgment.

32. Under the terms of the Program Funding Agreements, the Debtors are responsible for the conduct of the Clinical Studies and Programs and related activities (in coordination with the Principal Investigator, where applicable). Thus, funding for the Clinical Studies and Programs is predicated upon the Debtors' ability to perform the Clinical Studies or provide the Clinical Programs. Because the Debtors are no longer able to perform such studies or services, they are likely (or will likely be) ineligible for Future Funding and such Future Funding is likely not available to the Debtors' estates and creditors. Absent the Transfer, Future Funding will be forfeited and the Clinical Studies and/or Clinical Programs may be terminated resulting in patients losing access to essential medical treatment and research. The *nunc pro tunc* approval of certain of these agreements is necessary because the parties needed to provide for the

expeditious shipment of pharmaceuticals, devices or supplies used in the Clinical Studies and Programs for continual patient care to protect patient's health and well-being. Furthermore, entering into the Research Records Custody Agreement represents a sound exercise of the Debtors' business judgment as they are necessary to effectuate the transfer of research records related to the Clinical Studies and Programs and to eliminate the administrative burden of maintaining such research records for the lengthy period of time required by applicable non-bankruptcy law. To ensure that the research records are properly transferred, the Consumer Privacy Ombudsman and the Patient Care Ombudsman will receive notice of any Proposed Novation Agreement or Proposed Transfer Agreement involving entry into a Research Records Custody Agreement and will receive a copy of such an agreement. Additionally, the Debtors have agreed to cooperate with the Consumer Privacy Ombudsman and the Patient Care Ombudsman to provide them with information that has been reasonably requested.

33. Further, to the extent there are funds that are not payable to the Debtors under the Program Funding Agreements because of the Debtors' failure to achieve certain future performance milestones, the Debtors do not believe that such future funds may not constitute property of their estates under section 541 of the Bankruptcy Code.<sup>7</sup> To the extent that the Program Funding Sponsors owe the Debtors for services performed pre-Transfer the Debtors will reserve their rights to pursue such payments and reimbursements.

34. In addition, for Clinical Studies, the Program Funding Agreements provide that the study be conducted utilizing patient populations provided by the Debtors under the direction of the Principal Investigators. Because the Principal Investigators are no longer (or, in the future may no longer be) employed by the Debtors, in order for the Clinical Studies to

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<sup>7</sup> The Debtors are not waiving any right to assert that a specific Program Funding contract, agreement or the like, or any element thereof, is property of the Debtors' estates.

proceed, the study must be conducted under the supervision of the Principal Investigator employed by the Substituted Institutions.

35. Section 105(a) of the Bankruptcy Code provides, in relevant part, that “[t]he Court may 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). The Debtors submit that the Transfer Procedures are appropriate in these Chapter 11 Cases and well within the Court’s equitable powers under sections 105(a) and 363(b) of the Bankruptcy Code. The Transfer Procedures will allow the Debtors to enter into the Proposed Novation Agreements and the Proposed Transfer Agreements in an efficient and cost-effective manner, without the need to prepare, file, and prosecute a separate motion for each of the Clinical Studies and Programs. The procedures provide for an opportunity for oversight and review by the Interested Parties and Court oversight and approval in the event of any objection to the proposed Transfer. Accordingly, the Debtors should be authorized to enter into the Executed Novation/Transfer Agreements and the Transfer Procedures should be approved.

#### **REQUEST FOR WAIVER OF STAY**

36. In addition, by this Motion, the Debtors seek waiver of any stay of effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), unless the court orders otherwise, all orders authorizing a sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for 14 days after entry of such order. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before the order is implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). The Debtors submit that the imposition of the 14-day imposed by Bankruptcy Rule 6004(h) is inconsistent with the relief requested herein. In order to effectuate the expeditious and orderly transfer of the Debtors’ obligations under the Program Funding Agreements, the Debtors, the

Program Funding Sponsors, and the Substitute Institutions require the ability to enter into the Proposed Novation Agreements and Proposed Transfer Agreements, and to have such agreements effective as soon as possible. Under the proposed Transfer Procedures any interested party will have had ample opportunity to object to the relief requested herein. Accordingly, the Debtors submit that cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h).

### **NOTICE**

37. No trustee or examiner has been appointed in these Chapter 11 Cases. In accordance with the Final Administrative Order Establishing Case Management and Scheduling Procedures (the “**Case Management Order**”), entered on May 13, 2010, notice of this Motion has been given to the parties identified on the General Service List and the Special Service List (as such terms are identified in the Case Management Order) and the Program Sponsor identified in this Motion. The Debtors submit that no other notice need be given.

### **NO PREVIOUS REQUEST**

38. No previous request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested herein and such other or further relief as is just.

Dated: New York, New York  
June 9, 2010

KRAMER LEVIN NAFTALIS & FRANKEL LLP

/s/ Adam Charles Rogoff  
Kenneth H. Eckstein  
Adam C. Rogoff  
P. Bradley O'Neill  
1177 Avenue of the Americas  
New York, New York 10036  
Telephone: (212) 715-9100  
Facsimile: (212) 715-8000

*Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Order**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X	
In re:	:	Chapter 11
	:	
SAINT VINCENTS CATHOLIC MEDICAL	:	Case No. 10-11963 (CGM)
CENTERS OF NEW YORK, <u>et al.</u> ,	:	
	:	
Debtors.	:	Jointly Administered
-----	X	

**ORDER (I) AUTHORIZING THE  
DEBTORS TO ENTER INTO AGREEMENTS RELATING  
TO TRANSFER OF PROGRAM FUNDING AGREEMENTS AND (II)  
APPROVING PROCEDURES FOR PROVIDING NOTICE THEREOF**

Upon the Motion (the “**Motion**”)<sup>1</sup> of Saint Vincents Catholic Medical Centers of New York (“**SVCMC**”) and certain of its affiliates, as Chapter 11 debtors and debtors in possession (each a “**Debtor**” and collectively, the “**Medical Centers**” or the “**Debtors**”)<sup>2</sup> in the above-referenced Chapter 11 cases (the “**Chapter 11 Cases**”), pursuant to sections 105(a), 363(b), and 541 of title 11 of the United States Code (the “**Bankruptcy Code**”), for an order (i) authorizing the Debtors to enter into certain novation and/or transfer agreements relating to clinical studies and programs formerly operated by the Debtors, and (ii) approving procedures for the entry into additional novation agreements or other transfer or termination agreements effectuating the transfer of the Clinical Studies and Programs and for providing notice thereof, as more fully described in the Motion; and the Court having subject matter jurisdiction to consider the

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<sup>1</sup> Unless otherwise indicated, capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

<sup>2</sup> In addition to SVCMC, the Debtors are as follows: (i) 555 6th Avenue Apartment Operating Corporation; (ii) Bishop Francis J. Mugavero Center for Geriatric Care, Inc.; (iii) Chait Housing Development Corporation; (iv) Fort Place Housing Corporation; (v) Pax Christi Hospice, Inc.; (vi) Sisters of Charity Health Care System Nursing Home, Inc. d/b/a St. Elizabeth Ann’s Health Care & Rehabilitation Center; (vii) St. Jerome’s Health Services Corporation d/b/a Holy Family Home; and (viii) SVCMC Professional Registry, Inc.

Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.); and the Motion being a core proceeding under 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with the Case Management Order, and no other or further notice needing to be provided; and the Court having conducted a hearing on the Motion (the “**Hearing**”) to consider approval of the Motion; and all parties in interest having been heard, or having had the opportunity to be heard; and the Court having reviewed and considered the Motion and any objections or responses thereto; and upon the record of the Hearing and the full record of these Chapter 11 Cases; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent provided herein.
2. The Executed Novation/Transfer Agreements are hereby approved and the Debtors are authorized to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers contemplated thereby, without any further notice.
3. The following Transfer Procedures are hereby authorized and established in these Chapter 11 Cases:



- (a) Entry into Novation or Transfer Agreements. Subject to the procedures set forth herein, the Debtors are hereby authorized to enter into (i) Proposed Novation Agreements that substantially conform to the Form Novation Agreement and (ii) Proposed Transfer Agreements that substantially comply with the form customary for such transactions (provided that any such Proposed Transfer Agreement does not impose any administrative expense obligations upon the Debtors' estates).<sup>3</sup>
- (b) Notice of Proposed Novation Agreement. Upon entry into a Proposed Novation Agreement or Proposed Transfer Agreement, the Debtors shall serve notice (the "**Proposed Transfer Notice**") of such Proposed Novation Agreement or Proposed Transfer Agreement by first-class mail, electronic mail, facsimile, overnight delivery or hand delivery on the following parties: (a) the U.S. Trustee; (b) counsel for the postpetition DIP lenders; (c) counsel to the Creditors' Committee; (d) counsel to the Consumer Privacy Ombudsman; and (e) counsel to the Patient Care Ombudsman (collectively, the "**Interested Parties**"). The Proposed Transfer Notice will not be filed with the Court.
- (c) Contents of Proposed Transfer Notice. The Proposed Transfer Notice will include the following information with respect to the Proposed Novation Agreement or Proposed Transfer Agreement: (i) a description of the Clinical Study or Program being novated; (ii) the identity of the Program Funding Sponsor; (iii) the identity of the Substituted Institution; (iv) the identity of the Principal Investigator; and (v) a copy of the Proposed Novation Agreement or Proposed Transfer Agreement.
- (d) Research Records Custody Agreement. The Debtors are authorized to enter into a Research Records Custody Agreement in connection with a Proposed Novation Agreement or Proposed Transfer Agreement; provided however, that the Debtors shall attach a copy of each such Research Records Custody Agreement to the relevant Proposed Transfer Notice. The Debtors shall cooperate with the Consumer Privacy Ombudsman and Patient Care

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<sup>3</sup> For example, if the required Transfer agreement is an "assignment" form used by the applicable governmental agency, the transfer would be an assignment under applicable non-bankruptcy law with the consent of the Program Funding Sponsor. However, it would **not** be an assumption and assignment under section 365 of the Bankruptcy Code, thereby creating a cure obligation to the Debtors' estates.

Ombudsman and provide them with all information reasonably requested in connection with the proposed Research Records Custody Agreement.

- (e) IRB Agreement. The Debtors are authorized to enter into an IRB Agreement in connection with a Proposed Novation Agreement or Proposed Transfer Agreement; provided however, that the Debtors shall attach a copy of each such IRB Agreement to the relevant Proposed Transfer Notice.
- (f) Objections. Interested Parties shall have **seven** days from service of the Proposed Transfer Notice to serve any objections to a Proposed Novation Agreement or Proposed Transfer Agreement (the “**Objection Period**”). Any objection to a Proposed Novation Agreement or Proposed Transfer Agreement must (i) be in writing, (ii) state with specificity the grounds for the objection and (iii) be served upon the counsel to the Debtors and the Interested Parties, so as to be received no later than 12:00 p.m. (prevailing Eastern Time) on the final day of the Objection Period (which objection may be served by electronic mail, facsimile, or hand delivery).
- (g) Consent. The relevant Debtor or Debtors may consummate a Proposed Novation Agreement or Proposed Transfer Agreement prior to expiration of the applicable Objection Period if the Debtor or Debtors obtain(s) each Interested Party’s written consent to the Proposed Novation Agreement or Proposed Transfer Agreement, with such agreement effective *nunc pro tunc* to the date thereof.
- (h) No Objection. If no objection to a Proposed Novation Agreement or Proposed Transfer Agreement is served consistent with these procedures, the Debtors are authorized to consummate such Proposed Novation Agreement or Proposed Transfer Agreement, with such agreement effective *nunc pro tunc* to the date thereof and may take any actions that are reasonable and necessary to effect such agreement. No further notice or Court approval to consummate the Proposed Novation Agreement or Proposed Transfer Agreement shall be required.
- (i) Resolution of Objections. If an Interested Party serves an objection to a Proposed Novation Agreement or Proposed Transfer Agreement, the Debtors and such objecting party will use good faith efforts to resolve the objection consensually. If the Debtors and the objecting party are

unable to resolve the objection consensually, the Debtors may seek relief from the Court to consummate the proposed transaction upon at least five (5) business days written notice, subject to the Court's availability.

4. The Proposed Transfer Notice is approved and service of the Proposed Transfer Notice shall constitute sufficient notice of any Proposed Novation Agreement or Proposed Transfer Agreement.

5. Upon the consummation of an Executed Novation Agreement, Proposed Novation Agreement, or Proposed Transfer Agreement any claims by the Program Funding Sponsor entering into such an agreement under the novated or otherwise transferred Program Funding Agreements against the Debtors shall be forever barred and released.

6. Nothing herein shall prejudice the rights of the Debtors to collect on any claim against a Program Funding Sponsor for amounts owing to the Debtors on or prior to consummation of an Executed Novation Agreement, Proposed Novation Agreement, or Proposed Transfer Agreement.

7. To the extent applicable, the 14-day stay of Federal Rule of Bankruptcy Procedure 6004(h) is hereby waived, and this Order shall be effective immediately.

8. No further orders of this Court are necessary to effectuate the Novation Agreements.

9. This Court shall retain jurisdiction over any and all issues arising from or related to the implementation and interpretation of this Order.

Dated: New York, New York  
\_\_\_\_\_, 2010

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THE HONORABLE CECILIA G. MORRIS  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B-1-B-9**

**Executed Novation Agreements**

**EXHIBIT B-1**

**First Novation Agreement with Onyx Pharmaceuticals, Inc.**

## NOVATION

Onyx Pharmaceuticals Inc., for itself and on behalf of Onyx Therapeutics, Inc., formerly Proteolix, Inc., a wholly owned subsidiary of Onyx Pharmaceuticals, Inc., 2100 Powell Street, Emeryville, California 94608 ("Sponsor") is a party to the Clinical Trial Agreement for Compassionate Use effective October 7, 2009, as thereafter amended, a copy of which is annexed hereto, (the "Contract") with the Multiple Myeloma Research Consortium ("Consortium") and a number of its members, including with Saint Vincent's Catholic Medical Center of New York ("St. Vincent's") to perform Sponsor's clinical trial, Protocol No. Carfilzomib SPU (the "Clinical Study"), for which Dr. Sundar Jagannath who is employed by St. Vincent's is a Principal Investigator (as defined in the Contract).

Effective May 28, 2010, St. Vincent's is ceasing performance of its obligations under the Contract, Dr. Jagannath is leaving the employ of St. Vincent's and is joining Mount Sinai School of Medicine ("Institution"), where he/she will be conducting the Clinical Study in accordance with the Contract. Institution agrees to perform all obligations and duties set forth in the Contract which were to have been performed by St. Vincent's (including all the liabilities and obligations hereafter arising under the Contract whether actual, contingent or otherwise), and Sponsor agrees to continue to perform all its duties and obligations under the Contract substituting Institution as the party to whom such duties and obligations shall henceforth run. Sponsor and Institution agree that the terms relating to the Consortium under the Contract are not enforceable as to Institution, as Institution is not a member of the Consortium.

Sponsor hereby releases and discharges St. Vincent's from the performance of the Contract and from all obligations, liabilities, claims and demands howsoever arising under or in relation to the Contract and accepts, the obligations and liabilities of Institution under the Contract in place of the liabilities and obligations of St. Vincent's. Each of Institution and Sponsor further covenant not to bring any suit, action or proceeding or make any demand or claim of any type against St. Vincent's relating to or in connection with the Contract or the relationship created thereby. Nothing in this provision shall affect Sponsor's, Institution's or St. Vincent's right to make claims or bring an action for breach of this Novation. Furthermore, nothing in this Novation shall in any way limit or restrict in any way St. Vincent's right to receive or collect monies due to St. Vincent's or to which St. Vincent's is otherwise entitled under the Contract for services provided prior to the effective date of this Novation.

In all other respects, the Contract is reaffirmed as between Sponsor and Institution, with an effective date of May 28, 2010. By executing a copy of this Novation, St. Vincent's hereby consents thereto. Sponsor and Institution agree to negotiate a clinical research agreement for Institution's performance of the Clinical Study separate from the Contract within thirty (30) days hereafter.

[Signature page follows]

Accepted and agreed to as of May 28, 2010

Onyx Pharmaceuticals, Inc.

By 

Name: David Y. Lee

Title: Senior Vice President

Chief Medical Officer

Mount Sinai School of Medicine

By 

Name: Jessica Meise

Title: 5/28/2010

Grants & Contracts Officer

Saint Vincent Catholic Medical Centers of  
New York

By 

Name: Daniel Bruck

Title: President



**EXHIBIT B-2**

**Second Novation Agreement with Onyx Pharmaceuticals, Inc.**

## NOVATION

Onyx Pharmaceuticals Inc., for itself and on behalf of Onyx Therapeutics, Inc., formerly Proteolix, Inc., a wholly owned subsidiary of Onyx Pharmaceuticals, Inc., 2100 Powell Street, Emeryville, California 94608 ("Sponsor") is a party to the Clinical Trial Agreement effective August 6, 2007, as thereafter amended, a copy of which is annexed hereto, (the "Contract") with the Multiple Myeloma Research Consortium ("Consortium") and a number of its members, including with Saint Vincent's Catholic Medical Center of New York ("St. Vincent's") to perform Sponsor's clinical trial, Protocol No. PX-171-003 (the "Clinical Study"), for which Dr. Sundar Jagannath who is employed by St. Vincent's is a Principal Investigator (as defined in the Contract).

Effective May 28, 2010, St. Vincent's is ceasing performance of its obligations under the Contract, Dr. Jagannath is leaving the employ of St. Vincent's and is joining Mount Sinai School of Medicine ("Institution"), where he/she will be conducting the Clinical Study in accordance with the Contract. Institution agrees to perform all obligations and duties set forth in the Contract which were to have been performed by St. Vincent's (including all the liabilities and obligations hereafter arising under the Contract whether actual, contingent or otherwise), and Sponsor agrees to continue to perform all its duties and obligations under the Contract substituting Institution as the party to whom such duties and obligations shall henceforth run. Sponsor and Institution agree that the terms relating to the Consortium under the Contract are not enforceable as to Institution, as Institution is not a member of the Consortium.

Sponsor hereby releases and discharges St. Vincent's from the performance of the Contract and from all obligations, liabilities, claims and demands howsoever arising under or in relation to the Contract and accepts, the obligations and liabilities of Institution under the Contract in place of the liabilities and obligations of St. Vincent's. Each of Institution and Sponsor further covenant not to bring any suit, action or proceeding or make any demand or claim of any type against St. Vincent's relating to or in connection with the Contract or the relationship created thereby. Nothing in this provision shall affect Sponsor's, Institution's or St. Vincent's right to make claims or bring an action for breach of this Novation. Furthermore, nothing in this Novation shall in any way limit or restrict in any way St. Vincent's right to receive or collect monies due to St. Vincent's or to which St. Vincent's is otherwise entitled under the Contract for services provided prior to the effective date of this Novation.

In all other respects, the Contract is reaffirmed as between Sponsor and Institution, with an effective date of May 28, 2010. By executing a copy of this Novation, St. Vincent's hereby consents thereto. Sponsor and Institution agree to negotiate a clinical research agreement for Institution's performance of the Clinical Study separate from the Contract within thirty (30) days hereafter.

[Signature page follows]

Accepted and agreed to as of May 28, 2010

Onyx Pharmaceuticals, Inc.

By [Signature]  
Name: TOOBY YANBOY MD  
Title: Senior Vice President  
CLINICAL DEVELOPMENT

Mount Sinai School of Medicine

By ✓ IRM  
Name: Jessica Moise  
Title: 5/28/2010 Grants & Contracts Officer

Saint Vincent Catholic Medical Centers of  
New York

By [Signature]  
Name: Daniel Brucki  
Title: Vice President

**EXHIBIT B-3**

**Third Novation Agreement with Onyx Pharmaceuticals, Inc.**

## NOVATION

Onyx Pharmaceuticals Inc., for itself and on behalf of Onyx Therapeutics, Inc., formerly Proteolix, Inc., a wholly owned subsidiary of Onyx Pharmaceuticals, Inc., 2100 Powell Street, Emeryville, California 94608 ("Sponsor") is a party to the Clinical Trial Agreement effective August 6, 2007, as thereafter amended, a copy of which is annexed hereto, (the "Contract") with the Multiple Myeloma Research Consortium ("Consortium") and a number of its members, including with Saint Vincent's Catholic Medical Center of New York ("St. Vincent's") to perform Sponsor's clinical trial, Protocol No. PX-171-004 (the "Clinical Study"), for which Dr. Sundar Jagannath who is employed by St. Vincent's is a Principal Investigator (as defined in the Contract).

Effective May 28, 2010, St. Vincent's is ceasing performance of its obligations under the Contract, Dr. Jagannath is leaving the employ of St. Vincent's and is joining Mount Sinai School of Medicine ("Institution"), where he/she will be conducting the Clinical Study in accordance with the Contract. Institution agrees to perform all obligations and duties set forth in the Contract which were to have been performed by St. Vincent's (including all the liabilities and obligations hereafter arising under the Contract whether actual, contingent or otherwise), and Sponsor agrees to continue to perform all its duties and obligations under the Contract substituting Institution as the party to whom such duties and obligations shall henceforth run. Sponsor and Institution agree that the terms relating to the Consortium under the Contract are not enforceable as to Institution, as Institution is not a member of the Consortium.

Sponsor hereby releases and discharges St. Vincent's from the performance of the Contract and from all obligations, liabilities, claims and demands howsoever arising under or in relation to the Contract and accepts, the obligations and liabilities of Institution under the Contract in place of the liabilities and obligations of St. Vincent's. Each of Institution and Sponsor further covenant not to bring any suit, action or proceeding or make any demand or claim of any type against St. Vincent's relating to or in connection with the Contract or the relationship created thereby. Nothing in this provision shall affect Sponsor's, Institution's or St. Vincent's right to make claims or bring an action for breach of this Novation. Furthermore, nothing in this Novation shall in any way limit or restrict in any way St. Vincent's right to receive or collect monies due to St. Vincent's or to which St. Vincent's is otherwise entitled under the Contract for services provided prior to the effective date of this Novation.

In all other respects, the Contract is reaffirmed as between Sponsor and Institution, with an effective date of May 28, 2010. By executing a copy of this Novation, St. Vincent's hereby consents thereto. Sponsor and Institution agree to negotiate a clinical research agreement for Institution's performance of the Clinical Study separate from the Contract within thirty (30) days hereafter.

[Signature page follows]

Accepted and agreed to as of May 28, 2010

Onyx Pharmaceuticals, Inc.

By [Signature]  
Name: Toby Valdez  
Title: Senior Vice President, Clinical Development

Mount Sinai School of Medicine

By [Signature]  
Name: Jessica Moise  
Title: Grants & Contracts Officer

Saint Vincent Catholic Medical Centers of  
New York

By [Signature]  
Name: Daniel Banks  
Title: Vice President

**EXHIBIT B-4**

**Novation Agreement with Blotest AG**

#### NOVATION

Biocet AG, Lindstedtstrasse 5, 63303 Dreieich, Germany ("Sponsor") is a party to the Clinical Trial Agreement effective May 31st, 2010 ("Effective Date"), as thereafter amended, a copy of which is annexed hereto, (the "Contract") with Saint Vincent's Catholic Medical Center of New York St. Vincent's Comprehensive Cancer Center, 325 West 13th Street, New York, NY 10011 USA ("St. Vincent's") to perform Sponsor's clinical trial, Protocol No. 969 (the "Clinical Study"), for which Sundar Jagannath, M.D. who is employed by St. Vincent's is a Principal Investigator (as defined in the Contract).

Effective May 31st, St. Vincent's is ceasing performance of its obligations under the Contract, Sundar Jagannath is leaving the employ of St. Vincent's and is joining Mount Sinai School of Medicine Mount Sinai School of Medicine, One Gustave L. Levy Place, Box 1073, New York, NY 10029, USA ("Institution") as employee, where he/she will be conducting the Clinical Study in accordance with the Contract. Institution agrees to perform all obligations and duties set forth in the Contract which were to have been performed by St. Vincent's (including all the liabilities and obligations hereafter arising under the Contract whether actual, contingent or otherwise), and Sponsor agrees to continue to perform all its duties and obligations under the Contract substituting Institution as the party to whom such duties and obligations shall henceforth run. St. Vincent's agrees to cooperate with Institution and Sponsor in any activities or issues associated with transitioning the contract to Institution.

Sponsor hereby releases and discharges St. Vincent's from the performance of the Contract and from all obligations, liabilities, claims and demands howsoever arising under or in relation to the Contract after the effective date and accepts, the obligations and liabilities of Institution under the Contract in place of the liabilities and obligations of St. Vincent's. For obligations, liabilities, claims and demands of St. Vincent arising from the Contract prior to the Effective Date section 15 of the Contract shall apply. Each of Institution and Sponsor further covenant not to bring any suit, action or proceeding or make any demand or claim, of any type against St. Vincent's relating to or in connection with the Contract or the relationship created thereby. Nothing in this provision shall affect Sponsor's, Institution's or St. Vincent's right to make claims or bring an action for breach of this Novation. Furthermore, nothing in this Novation shall in any way limit or restrict in any way St. Vincent's right to receive or collect monies due to St. Vincent's or to which St. Vincent's is otherwise entitled under the Contract for services provided prior to the effective date of this Novation.

In all other respects, the Contract is reaffirmed as between Sponsor and Institution, with an effective date of May 31st, 2010. By executing a copy of this Novation, St. Vincent's hereby consents thereto. Sponsor and Institution agree to negotiate a clinical research agreement for Institution's performance of the Clinical Study separate from the Contract within thirty (30) days hereafter.

[Signature page follows]



Accepted and agreed to as of May 31, 2010

[Sponsor]

By

Name

Title

*[Signature]*  
Dr. Rainer Sorinelli  
Vice President  
Corporate Drug Safety  
Global AC

[Sponsor]

By

Name

Title

*[Signature]*  
Dr. Andrea Wartenberg  
Vice President  
Corporate Clinical Research  
Global AC

Mount Sinai School of Medicine

By

Name

Title

Jessica MOISE  
Grants & Contracts Officer

Saint Vincent Catholic Medical Centers of  
New York

By

Name

Title

*[Signature]*  
STEVEN R. TRONE  
CHIEF FINANCIAL OFFICER

Acknowledged by PI:

By

Name

Title

*[Signature]*  
S. V. KANTH  
PI

**EXHIBIT B-5**

**Novation Agreement with Unicorn Pacific Corporation**

### NOVATION

Unicom Pacific Corporation ("Sponsor") is a party to the Clinical Trial Agreement effective March 1<sup>st</sup>, 2009, as thereafter amended, a copy of which is annexed hereto, (the "Contract") with Saint Vincent's Catholic Medical Center of New York ("St. Vincent's") to perform Sponsor's clinical trial, Protocol No. 08-081 (the "Clinical Study"), for which Sundar Jagannath, M.D. who is employed by St. Vincent's is a Principal Investigator (as defined in the Contract).

Effective May 28, 2010, St. Vincent's is ceasing performance of its obligations under the Contract, Sundar Jagannath is leaving the employ of St. Vincent's and is joining Mount Sinai School of Medicine ("Institution"), where he/she will be conducting the Clinical Study in accordance with the Contract. Institution agrees to perform all obligations and duties set forth in the Contract which were to have been performed by St. Vincent's (including all the liabilities and obligations hereafter arising under the Contract whether actual, contingent or otherwise), and Sponsor agrees to continue to perform all its duties and obligations under the Contract substituting Institution as the party to whom such duties and obligations shall henceforth run.

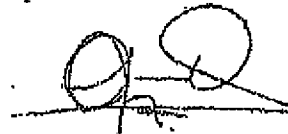
Sponsor hereby releases and discharges St. Vincent's from the performance of the Contract and from all obligations, liabilities, claims and demands howsoever arising under or in relation to the Contract and accepts the obligations and liabilities of Institution under the Contract in place of the liabilities and obligations of St. Vincent's. Each of Institution and Sponsor further covenant not to bring any suit, action or proceeding or make any demand or claim of any type against St. Vincent's relating to or in connection with the Contract or the relationship created thereby. Nothing in this provision shall affect Sponsor's, Institution's or St. Vincent's right to make claims or bring an action for breach of this Novation. Furthermore, nothing in this Novation shall in any way limit or restrict in any way St. Vincent's right to receive or collect monies due to St. Vincent's or to which St. Vincent's is otherwise entitled under the Contract for services provided prior to the effective date of this Novation.

In all other respects, the Contract is reaffirmed as between Sponsor and Institution, with an effective date of May 28, 2010. By executing a copy of this Novation, St. Vincent's hereby consents thereto. Sponsor and Institution agree to negotiate a clinical research agreement for Institution's performance of the Clinical Study separate from the Contract within thirty (30) days hereafter.

[Signature page follows]

Accepted and agreed to as of May 28, 2010

Sponsor



By \_\_\_\_\_  
Name: Samuel J. Grant  
Title: Managing Director

Mount Sinai School of Medicine

By          *per*  
Name: Jessica Miles  
Title: Grant & Contracts Officer

Saint Vincent Catholic Medical Centers  
of New York

By           
Name: Steven R. Korf  
Title: Chief Financial Officer

**EXHIBIT B-6**

**Novation Agreement with Celgene Corporation**

### NOVATION

Celgene Corporation ("Sponsor") is a party to the Clinical Study Agreement effective 19<sup>th</sup> day of October, 2009, as thereafter amended, a copy of which is annexed hereto, (the "Contract") with the Multiple Myeloma Research Consortium ("Consortium") and a number of its members, including Saint Vincent's Catholic Medical Center of New York ("St. Vincent's") to perform Sponsor's clinical trial, Protocol No. CC-4047-MM-002 "A Phase 1/2 Multicenter, Randomized, Open-Label, Dose-Escalation Study to Determine the Maximum Tolerated Dose, Safety, and Efficacy of CC-4047 (Pomalidomide) Alone and in Combination With Dexamethasone in Patients With Relapsed and Refractory Multiple Myeloma Who Have Received Prior Treatment That Includes Lenalidomide and Bortezomib" (the "Clinical Study"), for which Sundar Jagannath, M.D., who is employed by St. Vincent's is a [Site][Principal] Investigator (as defined in the Contract).

Effective the 28<sup>th</sup> day of May, 2010, St. Vincent's is ceasing performance of its obligations under the Contract, Sundar Jagannath, M.D. is leaving the employ of St. Vincent's and is joining Mount Sinai School of Medicine ("Institution"), where he will be conducting the Clinical Study in accordance with the Contract. Institution agrees to perform all obligations and duties set forth in the Contract which were to have been performed by St. Vincent's (including all the liabilities and obligations hereafter arising under the Contract whether actual, contingent or otherwise), and Sponsor agrees to continue to perform all its duties and obligations under the Contract substituting Institution as the party to whom such duties and obligations shall henceforth run. Sponsor and Institution agree that the terms relating to the Consortium under the Contract are not enforceable as to Institution, as Institution is not a member of the Consortium.

Sponsor hereby releases and discharges St. Vincent's from the performance of the Contract and from all obligations, liabilities, claims and demands howsoever arising under or in relation to the Contract and accepts the obligations and liabilities of Institution under the Contract in place of the liabilities and obligations of St. Vincent's. Each of Institution and Sponsor further covenant not to bring any suit, action or proceeding or make any demand or claim of any type against St. Vincent's relating to or in connection with the Contract or the relationship created thereby. Nothing in this provision shall affect Sponsor's, Institution's or St. Vincent's right to make claims or bring an action for breach of this Novation. Furthermore, nothing in this Novation shall in any way limit or restrict in any way St. Vincent's right to receive or collect monies due to St. Vincent's or to which St. Vincent's is otherwise entitled under the Contract for services provided prior to the effective date of this Novation.

In all other respects, the Contract is reaffirmed as between Sponsor and Institution, with an effective date of the 28<sup>th</sup> day of May, 2010. By executing a copy of this Novation, St. Vincent's hereby consents thereto. Sponsor and Institution agree to negotiate a clinical research agreement for Institution's performance of the Clinical Study separate from the Contract within thirty (30) days hereafter.

[Signature page follows]

Accepted and agreed to as of the 2<sup>nd</sup> day of  
June, 2010

Celgene Corporation



By Robert Knight  
Name: ROBERT KNIGHT  
Title: VP - Hematology

Mount Sinai School of Medicine

By Jessica Moise  
Name: Jessica Moise  
Title: Grants & Contracts Officer

Saint Vincent Catholic Medical Centers of  
New York

By Steven R. Koff  
Name: STEVEN R. KOFF  
Title: CHIEF FINANCIAL OFFICER

**EXHIBIT B-7**

**Novation Agreement with Innate Pharma**



#### NOVATION

DEVATE PHARMA ("Sponsor") is a party to the Clinical Trial Agreement effective March 17, 2010, as thereafter amended, a copy of which is annexed hereto, (the "Contract") with Saint Vincent's Catholic Medical Center of New York ("St. Vincent's") to perform Sponsor's clinical trial, Protocol No. IPH2101-103 (the "Clinical Study"), for which Sunder Jagannath, M.D. who is employed by St. Vincent's is a Principal Investigator (as defined in the Contract).

Effective May 28, 2010 St. Vincent's is ceasing performance of its obligations under the Contract, Sunder Jagannath is leaving the employ of St. Vincent's and is joining Mount Sinai School of Medicine ("Institution"), where he/she will be conducting the Clinical Study in accordance with the Contract. Institution agrees to perform all obligations and duties set forth in the Contract which were to have been performed by St. Vincent's (including all the liabilities and obligations hereafter arising under the Contract whether actual, contingent or otherwise), and Sponsor agrees to continue to perform all its duties and obligations under the Contract substituting Institution as the party to whom such duties and obligations shall henceforth run.

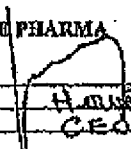
Sponsor hereby releases and discharges St. Vincent's from the performance of the Contract and from all obligations, liabilities, claims and demands howsoever arising under or in relation to the Contract and accepts, the obligations and liabilities of Institution under the Contract in place of the liabilities and obligations of St. Vincent's. Each of Institution and Sponsor further covenant not to bring any suit, action or proceeding or make any demand or claim of any type against St. Vincent's relating to or in connection with the Contract or the relationship created thereby. Nothing in this provision shall affect Sponsor's, Institution's or St. Vincent's right to make claims or bring an action for breach of this Novation. Furthermore, nothing in this Novation shall in any way limit or restrict in any way St. Vincent's right to receive or collect monies due to St. Vincent's or to which St. Vincent's is otherwise entitled under the Contract for services provided prior to the effective date of this Novation.

In all other respects, the Contract is reaffirmed as between Sponsor and Institution, with an effective date of May 28, 2010. By executing a copy of this Novation, St. Vincent's hereby consents thereto. Sponsor and Institution agree to negotiate a clinical research agreement for Institution's performance of the Clinical Study separate from the Contract within thirty (30) days hereafter.


[Signature page follows]

Accepted and agreed to as of \_\_\_\_\_, 2010

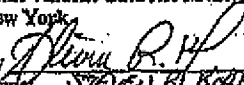
INNATE PHARMA

By   
Name: Anne Brailly  
Title: CEO

Mount Sinai School of Medicine

By   
Name: Joséfa Maise  
Title: Grants & Contracts Officer

Saint Vincent Catholic Medical Centers of  
New York

By   
Name: STEVEN R. KOFF  
Title: CHIEF FINANCIAL OFFICER

**EXHIBIT B-8**

**Novation Agreement with Facet Biotech Corporation**

### NOVATION

Facet Biotech Corporation, successor in interest to PDL BioPharma, Inc., ("Sponsor") is a party to the Clinical Multi-Site Trial Agreement effective July 15, 2008, as thereafter amended, a copy of which is annexed hereto, (the "Contract") with the Multiple Myeloma Research Consortium ("Consortium") and a number of its members, including Saint Vincent's Catholic Medical Center of New York ("St. Vincent's") to perform Sponsor's clinical trial, Protocol No. HuLuc63-1703 (the "Clinical Study"), for which Dr. Sundar Jagannath who is employed by St. Vincent's is a Site Investigator (as defined in the Contract).

Effective May 28, 2010, St. Vincent's is ceasing performance of its obligations under the Contract, Dr. Jagannath is leaving the employ of St. Vincent's and is joining Mount Sinai School of Medicine ("Institution"), where he will be conducting the Clinical Study in accordance with the Contract. Institution agrees to perform all obligations and duties set forth in the Contract which were to have been performed by St. Vincent's (including all the liabilities and obligations hereafter arising under the Contract whether actual, contingent or otherwise), and Sponsor agrees to continue to perform all its duties and obligations under the Contract substituting Institution as the party to whom such duties and obligations shall henceforth run. Sponsor and Institution agree that the terms relating to the Consortium under the Contract are not enforceable as to Institution, as Institution is not a member of the Consortium.

Sponsor hereby releases and discharges St. Vincent's from the performance of the Contract and from all obligations, liabilities, claims and demands howsoever arising under or in relation to the Contract and accepts the obligations and liabilities of Institution under the Contract in place of the liabilities and obligations of St. Vincent's. Each of Institution and Sponsor further covenant not to bring any suit, action or proceeding or make any demand or claim of any type against St. Vincent's relating to or in connection with the Contract or the relationship created thereby. Nothing in this provision shall affect Sponsor's, Institution's or St. Vincent's right to make claims or bring an action for breach of this Novation. Furthermore, nothing in this Novation shall in any way limit or restrict in any way St. Vincent's right to receive or collect monies due to St. Vincent's or to which St. Vincent's is otherwise entitled under the Contract for services provided prior to the effective date of this Novation.

In all other respects, the Contract is reaffirmed as between Sponsor and Institution, with an effective date of May 28, 2010. By executing a copy of this Novation, St. Vincent's hereby consents thereto. Sponsor and Institution agree to negotiate a clinical research agreement for Institution's performance of the Clinical Study separate from the Contract within thirty (30) days hereafter.

[Signature page follows]

Accepted and agreed to as of May 28, 2010

**Facet Biotech Corporation**

By [Signature]  
Name: John Ly  
Title: SL Director

**Mount Sinai School of Medicine**

By [Signature] 2010  
Name: Jessica Wolse  
Title: 5/27/2010 Grants & Contracts Officer

**Saint Vincent Catholic Medical Centers of  
New York**

By [Signature]  
Name: Daniel B. Smith  
Title: Vice President

**EXHIBIT B-9**

**Agreement for Contract Assignment with the New York State Crime Victims Board**

**ST. VINCENT CATHOLIC MEDICAL CENTERS  
AGREEMENT FOR CONTRACT ASSIGNMENT**

Contract Number C-501157

For the purpose of providing direct services to victims of crime as defined by the Federal Victims of Crime Act,

THIS AGREEMENT made this 28<sup>th</sup> day of May, 2010 by and between the State of New York, acting by and through THE NEW YORK STATE CRIME VICTIMS BOARD with offices located at 1 COLUMBIA CIRCLE, SUITE 200, ALBANY, NY 12203 and ST. VINCENT CATHOLIC MEDICAL CENTERS, signatory to the ORIGINAL AGREEMENT dated October 30, 2009, and ST. LUKE'S-ROOSEVELT HOSPITAL CENTER with offices located at 1000 TENTH AVENUE, NEW YORK, NEW YORK 10019, hereinafter referred to as the "CONTRACTOR."

**WITNESSETH:**

WHEREAS the CONTRACTOR has acquired all terms of the original contract signatory, ST. VINCENT CATHOLIC MEDICAL CENTERS including the subject ORIGINAL AGREEMENT dated October 30, 2009:

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties do hereby agree as follows:

**I. CONTRACTOR SERVICES**

A. The parties hereto agree that the CONTRACTOR shall now perform all of the services and comply with all of the requirements set forth in the ORIGINAL AGREEMENT dated October 30, 2009, upon approval of this AGREEMENT by the State Comptroller for a total compensation not to exceed those amounts stated in the ORIGINAL AGREEMENT dated October 30, 2009.

**II. TRANSFER OF LIABILITY**

A. The parties hereto agree that the CONTRACTOR has, through the acquisition of all terms of the original contract signatory, ST. VINCENT CATHOLIC MEDICAL CENTERS, assumed all responsibilities with regard to performance of the contract, professional liability and the furnishing of proof of insurance as of MAY 31, 2010.

**III. EFFECTIVE DATE** - The effective date for this Agreement, for payment purposes, is MAY 31, 2010

**IV.** This Agreement is subject to approval by the Attorney General and the Comptroller of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

ST. VINCENT CATHOLIC MEDICAL CENTERS

By: [Signature] Vice President  
Signer, Title

Sworn to before me this 22 day of May, 2010;

[Signature]  
Notary Public

CATHERINE A. CROMWELL  
Notary Public, State of New York  
No. 81-6853472  
Qualified in New York County  
Commission Expires April 14, 19

ST. LUKE'S-ROOSEVELT HOSPITAL CENTER

Aug 22, 2010

By: \_\_\_\_\_  
Signer, Title

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010;

\_\_\_\_\_  
Notary Public

SS# OR FED ID # \_\_\_\_\_

NEW YORK STATE CRIME VICTIMS BOARD

By: \_\_\_\_\_  
Signer, Title

APPROVED:

\_\_\_\_\_  
For the Attorney General

\_\_\_\_\_  
For the State Comptroller





## Saint Vincent Catholic Medical Centers

100-100-100-100

100 Academic  
Medical Center of  
New York Medical College  
New York City



100 Vincent's Hospital  
Manhattan

100 Vincent's Hospital  
Westchester

100 Bishop McGuire Center  
on Geriatric Care

100 Holy Family Home

100 Elizabeth Ann's Health  
Care & Rehabilitation  
Center

100 Saint Vincent  
Catholic Medical Centers  
Behavioral Health  
Services

100 Saint Vincent  
Catholic Medical Centers  
Home Health Care

100 Saint Vincent Hospice

100 JS Family Health Plan  
100 Saint Vincent NYC

### To The Crime Victims Board:

As requested, we are executing the attached form of assignment of the contract for funding for the rape crisis clinic, so that future funding can be assigned to St Luke's, which is opening a clinic to provide the types of program and services previously provided by Saint Vincents Catholic Medical Centers ("Saint Vincents"). As you are aware, Saint Vincents is a debtor in a case chapter 11 under the federal Bankruptcy Code.

The assignment of the contract funding is being done pursuant to the contract. Saint Vincents is not assuming and assigning the contract under the Bankruptcy Code. The assignment of the contract to St. Luke's does not change the priority or nature of any claims against Saint Vincents arising prior to the transfer of the contract to St. Luke's.

Sincerely,

Dan Brooks  
Vice President  
St. Vincent's Manhattan

**EXHIBIT C**

**Form Novation Agreement**

## **NOVATION**

\_\_\_\_\_ (“Sponsor”) is a party to the \_\_\_\_\_ Agreement effective \_\_\_\_\_, 2010, as thereafter amended, a copy of which is annexed hereto, (the “Contract”) [with the \_\_\_\_\_ (“Consortium”) and a number of its members, including] with Saint Vincent’s Catholic Medical Center of New York (“St. Vincent’s”) to perform Sponsor’s clinical trial, Protocol No. \_\_\_\_\_ (the “Clinical Study”), for which \_\_\_\_\_ who is employed by St. Vincent’s is a [Site][Principal] Investigator (as defined in the Contract).

Effective \_\_\_\_\_, St. Vincent’s is ceasing performance of its obligations under the Contract, \_\_\_\_\_ is leaving the employ of St. Vincent’s and is joining \_\_\_\_\_ (“Institution”), where he/she will be conducting the Clinical Study in accordance with the Contract. Institution agrees to perform all obligations and duties set forth in the Contract which were to have been performed by St. Vincent’s (including all the liabilities and obligations hereafter arising under the Contract whether actual, contingent or otherwise), and Sponsor agrees to continue to perform all its duties and obligations under the Contract substituting Institution as the party to whom such duties and obligations shall henceforth run. [Sponsor and Institution agree that the terms relating to the Consortium under the Contract are not enforceable as to Institution, as Institution is not a member of the Consortium.]

Sponsor hereby releases and discharges St. Vincent’s from the performance of the Contract and from all obligations, liabilities, claims and demands howsoever arising under or in relation to the Contract and accepts, the obligations and liabilities of Institution under the Contract in place of the liabilities and obligations of St. Vincent’s. Each of Institution and Sponsor further covenant not to bring any suit, action or proceeding or make any demand or claim of any type against St. Vincent’s relating to or in connection with the Contract or the relationship created thereby. Nothing in this provision shall affect Sponsor’s, Institution’s or St. Vincent’s right to make claims or bring an action for breach of this Novation. Furthermore, nothing in this Novation shall in any way limit or restrict in any way St. Vincent’s right to receive or collect monies due to St. Vincent’s or to which St. Vincent’s is otherwise entitled under the Contract for services provided prior to the effective date of this Novation.

In all other respects, the Contract is reaffirmed as between Sponsor and Institution, with an effective date of \_\_\_\_\_, 2010. By executing a copy of this Novation, St. Vincent’s hereby consents thereto. Sponsor and Institution agree to negotiate a clinical research agreement for Institution’s performance of the Clinical Study separate from the Contract within thirty (30) days hereafter.

**[Signature page follows]**

Accepted and agreed to as of \_\_\_\_\_, 2010

**[Sponsor]**

By \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

**[Institution]**

By \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

**Saint Vincent Catholic Medical Centers of  
New York**

By \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

**EXHIBIT D**

**Form Research Records Custody Agreement**

## **RESEARCH RECORDS CUSTODY AGREEMENT**

This Research Records Custody Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010 by and between Saint Vincents Catholic Medical Centers of New York ("SVCMC") and \_\_\_\_\_ ("Custodian").

**WHEREAS**, SVCMC will cease to operate its Cancer Center ("SVCMC Center") on or about May 27, 2010 (the "Closing Date");

**WHEREAS**, SVCMC and certain physicians (the "Investigators") at the SVCMC Center have conducted clinical studies (the "Studies") in conjunction with various clinical study sponsors (the "Sponsors") and in accordance with the terms and conditions of those certain clinical trial agreements (the "Clinical Trial Agreements");

**WHEREAS**, certain Investigators are becoming Custodian employees (the "Custodian Physicians");

**WHEREAS**, pursuant to the terms of the Clinical Trial Agreements, SVCMC has agreed to maintain the custody of the records associated with the Studies conducted by the Custodian Physicians and developed in accordance with the Clinical Trial Agreements (the "Records");

**WHEREAS**, SVCMC wishes to provide for the smooth transfer of the Records to Custodian so that the Records may be accessed readily by the Investigators, Sponsors and other applicable parties in continuation of the Studies; and

**WHEREAS**, Custodian also has agreed to assume the custody and storage of the Records pursuant to applicable law and the Clinical Trial Agreements.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Transfer and Custody of Patient Records.**

a. As of the date hereof, SVCMC will transfer to Custodian custody of certain of its existing Records. The Records consist of two categories: (i) records for Studies conducted by the Custodian Physicians which have closed (the "Closed Records") to the extent requested by Custodian in accordance with Section 1(d) below; and (ii) records for Studies conducted by the Custodian Physicians which are ongoing (the "Open Records"). SVCMC hereby appoints Custodian, and Custodian agrees to serve during the term of this Agreement, as custodian for the maintenance, safekeeping, inspection and copying of the Records in accordance with the terms of this Agreement.

b. The parties agree that the Records are being transferred for custodial purposes to Custodian hereunder for purposes of maintenance, access and continuation of the Studies, as applicable, in accordance with the Clinical Trial Agreements.

c. Custodian shall store and maintain the Records in accordance with the Clinical Trial Agreements and applicable federal, state and local laws, rules and regulations, including those laws, rules and regulations governing the confidentiality of protected health information, and Custodian shall take reasonable measures to protect the Records from theft, loss, unauthorized destruction and unauthorized access. Custodian shall at all times safeguard the safety of the Records and will promptly report to SVCMC any problems or security incidents with respect to the Records.

d. To the extent Closed Records are requested by the Custodian, all Closed Records transferred to Custodian hereunder shall be retained by Custodian as custodian until the later of (1) the time period specified in the Clinical Trial Agreement, or (2) the time period required by applicable law or regulation (the “Required Custody Date”), unless Custodian transfers the Closed Records to itself pursuant to the process set forth in Section 1(e) below.

e. With respect to the Open Records, all Open Records transferred to Custodian hereunder shall be retained by Custodian as custodian until the later of (1) the time period specified in the Clinical Trial Agreement, or (2) the Required Custody Date, unless Custodian transfers the Open Records to itself pursuant to (a) a valid patient authorization executed in connection with the applicable Study and approved by the Institutional Review Board providing oversight for the Study and the Sponsor of the Study and (b) an agreement between Custodian, SVCMC and the Sponsor of such Study.

f. Custodian acknowledges and agrees that it must arrange for the transfer of all Records from SVCMC pursuant to this Agreement by the Closing Date. To the extent that any Records are not transferred by the Closing Date, Custodian acknowledges and agrees that such Records will be transferred by SVCMC to Beth Israel Medical Center (“BIMC”) pursuant to a Research Records Custody Agreement between SVCMC and BIMC, and Custodian must arrange for the transfer of such Records from BIMC.

2. Patient Communication and Access. Custodian shall provide timely access to, and photocopies of, the Records to SVCMC, the Investigator and Sponsor conducting a Study, patients participating in a Study and their legal representatives, and entities and governmental agencies that have oversight responsibilities with respect to the Study, to the extent (1) permitted in a valid HIPAA authorization executed by the patient in connection with the Study, (2) required by the Clinical Trial Agreement, and (3) permitted by laws, rules or regulations applicable to the parties and the Study. Such access and copies shall be provided within the time periods required by the Clinical Trial Agreement and applicable laws, rules and regulations.

3. Legal and HIPAA Compliance. Custodian acknowledges that the Records being transferred hereunder are confidential. In the event that a patient or other appropriate person under applicable laws, rules or regulations (including, without limitation, a committee for an incompetent, a conservator, or other person pursuant to court order) requests that a copy of a patient’s Records be provided to such person or to another health care provider, Custodian shall promptly forward, or shall cause its designee to forward, a copy of the Records, if such access is permitted under a HIPAA authorization executed by the patient in connection with participation in the Study; provided, however, that in all instances, Custodian or its designee shall comply with all provisions of the Clinical Trial Agreement and applicable law, rules and regulations with

respect to the confidentiality of such Records. With respect to the Records transferred to Custodian hereunder, Custodian shall abide by all applicable laws, rules and regulations applicable to such records, including, without limitation, the Federal Health Insurance Portability and Accountability Act of 1996 and its related regulations.

4. Term and Termination.

a. This Agreement shall take effect upon execution by the parties hereto and shall remain in effect for as long as Custodian retains custody of any Records transferred hereunder.

b. This Agreement may be terminated at any time by the mutual written agreement of the parties.

5. Insurance. Custodian represents and warrants that its activities hereunder are covered by insurance policies in the minimum amount of \$1,000,000 per incident, \$3,000,000 in the aggregate.

6. Miscellaneous.

a. Neither party may assign this Agreement without the express prior written consent of the other party, and any attempt to assign this Agreement without such consent shall be void.

b. Neither party shall be authorized to act as agent for the other or to incur any liability in the name of or on behalf of the other, unless specifically authorized in this Agreement or in a writing executed by the party that would be responsible for the obligation.

c. This Agreement shall be governed by the laws of the State of New York, exclusive of conflict of law rules. Each party to this Agreement hereby agrees and consents that any dispute with respect to this Agreement shall only be adjudicated in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). By execution and delivery of this Agreement, each such party hereby: (i) accepts the jurisdiction of the Bankruptcy Court; (ii) agrees to be bound by any order of the Bankruptcy Court; (iii) waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the venue set forth above; and (iv) further waives any claim that the Bankruptcy Court is an inconvenient forum.

d. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than a party hereto any rights, remedies, obligations or liabilities whatsoever.

e. This Agreement is the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements, whether written or oral, concerning the subject matter hereof. This Agreement shall not be changed or modified, except by a writing signed by both of the parties hereto or their respective successors. Except as otherwise provided herein, all rights and remedies set forth in this Agreement shall be in addition to and not exclusive of any other rights or remedies now or hereafter existing at law or in equity.



f. Any notice, request, instruction or document to be given hereunder by any party to another shall be in writing and delivered personally or mailed, first class registered or certified mail, postage prepaid, or by reputable overnight courier, to the address of such other party stated below:

To SVCMC:

Saint Vincents Catholic Medical Centers of New York

450 West 33<sup>rd</sup> Street

New York, New York 10001

Attn: Mark E. Toney, Chief Restructuring Officer

With a copy to:

Kramer Levin Naftalis & Frankel LLP

1177 Avenue of the Americas

New York, New York 10036

Fax: (212) 715-8000

Attn: Adam C. Rogoff, Esq.

Garfunkel Wild, P.C.

111 Great Neck Road

Great Neck, New York 11021

Attn: Judith A. Eisen, Esq.

To Custodian:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

With a copy to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Each party hereto shall have the right to give notice to the other party changing its address as stated above and such address shall thereupon be deemed to be changed accordingly.

g. If any provision of this Agreement or the application of any provision hereof to any person or circumstances is held to be legally invalid, inoperative or unenforceable, then the remainder of this Agreement shall not be affected unless the invalid provision substantially impairs the benefits of the remaining portions of this Agreement to the other party or parties.

h. Any consent or waiver executed in writing by a party hereto shall be binding upon such party from and after the date of execution thereof unless a later or earlier date is specified therein. No delay or failure to exercise any remedy or right occurring upon any default shall be construed as a waiver of such remedy or right, or an acquiescence in such default, nor shall it affect any subsequent default of the same or a different nature.

i. All headings and captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and shall in no way define, limit, extend or describe the scope or intent of any provisions hereof.

j. The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may reasonably be necessary or appropriate to achieve the purposes set forth in this Agreement.

k. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

l. This Agreement may be executed in counterparts and each such counterpart, when taken together, shall constitute a single and binding agreement.

IN WITNESS WHEREOF, this Research Records Custody Agreement is signed as of the day and year first above written.

**SAINT VINCENTS CATHOLIC  
MEDICAL CENTERS OF NEW YORK**

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title: