

**Hearing Date and Time: May 17, 2012 at 11:00 a.m. (prevailing Eastern Time)**  
**Deadline for Objections: May 10, 2012 by 12:00 Noon (prevailing Eastern Time)**

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*Counsel for Debtors and Debtors in Possession*

**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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**NOTICE OF HEARING ON MOTION FOR ENTRY OF ORDER PURSUANT TO  
FED. R. BANKR. P. 9019 APPROVING SETTLEMENT STIPULATION AND  
AGREEMENT AMONG SAINT VINCENTS CATHOLIC MEDICAL CENTERS OF  
NEW YORK AND ITS DEBTOR AND NON-DEBTOR AFFILIATES,  
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, SUN LIFE  
ASSURANCE COMPANY OF CANADA, AND THE MED MAL TRUST MONITOR**

**PLEASE TAKE NOTICE** that a hearing will be held before the Honorable Cecelia G. Morris, Chief United States Bankruptcy Judge, of the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, on **May 17, 2012 at 11:00 a.m.** (prevailing Eastern Time) to consider the Motion for Entry of Order Pursuant to Fed. R. Bankr. P. 9019 Approving Settlement Stipulation and Agreement Among Saint Vincents Catholic Medical Centers of New York and its Debtor and

Non-Debtor Affiliates, the Official Committee of Unsecured Creditors, Sun Life Assurance Company of Canada, and the Med Mal Trust Monitor (the "**Motion**").

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to entry of the proposed order must: (i) be in writing; (ii) specify with particularity the basis of the objection; and (iii) be filed with the Court and simultaneously served on: (a) Debtors' counsel, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Adam C. Rogoff, Esq. and Garfunkel Wild, P.C., 111 Great Neck Road, Suite 503, Great Neck, New York 11021, Attn: Judith Eisen, Esq.; (b) counsel for the Creditor's Committee, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, Attn: David Botter, Esq., Stephen Kuhn, Esq. and Sarah Link Schultz, Esq.; (c) counsel to the secured lenders, General Electric Capital Corporation, as agent for itself and TD Bank, N.A., c/o Winston & Strawn LLP, 200 Park Avenue, New York, New York, 10166-4193, Attn: David Neier, Esq.; and Winston & Strawn LLP, 101 California Street, San Francisco, CA 94111-5802, Attn: Randy Rogers, Esq.; (d) counsel to Sun Life, Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York 10178, Attn: Eric R. Wilson, Esq. and Stacia A. Neeley, Esq.; and Paul Hastings LLP, 515 South Flower Street, Twenty-Fifth Floor, Los Angeles, CA 90071, Attn: Cynthia M. Cohen, Esq.; (e) counsel to the MedMal Trust Monitor, Cooley LLP 1114 Avenue of the Americas, New York, New York 10036, Attn: Richard S. Kanowitz, Esq., Cathy R. Hershcopf, Esq., and Seth Van Aalten, Esq.; and (f) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, New York, NY 10004, Attn: Serene Nakano, Esq., so as to be actually received by 12:00 Noon (prevailing Eastern Time) on May 10, 2012.

A copy of the Motion and its exhibits can also be viewed and obtained on the Court's website [www.ecf.nysb.uscourts.gov](http://www.ecf.nysb.uscourts.gov) or (without charge) at <http://chapter11.epiqsystems.com/svcmc2010>.

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney if you have one in these bankruptcy cases. (If you do not have an attorney in these bankruptcy cases, you may wish to consult one.)**

Dated: New York, New York  
May 3, 2012

KRAMER LEVIN NAFTALIS & FRANKEL LLP

/s/ Adam C. Rogoff  
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CENTERS OF NEW YORK, <u>et al.</u> ,	:	
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Debtors.	:	Jointly Administered
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**MOTION FOR ENTRY OF ORDER PURSUANT TO FED. R. BANKR. P. 9019 APPROVING SETTLEMENT STIPULATION AND AGREEMENT AMONG SAINT VINCENTS CATHOLIC MEDICAL CENTERS OF NEW YORK AND ITS DEBTOR AND NON-DEBTOR AFFILIATES, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, SUN LIFE ASSURANCE COMPANY OF CANADA, AND THE MED MAL TRUST MONITOR**

TO THE HONORABLE CECELIA G. MORRIS,  
CHIEF 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 “**Debtors**”)<sup>1</sup> in the above-referenced chapter 11 cases (the “**Chapter 11 Cases**”), hereby move (the “**Motion**”) for entry of an order substantially in the form of the

<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.

proposed order annexed hereto as **Exhibit A**, pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”) and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), approving a settlement agreement (the “**Settlement Agreement**”), annexed hereto as **Exhibit B**, by and among the Debtors, the official committee of unsecured creditors appointed in these cases pursuant to section 1102 of the Bankruptcy Code (the “**Committee**”), Sun Life Assurance Company of Canada (“**Sun Life**”), and the monitor (the “**Med Mal Monitor**”) for certain medical malpractice trusts (the “**Med Mal Trusts**”), relating to the allocation of the net proceeds of the sale of the Debtors’ Westchester behavioral health hospital (“**St. Vincents Westchester**”) and certain other related behavioral health assets (together with St. Vincents Westchester, the “**Behavioral Health Assets**”). In support of the Motion, the Debtors respectfully represent as follows:

#### **PRELIMINARY STATEMENT**

1. In the fall of 2010, the Debtors sold their Behavioral Health Assets, including St. Vincents Westchester, to St. Joseph’s Medical Center. Since the closing, the Debtors have held the proceeds of the sale – consisting of approximately \$18 million in cash and a \$6 million note – in escrow, subject to the competing claims of the estates and several secured creditors. After months of negotiation and a Court-ordered mediation, the Debtors, the Committee and the remaining secured creditors, Sun Life and the Med Mal Monitor, have agreed to an allocation of the sale proceeds and treatment of the competing claims to the sale proceeds. The Debtors now seek approval of the terms of the parties’ Settlement Agreement, which falls well within the range of reasonableness and should therefore be approved.

#### **JURISDICTION AND VENUE**

2. 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).

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

4. The statutory predicates for the relief requested herein are section 105(a) of the Bankruptcy Code and rule 9019 of the Bankruptcy Rules.

### **FACTS RELEVANT TO THE MOTION**

5. On April 14, 2010, the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

#### **Saint Vincents Westchester**

6. Before it was sold, St. Vincents Westchester was one of the Debtors' central healthcare businesses, providing behavioral health care and substance abuse services to patients throughout the New York City area. The main campus of St. Vincents Westchester was situated on approximately 67 acres of land in Harrison, New York (together with the improvements to such land, the "**Westchester Real Property**"). The Westchester Real Property was zoned as a single, undivided parcel and designated R-1 (single family residential). The behavioral health facility, for which there is a zoning variance, was housed in eleven buildings located on a portion of the site. Approximately 37 of the 67 acres, however, was undeveloped land unnecessary to the operation of the facility (the "**Vacant Land**").

7. In addition to its Harrison facility, St. Vincents Westchester owned and operated a number of satellite locations, clinics and residential homes throughout the New York City area (the "**Satellite Facilities**").

8. Several creditors asserted security interests in various aspects of the Behavioral Health Assets prior to their sale:

- **General Electric Capital Corporation**. General Electric Capital Corporation ("**GE Capital**"), which was both a pre- and post-petition lender, held first and second liens on specified assets of St. Vincents Westchester, as well as mortgages on certain of the Satellite Facilities.

- Sun Life. Sun Life held a first priority mortgage and security agreement and an assignment of leases that covered the Westchester Real Property, as well as certain personalty related thereto (together with the Westchester Real Property, the “**Sun Life Collateral**”). Sun Life filed a proof of claim asserting that, as of the Petition Date, approximately \$16.3 million in principal was outstanding under the note secured by the Sun Life Collateral, with additional amounts accruing subsequent to the Petition Date (the “**Sun Life Westchester Secured Claim**”). Sun Life also asserted an adequate protection lien as a result of the post-petition financing provided by GE Capital.
- Med Mal Trusts. The plan of reorganization in the Debtors’ first chapter 11 bankruptcy granted the Med Mal Trusts a second priority mortgage on the Westchester Real Property (the “**Med Mal Collateral**” and together with the Sun Life Collateral, the “**Collateral**”). The Med Mal Trusts claim to have been owed approximately \$120 million as of the Petition Date.

### **The Sale to St. Joseph’s**

9. On October 12, 2010, after an extensive marketing process, the Court approved the sale of the Behavioral Health Assets as a going concern to St. Joseph’s Medical Center (“**St. Joseph’s**”). The sale closed on November 1, 2010. The consideration for the sale consisted of \$18 million in cash, a \$6 million promissory note (the “**Note**”), and the assumption of certain liabilities.

10. As part of the sale transaction, the Debtors negotiated an option to purchase the Vacant Land back from St. Joseph’s for a price of \$5 million (plus reimbursement of costs of capital and operating costs) (the “**Option**”). The deal permitted the Debtors to market the Option for one year after the closing date of November 1, 2010. If sold, the buyer of the Option would then have an additional three years in which to obtain zoning and regulatory approvals to subdivide the land (i.e., carve off the 37 acres from the main campus and get it zoned for alternative use) and exercise the Option.

11. To accommodate the desire of Sun Life and the Med Mal Trusts (together, the “**Mortgagees**”) to monetize the value of the Vacant Land, the Debtors arranged an extensive marketing process for the Option, which was done in coordination with the Mortgagees. The

process was run by a broker – Eastern Consolidated – retained by the Debtors but selected in close consultation with the Mortgagees. See generally Application to Employ Eastern Consolidated as Debtors’ Real Estate Advisor [Dkt. No. 1408].

12. As part of the marketing process, Eastern Consolidated contacted 4,732 potential purchasers. Of these, 52 signed confidentiality agreements, 11 made serious indications of interest, several conducted diligence, and one signed a letter of intent. Ultimately, the party signing the letter of intent determined to withdraw its offer for the Option. The Debtors offered Sun Life and the Med Mal Trusts the opportunity to credit bid on the Option, but both declined, with the result that the right to transfer the Option expired on November 1, 2011.

### **The Allocation Dispute**

13. To prevent the competing claims to the sale proceeds from delaying the sale, the order approving the sale (the “**Sale Order**”) directed the Debtors to hold the net sale proceeds (the “**Net Sale Proceeds**”) in escrow pending further order of the Court and transferred the competing claims to those proceeds. Sale Order ¶¶ 16, 23 [Dkt. No. 1011].<sup>2</sup> The escrow account (the “**Escrow**”) currently contains approximately \$18,457,000.00, representing the initial deposit, interest on the promissory note, and other interest.<sup>3</sup>

14. In the fall of 2011, after the claims of GE Capital had been satisfied from other assets of the estates, the Debtors entered into discussions with Sun Life concerning the proper allocation of the Net Sale Proceeds between the Collateral and those aspects of the

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<sup>2</sup>The Sale Order called for payment of the brokers who arranged the sale (Cain Brothers and Shattuck Hammond) out of the gross sale proceeds. Sale Order ¶ 16. The order approving the retention of Eastern Consolidated further called for payment of Eastern’s fees from the escrowed funds. See Order Authorizing the Debtors to Employ and Retain Eastern Consolidated as Debtors’ Real Estate Advisor ¶ 4 [Dkt. No. 1503]. In total, the brokers for the original sale and the subsequent marketing of the Option were owed \$740,000. The brokers have been paid \$745,227.42 out of estate assets (a figure that includes their reimbursable expenses), though no deductions have yet been made from the Escrow.

<sup>3</sup>A separate escrow holds certain rents collected from the Westchester Real Property following the Petition Date. This escrow contains approximately \$261,000.00.



Behavioral Health Assets that were unencumbered by the liens and security interests of Sun Life and the Med Mal Trusts. The Debtors and Sun Life each retained professionals to advise them on allocation issues: the Debtors, Scott Phillips of Healthcare Management Partners, LLC, and Sun Life, Robert Nabholz of Duff & Phelps.

15. After several months of discussions failed to produce an agreement, the parties asked the Court to appoint a mediator. By orders dated March 16, 2012 and March 23, 2012, the Court appointed Richard Toder (the “**Mediator**”) as mediator and directed the Debtors, the Committee, Sun Life and the Med Mal Monitor to appear before him to mediate their disputes. See Order Appointing Mediator [Dkt. No. 2507]; Supplemental Order Appointing Mediator [Dkt. No. 2525].

16. The mediation among the Debtors, the Committee, Sun Life and the Med Mal Monitor took place on April 24, 2012. After almost a full day of intensive bargaining with the active involvement of the Mediator, the parties reached an agreement, the terms of which are now embodied in the Settlement Agreement.

### **The Settlement Agreement**

17. The following is a summary of the salient terms of the Settlement Agreement<sup>4</sup>:

- The Sun Life Westchester Secured Claim will be compromised and allowed in the amount of \$11,375,000.00, payable in cash from the Escrow within 10 days of the effective date of the Settlement Agreement (without interest);
- Sun Life will waive and release all other claims it may hold against the Debtors’ estates, including any unsecured deficiency and adequate protection claims;
- The Med Mal Trusts will receive no distribution on account of their secured interest in the Westchester Real Property; and

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<sup>4</sup>To the extent there are any inconsistencies between this summary description and the Settlement Agreement, the Settlement Agreement and the Order approving it shall control.

- The Debtors' estates will retain the balance of the Net Sale Proceeds, i.e., the Note and the cash remaining in the Escrow after payment of the \$11,375,000.00 to Sun Life.

### **RELIEF REQUESTED**

18. The Debtors seek entry of an Order in the form attached as Exhibit A hereto and authorization to enter into and implement the terms of the Settlement Agreement.<sup>5</sup>

### **BASIS FOR RELIEF REQUESTED**

19. Bankruptcy Rule 9019(a) provides, in pertinent part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” The decision to approve a particular compromise or settlement under Rule 9019(a) is within the sound discretion of the bankruptcy court. See, e.g., In re Drexel Burnham Lambert Group, Inc., 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991).

20. “[C]ompromises are favored in bankruptcy because they minimize the costs of litigation and further the parties’ interest in expediting the administration of a bankruptcy estate.” In re 1031 Tax Grp., LLC, Bankr. No. 07-11448, Adv. No. 07-1710, 2007 WL 2455176, at \*3 (Bankr. S.D.N.Y. Aug. 23, 2007) (internal quotations and citations omitted); accord In re Iridium Operating LLC, 478 F.3d 452, 455 (2d Cir. 2007) (noting that “[i]n Chapter 11 bankruptcies, settlements . . . help clear a path for the efficient administration of the bankrupt estate,” and are therefore encouraged); accord In re Global Vision Products, Inc., 07 CV. 12628 (RDD), 2009 WL 2170253 (S.D.N.Y. July 14, 2009) (“As a general rule, however, courts favor compromises because they are ‘a normal part of the process of reorganization.’”) (internal quotations and citations omitted).

21. A bankruptcy court must approve a proposed settlement where the court finds the settlement to be fair and reasonable and in the best interests of the debtor’s estate. See

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<sup>5</sup> The Settlement Agreement attached hereto is in the form that has been agreed to among the parties. A fully executed version of the agreement will be filed shortly.

Plaza Equities LLC v. Pauker (In re Copperfield Invs.), 401 B.R. 87, 91 (Bankr. S.D.N.Y. 2009); In re Worldcom, Inc., 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006). In the Second Circuit, this analysis is guided by six factors: (i) the balance between the litigation's possibility of success and the settlement's future benefits; (ii) the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment; (iii) the paramount interests of the creditors, including each affected class's relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement; (iv) whether other parties in interest support the settlement; (v) the competency and experience of counsel supporting the settlement; and (vi) the extent to which the settlement is the product of arm's length bargaining. In re Iridium Operating LLC, 478 F.3d at 462<sup>6</sup>; see also In re East 44th Realty, LLC, No. 05 Br. 16167 (RDD), 2008 WL 217103, at \*8-12 (S.D.N.Y. Jan. 23, 2008) (applying Iridium factors and approving settlement as within the range of reasonableness); In re 1031 Tax Grp., LLC, 2007 WL 2455176, at \*3-5 (applying Iridium factors and approving settlement as fair and equitable and in the best interest of the estates)

22. "Importantly, it is not necessary for the bankruptcy court to conduct a 'mini trial' on the issue." In re WorldCom, Inc., 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006). Rather, for the Court to approve a settlement, it need only determine that the proposed settlement falls at or above the lowest point in the range of reasonableness. See In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983) (quoting Newman v. Stein, 464 F.2d 689, 693 (2d Cir. 1972)); accord In re Northwest Airlines Corp., 393 B.R. 337, 344 (Bankr. S.D.N.Y. 2008).

23. Here, an application of the Iridium factors compels the conclusion that the Settlement Agreement falls well within the range of reasonableness required by Bankruptcy Rule

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<sup>6</sup>Iridium established an additional factor relating to releases for officers and directors which is irrelevant to this particular Settlement Agreement.

9019. With respect to the first and second Iridium factors, the Debtors concluded that the majority of the value of the Behavioral Health Assets lay in the unencumbered business enterprise value of St. Vincents Westchester and the various Satellite Facilities, and not in the Westchester Real Property or the other Collateral. The Debtors asserted, among other things, that their position was supported by the failed marketing of the Option, and evidence that approximately 40% of the EBIDA of the business was attributable to Satellite Facilities on which the Mortgagees had no lien. In opposition, Sun Life asserted meaningful arguments, including that the Westchester Real Property consisted of 60-plus acres in one of the most exclusive residential communities in the area. The Debtors recognized that Sun Life's position was far from frivolous, that the business and property were in many ways unique and that proof of both sides' positions would be heavily fact-based and dependent on expert testimony.

24. Accordingly, the Debtors faced a material risk that they would not prevail on allocation issues. Full bore litigation, moreover, would have taken a minimum of several months before the Bankruptcy Court, and potentially much longer if appeals were filed. The litigation and accompanying discovery would have been costly, especially considering the number of parties with interests in the allocation dispute.

25. In contrast, the Settlement Agreement provides for the estates to receive more than 50% of the Net Sale Proceeds without litigation or delay. These proceeds will help to fund the Debtors' recently-filed chapter 11 plan that contemplates a distribution to general unsecured creditors.

26. Iridium factors three and four also support the proposed settlement. For the reasons discussed above, it is in the best interests of unsecured creditors generally that the allocation issues be resolved expeditiously, so as to facilitate distributions under the proposed

chapter 11 plan. Importantly, the Committee was an active participant in the mediation with Sun Life, is signatory to the Settlement Agreement and fully supports this Motion. The Mortgagees, who are the only other parties that could have claimed an interest in the Net Sale Proceeds are, of course, also supporters of the settlement.

27. Finally, factors five and six of the Iridium test also weigh heavily in favor of approval of the Settlement Agreement. The settlement is the culmination of approximately 6 months of negotiations among the various parties, each of whom was represented by experienced counsel who have been integrally involved in these chapter 11 cases from the very beginning. The parties were initially far apart in their positions, but following extensive arms' length negotiations, including an active and candid mediation session overseen by an effective mediator, the parties came to an agreement.

28. In sum, the Settlement Agreement is fair and reasonable, is in the best interests of the Debtors' estates and creditors, and is well within the range of reasonableness. The Settlement Agreement resolves one of the last major claims disputes and helps to fund the recently-filed consensual chapter 11 plan in these cases. As such, it represents a significant achievement and confers substantial benefits on these estates. For these reasons, the Settlement Agreement falls far above the lowest point in the range of reasonableness, is in the best interests of the Debtors' estates, their creditors and all parties-in-interest and should be approved.

#### **NOTICE**

29. No trustee or examiner has been appointed in these Chapter 11 Cases. In accordance with the First Amended Final Administrative Order Establishing Case Management and Scheduling Procedures [Docket No. 835] (as it may be further amended, the "**Case Management Order**"), 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), including counsel to the Committee, Sun Life and the Med Mal Monitor.

The Debtors submit that no other notice need be given.

**NO PREVIOUS REQUEST**

30. 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 and such other or further relief as is just.

Dated: New York, New York  
May 3, 2012

KRAMER LEVIN NAFTALIS & FRANKEL LLP

/s/ Adam C. Rogoff  
Kenneth H. Eckstein  
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New York, New York 10036  
Telephone: (212) 715-9100

*Counsel for Debtors and  
Debtors in Possession*

**Exhibit A to Motion**

**Proposed Order**

**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, et al.,	: :
	: Jointly Administered
Debtors.	: :
	: :
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**ORDER PURSUANT TO FED. R. BANKR. P. 9019 APPROVING  
SETTLEMENT STIPULATION AND AGREEMENT AMONG SAINT  
VINCENTS CATHOLIC MEDICAL CENTERS OF NEW YORK AND  
ITS DEBTOR AND NON-DEBTOR AFFILIATES, THE OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS, SUN LIFE ASSURANCE  
COMPANY OF CANADA, AND THE MED MAL TRUST MONITOR**

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 "Debtors")<sup>2</sup> in the above-referenced Chapter 11 cases (the "Chapter 11 Cases") for entry of an order pursuant to § 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving a settlement agreement (the "Settlement Agreement") by and among the Debtors, the Official Committee of Unsecured Creditors, Sun Life Assurance Company of Canada, and the Med Mal Trust Monitor, all as more fully set forth in the Motion; and the Court having subject matter jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the

<sup>1</sup>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) and SVCMC Professional Registry, Inc.



Amended Standing Order of Reference, dated January 31, 2012 (Preska, C.J.); the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; the relief requested in the Motion and the settlement of claims as set forth in the subject Settlement Agreement being fair and reasonable; due and proper notice of the Motion having been provided; the Court having reviewed the Motion and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Settlement Agreement is approved on the terms and conditions set forth therein.
3. The Debtors are authorized to take any and all actions necessary or appropriate to implement the terms of this Order.
4. This Court shall retain jurisdiction over the Parties and the Settlement Agreement with respect to any matters related to or arising from the implementation, interpretation, or enforcement of the Settlement Agreement or this Order.

Dated: New York, New York  
May \_\_, 2012

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THE HONORABLE CECELIA G. MORRIS  
CHIEF UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A TO ORDER**

**Settlement Agreement**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
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SAINT VINCENTS CATHOLIC MEDICAL	:	Case No. 10-11963 (CGM)
CENTERS OF NEW YORK, et al., <sup>1</sup>	:	
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Debtors.	:	Jointly Administered
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**SETTLEMENT STIPULATION AND AGREEMENT AMONG SAINT VINCENTS  
CATHOLIC MEDICAL CENTERS OF NEW YORK AND ITS DEBTOR AND NON-  
DEBTOR AFFILIATES, THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS, SUN LIFE ASSURANCE COMPANY OF CANADA, AND THE MED  
MAL TRUST MONITOR**

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This Settlement Stipulation and Agreement (the “Settlement Agreement”) is entered into as of May [2], 2012 by and between (A) Saint Vincents Catholic Medical Centers (“SVCMC”) and each of its affiliated debtors and debtors-in-possession (each, a “Debtor” and collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) on behalf of the Debtors and the bankruptcy estates in the Chapter 11 Cases, (B) the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the “Committee”) on behalf of the Committee and the unsecured creditors in the Chapter 11 Cases, (C) Sun Life Assurance Company of Canada (“Sun Life”), and (D) the monitor of those certain medical malpractice trusts (collectively, the “Med Mal Trusts”) (the “Med Mal Monitor”), on behalf of the Med Mal Monitor and the beneficiaries of the Med Mal Trusts. The Debtors, the Committee, Sun Life and

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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

the Med Mal Monitor are referred to hereinafter as the “Parties”. This Settlement Agreement is based upon the following facts.

1. In the fall of 2010, the Debtors sold their Westchester behavioral health hospital (“St. Vincents Westchester”) and certain other related behavioral health assets (together with St. Vincents Westchester, the “Behavioral Health Assets”) to St. Joseph’s Medical Center for \$18 million in cash, a \$6 million promissory note (the “Note”), and the assumption of certain liabilities (collectively, the “Sale Proceeds”).

2. Several creditors asserted security interests in various aspects of the Behavioral Health Assets prior to their sale, including:

- General Electric Capital Corporation. General Electric Capital Corporation (“GE Capital”), which was both a pre- and post-petition lender, held first and second liens on specified assets of St. Vincents Westchester, as well as mortgages on certain satellite facilities related thereto.
- Sun Life. Sun Life held a first priority mortgage and security agreement and an assignment of leases (the “Sun Life Liens”) that covered the main 67-acre Harrison, New York campus of St. Vincents Westchester and the improvements thereon (the “Westchester Real Property”), as well as certain personalty related thereto (together with the Westchester Real Property, the “Sun Life Collateral”). Sun Life filed a proof of claim asserting that, as of the Petition Date, approximately \$16.3 million in principal was outstanding under the note secured by the Sun Life Collateral, with additional amounts accruing subsequent to the Petition Date (the “Sun Life Westchester Secured Claim”). Sun Life also held an adequate protection lien as a result of the post-petition financing by GE Capital.
- Med Mal Trusts. The plan of reorganization in the Debtors’ first chapter 11 bankruptcy granted the Med Mal Trusts a second priority mortgage (the “Med Mal Trusts Liens”) on the Westchester Real Property (the “Med Mal Collateral”). The Med Mal Trusts claim to have been owed approximately \$120 million as of the Petition Date.

3. In the fall of 2011, after the claims of GE Capital were satisfied from other assets of the Debtors' estates, discussions commenced among the Parties with respect to the proper allocation of the Sale Proceeds among the Parties.

4. The Debtors are currently holding approximately \$18,718,000.00 in Sale Proceeds and other amounts in escrow accounts (the "Escrow") subject to the claims of Sun Life and the Med Mal Trusts and payment of certain broker fees.

5. By orders dated March 16, 2012 and March 23, 2012, the Court appointed Richard Toder (the "Mediator") as mediator and directed the Parties to appear before him to mediate their disputes regarding the proper allocations of the Sale Proceeds.

6. The mediation among the Parties took place on April 24, 2012, and resulted in a compromise, the terms of which are set forth hereinbelow.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED THAT, subject to Bankruptcy Court approval:

1. This Settlement Agreement shall become effective on the date that an order entered by the Bankruptcy Court approving the terms set forth herein becomes final and non-appealable (the "Effective Date").

2. The Sun Life Westchester Secured Claim shall be compromised and allowed in the amount of \$11,375,000.00. The Sun Life Westchester Secured Claim shall be the only secured claim allowed against and paid from the Sale Proceeds.

3. Within 10 (ten) days of the Effective Date, the Debtors shall remit to Sun Life \$11,375,000.00 in cash (the "Sun Life Payment") from the Escrow in full satisfaction of the Sun Life Westchester Secured Claim.

4. Upon Sun Life's receipt of the Sun Life Payment, (i) all remaining contents of the Escrow and (ii) the Note, shall be released to the Debtors' estates for use in the general purposes in these cases, including payment of broker fees and to fund distributions pursuant to any confirmed plan of reorganization in the Chapter 11 Cases.

5. Upon Sun Life's receipt of the Sun Life Payment, Sun Life, on behalf of itself and its predecessors, successors, assigns, attorneys, representatives and other agents, hereby waives and releases any and all rights and claims, liabilities, cross-claims, counterclaims and demands it has, had, or might have of any kind or any nature, whatsoever, whether known or unknown, whether legal or equitable, whether matured or contingent, whether liquidated or unliquidated against, liabilities on, liens on, obligations of and against each of the the Debtors, their estates or any of their assets or properties, including, without limitation, the Sun Life Liens, proof of claim number 185 and any deficiency claims and adequate protection claims or liens against the Debtors and their estates; provided, however, this release shall not affect (a) the obligations under this Settlement Agreement, (b) any payment to which Sun Life's assigns may be entitled by reason of that certain promissory note, mortgage and security agreement and assignment of leases with respect to the property and improvements commonly known as the Staff House or (c) any payment which Sun Life may be entitled to receive from its assigns of that certain promissory note, mortgage and security agreement and assignment of leases with respect to the property and improvements commonly known as the Staff House. The Debtors, the Debtors' claims and noticing agent, Epiq Systems, and the Clerk of this Court are authorized to take any and all actions that are necessary or appropriate to give effect to this Order.

6. The Debtors, on behalf of themselves and the bankruptcy estates in the Chapter 11 Cases (inclusive of creditors and all other persons or entities claiming through or under the

Debtors and the estates) and the Committee hereby waive and release Sun Life and its predecessors, successors, assigns, attorneys, representatives and other agents from any and all claims, rights, liabilities, cross-claims, counterclaims, demands, defenses or other causes of action it or they has, have, had or might have of any kind or any nature, whatsoever, whether known or unknown, whether legal or equitable, whether matured or contingent, whether liquidated or unliquidated including without limitation, any arising from or with respect to sections 502, 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551 and 553 of title 11 of the United States Code, or under similar or related state or federal statutes and common law, including any state fraudulent transfer or fraudulent conveyance laws.

7. Upon Sun Life's receipt of the Sun Life Payment, the Med Mal Trusts Liens shall be released and the Med Mal Trusts will receive no distribution on account of their secured interest in the Med Mal Collateral. Nothing contained in this Settlement Agreement shall affect the Med Mal Trusts' right to receive distributions on account of other claims they hold against the Debtors' estates, certain of which will be addressed in accordance with the terms of that certain separate settlement dated as of April 20, 2012, among the Debtors, the Committee and the Med Mal Monitor (subject to the approval of that settlement pursuant to the Debtors' Chapter 11 Plan dated April 24, 2012).

8. This Settlement Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to the rules of conflict of laws of any other jurisdiction that would cause any laws other than the laws of the State of New York to be applied.

9. The Bankruptcy Court shall retain jurisdiction to hear and determine all matters arising from or relating to this Settlement Agreement.

10. This Settlement Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and may not be amended or modified in any manner except by a writing signed by each of the Parties or their counsel and approved by the Bankruptcy Court.

11. Each of the Parties hereto represents that it is empowered, and has taken all actions necessary to enable it to enter into, and perform in accordance with, this Settlement Agreement. Each of the undersigned counsel represents that it is authorized to execute this Settlement Agreement on behalf of its respective client.

12. This Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

13. The Parties agree and represent that they are entering into this Settlement Agreement without reliance on any statement, representation or promise of any other Party, except as expressly set forth herein.



14. The Parties agree and represent that this Settlement Agreement is a compromise and does not constitute, and shall not be construed as, an admission of any fact or liability or a concession of any law.

SAINT VINCENTS CATHOLIC MEDICAL CENTERS  
OF NEW YORK

By \_\_\_\_\_  
Title:  
Dated:

555 6TH AVENUE APARTMENT OPERATING  
CORPORATION

By \_\_\_\_\_  
Title:  
Dated:

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GERIATRIC CARE, INC.

By \_\_\_\_\_  
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CHAIT HOUSING DEVELOPMENT CORPORATION

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

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THE MED MAL TRUST MONITOR

By \_\_\_\_\_  
Title:  
Dated:

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SUN LIFE ASSURANCE COMPANY OF CANADA

By \_\_\_\_\_  
Title:  
Dated:

\*\*\*

THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS

By \_\_\_\_\_  
Title:  
Dated:

**EXHIBIT B to Motion**

**Settlement Agreement**

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, et al., <sup>1</sup>	:	
	:	
Debtors.	:	Jointly Administered
	:	
-----	X	

**SETTLEMENT STIPULATION AND AGREEMENT AMONG SAINT VINCENTS  
CATHOLIC MEDICAL CENTERS OF NEW YORK AND ITS DEBTOR AND NON-  
DEBTOR AFFILIATES, THE OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS, SUN LIFE ASSURANCE COMPANY OF CANADA, AND THE MED  
MAL TRUST MONITOR**

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This Settlement Stipulation and Agreement (the “Settlement Agreement”) is entered into as of May [2], 2012 by and between (A) Saint Vincents Catholic Medical Centers (“SVCMC”) and each of its affiliated debtors and debtors-in-possession (each, a “Debtor” and collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) on behalf of the Debtors and the bankruptcy estates in the Chapter 11 Cases, (B) the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the “Committee”) on behalf of the Committee and the unsecured creditors in the Chapter 11 Cases, (C) Sun Life Assurance Company of Canada (“Sun Life”), and (D) the monitor of those certain medical malpractice trusts (collectively, the “Med Mal Trusts”) (the “Med Mal Monitor”), on behalf of the Med Mal Monitor and the beneficiaries of the Med Mal Trusts. The Debtors, the Committee, Sun Life and

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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

the Med Mal Monitor are referred to hereinafter as the “Parties”. This Settlement Agreement is based upon the following facts.

1. In the fall of 2010, the Debtors sold their Westchester behavioral health hospital (“St. Vincents Westchester”) and certain other related behavioral health assets (together with St. Vincents Westchester, the “Behavioral Health Assets”) to St. Joseph’s Medical Center for \$18 million in cash, a \$6 million promissory note (the “Note”), and the assumption of certain liabilities (collectively, the “Sale Proceeds”).

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