IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

IN RE: COLOPLAST CORP. PELVIC SUPPORT
SYSTEMS PRODUCTS LIABILITY LITIGATION MDL 2387

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER # 88
(ORDER RE: ZIMMERMAN REED QUALIFIED SETTLEMENT FUND)

Pending is an Unopposed Motion for Approval of the Zimmerman Reed Qualified Settlement Fund, filed February 18, 2016. [ECF No. 461]. Zimmerman Reed LLC, as counsel for certain plaintiffs in this MDL 2387, hereby moves for entry of an Order to aid in the efficient processing and administration of a confidential settlement agreement (the "Settlement Agreement") between Zimmerman Reed LLC and Coloplast Corp. ("COLOPLAST") (Zimmerman Reed LLC and COLOPLAST, together, the "Parties") to resolve the claims of certain claimants against COLOPLAST relating to COLOPLAST pelvic implants. In particular, the Motion seeks an Order: (1) approving the escrow agreement ("Zimmerman Reed Escrow Agreement"), attached hereto as Exhibit A, which forms a settlement escrow account ("Zimmerman Reed Settlement Escrow Account"), (2) retaining continuing jurisdiction and supervision over the Zimmerman Reed Settlement Escrow Account, and (3) determining that the Zimmerman Reed Settlement Escrow Account is a "qualified settlement fund" within the meaning of section 468B of the Internal Revenue Code of 1986, as amended ("Code") and Treasury Regulation sections 1.468B-1, *et seq*. ("Regulations").

The Court, having reviewed the Motion and the Zimmerman Reed Escrow Agreement, and

finding good and sufficient cause therefor, hereby **FINDS** and **ORDERS** as follows:

1) The Unopposed Motion is **GRANTED;**

2) The terms of the Zimmerman Reed Escrow Agreement are hereby approved; and

3) The Zimmerman Reed Settlement Escrow Account constitutes a qualified settlement fund within the meaning of section 468B of the Internal Revenue Code of 1986, as amended (the "Code") and Treasury Regulation sections 1.468B-1, *et seq*. The Court further retains continuing jurisdiction and supervision over the Zimmerman Reed Settlement Escrow Account, in accordance with the terms of the Zimmerman Reed Escrow Agreement.

The Court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2387 and it shall apply to each member related case previously transferred to, removed to, or filed in this district, which includes counsel in all member cases up to and including civil action number 2:16-cv-01563. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this Court, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the Court. The orders may be accessed through the CM/ECF system or the Court's website at www.wvsd.uscourts.gov.

ENTER: February 23, 2016

JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

THE ZIMMERMAN REED ESCROW AGREEMENT

The Zimmerman Reed Escrow Agreement (the "Escrow Agreement") is entered into and shall be effective as of February __17__, 2016, by and among Zimmerman Reed LLP ("Zimmerman Reed"); Amegy Bank a division of ZB, N.A., in its capacity as escrow agent (the "Escrow Agent"); and Scott Freeman, in his capacity as administrator (the "Administrator') (collectively, the "Parties").

RECITALS

WHEREAS, Coloplast Corp, et al (collectively, "Coloplast") and the law firm of Zimmerman Reed entered into a confidential settlement agreement (the "Settlement Agreement") on behalf of certain claimants (collectively, "Claimants," and each a "Claimant") represented by Zimmerman Reed for purposes of participating in the Settlement Agreement;

WHEREAS, the Settlement Agreement provides that Zimmerman Reed may create an individual escrow account titled the Zimmerman Reed Settlement Escrow Account, which shall be structured and operated as a "qualified settlement fund" under section 468B(d)(2) of the Internal Revenue Code and Section 1.468-B-1, *et seq.*, of the Treasury Regulations, provided that the Zimmerman Reed Settlement Escrow Account complies with the terms and provisions of the Settlement Agreement;

WHEREAS, Zimmerman Reed has received approval from Coloplast to create the Zimmerman Reed Settlement Escrow Account, which is being established pursuant to this Escrow Agreement;

WHEREAS, this Escrow Agreement sets forth the terms and conditions whereby the funds that are deposited into the Zimmerman Reed Settlement Escrow Account will be retained, invested, and distributed therefrom;

WHEREAS, the Zimmerman Reed Settlement Escrow has been approved by, and is subject to the continuing jurisdiction of, the United States District Court for the Southern District of West Virginia (Charleston Division) (the "Court"); and

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

AGREEMENT

I. PURPOSE OF THE ESCROW AGREEMENT

The purpose of this Escrow Agreement shall be to facilitate the performance of the payments otherwise distributable to Zimmerman Reed, as agent of the Claimants, under the Settlement Agreement.

II. APPOINTMENT OF ESCROW AGENT

Amegy Bank, a division of ZB, N.A., is hereby appointed to act as Escrow Agent in accordance with the terms hereof, and Amegy Bank a division of ZB, N.A. hereby accepts such appointment. The Escrow Agent shall have all the rights, powers, protections, duties, and obligations expressly provided herein.

III. APPOINTMENT OF ADMINISTRATOR

Scott Freeman is hereby appointed to act as Administrator in accordance with the terms hereof, and he hereby accepts such appointment. The Administrator shall have all the rights, powers, protections, duties, and obligations expressly provided herein.

IV. DEPOSITS INTO THE ZIMMERMAN REED SETTLEMENT ESCROW ACCOUNT

To further the purposes of this Escrow Agreement, Amegy Bank a division of ZB, N.A., agrees to accept the funds that are deposited into the Zimmerman Reed Settlement Escrow Account, and any earnings thereon. The Escrow Agent and Administrator assume such liability and responsibility for the administration and distribution of the Escrowed Funds as set forth in this Escrow Agreement.

V. DISTRIBUTION OF ESCROWED FUNDS

A. Distribution of Escrowed Funds. The Escrow Agent shall distribute the Escrowed Funds solely in the manner set forth in this Section V.A ,upon receipt of a request approved pursuant to signature by an authorized person for Zimmerman Reed (an "Authorized Person") and, where specified below, the Administrator:

1. Within ten (10) days of receipt of a Certified Claims Group Payment List which has been approved by counsel for Coloplast, the Escrow Agent shall, subject to the availability of funds deposited pursuant to Section IV:
   a. Distribute from the Zimmerman Reed Settlement Escrow Account (1) the amount specified, if any, to the MDL 2387 common benefit fund; and (2) the amount specified to Claimants' Counsel, as agent of the Claimants (except where such amounts are subject to structured settlements or a special needs trust in accordance with Section VI); and
   b. Retain or transfer the specified lien holdback amounts from the Zimmerman Reed Settlement Escrow Account, as necessary.

2. For distributions to fund "structured settlements," as set forth in Section VI.A, below, payment shall be made to the Assignee as set forth in the request approved by an Authorized Person and the Administrator, which contains a certification by the Administrator that the requirements of Section VI.A have been satisfied;

3. For distributions to fund "special needs trusts," as set forth in Section VI.B, below, payment shall be made to the Special Needs Trust as set forth in the request approved by an Authorized Person and the Administrator, which contains a certification by the Administrator that the requirements of Section VI.B have been satisfied;

4. For distributions to pay the Escrow Agent or the Administrator for fees, costs, and expenses permitted under this Escrow Agreement, including professional fees, costs and expenses, including such costs associated with tax preparation, payment, reporting, and withholding by the Administrator as described in Section VIII, payment shall be made to such payees as set forth in a request approved by an Authorized Person;

5. For distributions to Claimants in the amounts due and owing to them from the Zimmerman Reed Settlement Escrow Account available for distribution pursuant to the terms of the Settlement Agreement. The Escrow Agent shall not make any distribution to an incompetent person, including payment of attorney fees and expenses, without an order from a court of competent jurisdiction approving the disbursement.

6. For all other distributions pursuant to Zimmerman Reed Settlement Escrow Agreement, payment shall be made directly to Zimmerman Reed, or to a client trust account established by Zimmerman Reed, in accordance with a request approved by an Authorized Person.

B. Authorized Persons. The names of the Authorized Persons, together with their specimen signatures, shall be provided by Zimmerman Reed to the Escrow Agent, and may be amended from time to time.

VI. DISTRIBUTIONS FOR STRUCTURED SETTLEMENTS OR TO SPECIAL NEEDS TRUSTS

A. Structured Settlements. The Escrow Agent shall, at the election of a Claimant or Zimmerman Reed (for the purposes of this Section VI.A, a "Structured Settlement Electing Party") distribute specified amounts pursuant to instructions received under Section V.A.1, in the form of a Structured Settlement,[1] provided that the Administrator provides the certification described in Section V.A.1 that the following requirements are satisfied:

1. The Administrator, on behalf of the Zimmerman Reed Settlement Escrow

[1] A Structured Settlement means that the Escrow Agent, on behalf of the Zimmerman Reed Settlement Escrow Account, agrees to pay amounts otherwise payable from the Zimmerman Reed Settlement Escrow Account in a lump sum in the form of periodic payments over time ("Periodic Payments"), conditioned upon the Escrow Agent's assignment of such Periodic Payment obligation to a third-party assignee (the "Assignee"), which then funds the obligation to make Periodic Payments through the purchase of a funding asset from a related issuer or custodian of such funding asset.

Account, has assigned all obligations of the Zimmerman Reed Settlement Escrow Account to make Periodic Payments to the Assignee through the Administrator's execution of a structured settlement assignment and release form which (a) has already been properly executed by all required parties to the Structured Settlement, and (b) contains no language inconsistent with this Escrow Agreement, the Settlement Agreement or the Release; and

2. The Assignee shall be the sole party to whom the Administrator, on behalf of the Zimmerman Reed Settlement Escrow Account, or the Zimmerman Reed Settlement Escrow Account owes the obligation to pay the amount being requested by Zimmerman Reed to fund the Structured Settlement for all purposes, including, as applicable, section 130(c) of the Code or Treasury Regulation section 1.461-1(g)(1)(ii), and upon assignment by the Administrator and payment of such amount by the Escrow Agent to the Assignee, the Structured Settlement Electing Party has agreed to irrevocably give up any right, under any circumstances, to seek from the Administrator, the Escrow Agent, the Zimmerman Reed Settlement Escrow Account, or the Released Parties (as such term is defined in the Settlement Agreement) (a) any further payments with regard to the Structured Settlement under all circumstances, including in any circumstances where, for any reason, the applicable party fails to receive all the future Periodic Payments at any time, (b) any further payments with respect to any action of the Administrator, the Escrow Agent, the Zimmerman Reed Settlement Escrow, the Settlement Escrow, or the Released Parties related to the Structured Settlement, as well as (c) any further payments regarding any tax, financial or other consequences of the Structured Settlement.

B. Special Needs Trust. The Escrow Agent shall, at the election of a Claimant or Zimmerman Reed (for the purposes of this Section VI.B, a "Special Needs Trust Electing Party") distribute specified amounts pursuant to instructions received under Section V.A.3, to a trust which Zimmerman Reed has designated as a Special Needs Trust,[2] provided that the Administrator provides the certification described in Section V.A.3 that the following requirements are satisfied:

1. The Special Needs Trust (a) has been properly executed, and (b) contains no language inconsistent with this Escrow Agreement, the Settlement Agreement or the Release; and

2. The Special Needs Trust shall be the sole party to whom the Administrator, on behalf of the Zimmerman Reed Settlement Escrow Account, or the Zimmerman Reed Settlement Escrow Account owes the

[2] A Special Needs Trust is a trust established for the sole benefit of a Claimant, with the intent that the assets held in such trust not be considered for purposes of Claimant's qualification for certain governmental benefits.

obligation to pay the amount being requested pursuant to V.A.3 to fund the Special Needs Trust for all purposes, including, as applicable, Treasury Regulation section 1.461-1(g)(1)(ii), and upon payment of such amount to the Special Needs Trust by the Escrow Agent, the Special Needs Trust Electing Party has agreed to irrevocably give up any right, under any circumstances, to seek from the Administrator, the Escrow Agent, the Zimmerman Reed Settlement Escrow Account, or the Released Parties (as such term is defined in the Settlement Agreement) (a) any further payments with regard to the Special Needs Trust under all circumstances, including in any circumstances where, for any reason, the beneficiary fails to receive any or all of the payments from the Special Needs Trust or where the assets of the Special Needs Trust are considered for purposes of qualification for certain governmental benefits, (b) any further payments with respect to any action of the Administrator, the Escrow Agent, the Zimmerman Reed Settlement Escrow, or the Released Parties related to the Special Needs Trust, as well as (c) any further payments regarding any tax, financial or other consequences of the Special Needs Trust, including qualification of the beneficiary of the Special Needs Trust to receive certain governmental benefits.

VII. INVESTMENT OF ESCROWED FUNDS

A. Investment; Preservation of Principal. The Escrow Agent shall invest and reinvest from time to time the Escrowed Funds in: (i) any obligations of, or any obligation guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof; or (ii) U.S. dollar denominated deposit accounts with domestic commercial or national banks, including the Escrow Agent or an affiliate of the Escrow Agent, that have a short term issuer rating on the date of purchase of "A-1" or better by S&P or "Prime-1" or better by Moody's and maturing no more than 360 days after the date of purchase (provided that ratings on holding companies are not considered as the rating of the bank); or (iii) money market accounts or money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Securities Act, and rated "AAAm" or "AAAm-G" or better by S&P, and "Aaa," "Aal" or "Aa2" if rated by Moody's, including any mutual fund for which the Escrow Agent or an Affiliate of the Escrow Agent serves as investment manager, shareholder servicing agent, and/or custodian, as directed in writing by the Administrator in a form to be provided by the Escrow Agent. Any investment losses realized by investment of Escrowed Funds or any portion thereof shall be charged to the Escrowed Funds. To the extent the Escrow Agent invests any funds in the manner provided for in this Section VII, no Party hereto (including the Escrow Agent) shall be liable for any loss(es) which may be incurred by reason of any such investment (or reinvestment). Such funds should be invested such that the following investment policy is implemented, as appropriate: (i) safety of principal; (ii) zero bank balance exposure through use of custodial/trust accounts (to avoid the risk of bank deposit forfeiture); and (iii) zero sweep

disbursement accounts.

B. Use of Interest or Investment Income. All interest on or income realized by investment of the Escrowed Funds or any portion hereof shall be accumulated and added to the Escrowed Funds, and further provided that any such interest or investment income shall be used to pay for distributions described in Section V.A.4.

VIII. TAX MATTERS

A. Settlement Escrow as a Qualified Settlement Fund. The Settlement Escrow is structured and shall be operated in a manner so that it qualifies as a "qualified settlement fund" under section 468B of the Internal Revenue Code of 1986, as amended (the "Code") and Treasury Regulation sections 1.468B-1, *et seq.* Specifically, (1) the establishment of the Settlement Escrow under the terms and conditions of this Escrow Agreement is subject to Court approval, and no deposits into or distributions from the Settlement Escrow shall be made until such Court approval is obtained; (2) the Settlement Escrow is subject to the continuing jurisdiction and supervision of the Court; (3) the Settlement Escrow is established to resolve or satisfy claims of alleged tort or violation of law; and (4) the Zimmerman Reed Settlement Escrow Account is an escrow account, and its assets are, and will be, segregated from the general assets of the transferor and deposited herein. The Administrator shall serve as the "administrator" within the meaning of Regulation Section 1.468B-2(k)(3). The Administrator shall take any action or cause the Zimmerman Reed Settlement Escrow Account to take any action necessary to create and maintain its status as a qualified settlement fund, and the Administrator agrees not to take any action that will adversely affect the qualification of the Zimmerman Reed Settlement Escrow Account as a qualified settlement fund.

B. Tax Preparation, Payment, Reporting, and Withholding Requirements. The Administrator shall be responsible for the timely and proper performance of the undertakings specified in the regulations promulgated under section 468B of the Code, including, but not limited to, the obtaining of an employer identification number for the Zimmerman Reed Settlement Escrow Account; the filing of all required federal, state or local tax and information returns in accordance with the provisions of Treasury Regulation section 1.468B-2(k)-(l); any required withholding of tax; the payment of any federal, state or local taxes (including estimated taxes) and associated tax-related penalties and interest for which the Zimmerman Reed Settlement Escrow Account may be liable, with such amounts payable subject to Section V.A.4; responding to any questions from or audits regarding such taxes by the Internal Revenue Service or any state or local tax authority; and compliance with any other tax-related requirements. The Administrator may retain and compensate independent, certified public accountants to consult with and advise the Administrator with respect to the preparation of any and all appropriate income tax returns, information returns or

compliance withholding requirements, with such amounts payable subject to Section V.A.4.

C. Savings Provision. Notwithstanding anything herein to the contrary, in the event that any portion of this Escrow Agreement shall at any time be considered cause for the Escrow Account to fail to qualify as a qualified settlement fund section 468B of the Code together with any and all Treasury Regulations and Internal Revenue Service Notices, Announcements and directives thereunder, such offending portion of this Escrow Agreement shall be considered null, void, and of no effect, without any action by any court or by the Administrator, so that this Escrow Account continues to qualify as a qualified settlement fund in compliance with section 468B of the Code and the applicable administrative authority and announcements thereunder. In the event that this Section VIII.C applies to render an offending Section null, void, or of no effect, the remainder of this Escrow Agreement shall not be affected thereby, and each remaining term and Section of the Agreement shall be valid and enforced to the fullest extent permitted by law.

IX. ADDITIONAL MATTERS RELATING TO DUTIES, LIABILITIES, AND RIGHTS OF THE ESCROW AGENT AND ADMINISTRATOR

A. Compensation. The Administrator will, in accordance with Section V.A.4, be paid such fees, costs, and expenses, including reasonable attorneys' fees and expenses suffered or incurred in connection with the performance of their respective duties and obligations hereunder, including without limitation, accountancy and tax return preparation fees incurred in connection with the performance of the duties set forth in Section VIII hereof and all actions necessary or advisable with respect thereto (including, without limitation, the payment of any professional fees and expenses related thereto).

B. Preparation of Financial Statements and Financial Records. The Escrow Agent shall, within ten days of any request by Zimmerman Reed or the Administrator, provide financial statements for the Zimmerman Reed Settlement Escrow Account, including receipts, disbursements and earnings. Complete copies of such financial records shall be provided to Zimmerman Reed and the Administrator.

C. No Implied Duties. This Escrow Agreement expressly and exclusively sets forth the duties of the Escrow Agent and Administrator with respect to any and all matters pertinent hereto and no implied duties, responsibilities, or obligations (including, without limitation, any fiduciary or similar obligations) shall be read into this Escrow Agreement against the Escrow Agent or Administrator.

D. Indemnification. The Escrow Agent, the Administrator and their respective officers, directors, employees and agents (collectively, "Indemnified Parties") shall be indemnified solely by the Escrowed Funds, and held harmless against, any and all claims, suits, actions, proceedings, investigations, judgments,

deficiencies, damages, settlements, liabilities and expenses (including reasonable legal fees and expenses of attorneys) as and when incurred, arising out of or based upon any act, omission, alleged act or alleged omission by the Indemnified Parties or any other cause, in any case in connection with the acceptance of, or performance or non-performance by the Indemnified Parties of, any of the Indemnified Parties' duties under this Escrow Agreement, except as a result of the Indemnified Parties' bad faith, willful misconduct or gross negligence.

E. Notices. The Escrow Agent shall not be responsible for nor shall it be its duty to notify any party hereto or any other party interested in this Escrow Agreement of any payment required or maturity occurring under this Escrow Agreement or under the terms of any instrument deposited therewith unless such notice is explicitly provided for in this Escrow Agreement.

F. Liquidation of Investments. The Escrow Agent shall have the right to liquidate any investment held in order to provide funds necessary to make required payments under this Escrow Agreement. The Escrow Agent shall have no liability as a result of any liquidation of any investment prior to its maturity when that liquidation is necessary (to be determined in the Escrow Agent's sole discretion) to provide funds to make required payments under this Escrow Agreement, except to the extent that such investment has been made in violation of Section VII.

G. Validity of Instructions. Escrow Agent shall not be liable for the sufficiency, correctness, or genuineness as to form, manner of execution, of validity of any instrument deposited, or instruction given, nor as to the identity, authority or rights of any person executing the same, except as above provided. Except as limited pursuant to Section IX.D, the Escrow Agent shall be protected in conclusively relying and acting upon any document which the Escrow Agent in good faith believes to be genuine and what it purports to be, including, without limitation, authorizations regarding release, disbursement or retention of the Escrowed Funds pursuant to Section V.

H. Release of Escrow Agent. The retention and distribution of the Escrowed Funds in accordance with the terms and provisions of this Escrow Agreement shall fully and completely release Escrow Agent from any and all further obligations or liabilities under this Escrow Agreement, except to the extent provided in Section IX.D.

I. Resignation and Removal of Escrow Agent; Appointment of Successor.

1. The Escrow Agent or any successor may resign by a written notice delivered to Zimmerman Reed specifying the effective date of such resignation, which date shall not be earlier than one hundred twenty (120) days following the receipt by Zimmerman Reed of the notice of resignation. Such resignation shall take effect on the date specified on the

notice of resignation, unless a successor escrow agent has been appointed in accordance with the provisions of this Section IX.I and has accepted such appointment on an earlier date, in which case such resignation shall take effect immediately upon receipt by such successor escrow agent of the Escrowed Funds. The Escrow Agent may be removed by Zimmerman Reed, with or without cause at any time upon thirty (30) days' prior written notice to Escrow Agent, which notice may be waived by Escrow Agent, and the Escrow Agent's removal shall be effective upon the expiration of such thirty (30) days or upon the Escrow Agent's waiver of such notice.

2. Appointment of Successor Escrow Agent. If at any time Escrow Agent shall resign, be removed, or otherwise become incapable of acting as escrow agent pursuant to this Escrow Agreement, or if at any time a vacancy shall occur in the office of Escrow Agent for any other cause, a successor agent meeting the requirements set forth in Section IX.J, shall be appointed by Zimmerman Reed by a written instrument delivered to the successor agent. Upon the appointment and acceptance of any successor agent hereunder, Escrow Agent shall transfer the Escrowed Funds to its successor.

J. Qualifications of Escrow Agent. The Escrow Agent, including any successor Escrow Agent, shall at all times be a bank, savings and loan association, or trust company in good standing, organized and doing business under the laws of the United States of America or a State of the United States of America, having a net worth of not less than Five Hundred Million ($500,000,000), and shall be authorized under such laws to enter into and perform this Escrow Agreement. If the Escrow Agent at any time ceases to have the foregoing qualifications, Escrow Agent shall give notice of resignation in accordance with Section IX.I and a qualified successor escrow agent or disbursing agent shall be appointed in accordance with Section IX.I.

X. TERMINATION OF SETTLEMENT ESCROW

The Settlement Escrow will terminate after all funds deposited in it, together with all interest earned thereon, are disbursed in accordance with the provisions of Section V (the "Termination"). Upon Termination of the Settlement Escrow in accordance with this Section X, Escrow Agent shall be relieved of any and all further obligations and released from any and all liability under this Escrow Agreement, except as otherwise specifically provided herein.

XI. MISCELLANEOUS

A. Notices. Any notice of other communication hereunder must be given in writing and either: (i) delivered in person; (ii) transmitted by telefax or other telecommunications mechanism, provided that any notice to be given is also mailed as provided in clause (iii); (iii) mailed by registered, express, or certified

mail, postage prepaid return receipt requested; or (iv) delivered by a generally recognized courier or messenger service that provides written acknowledgement of receipt by addressee, postage prepaid as follows:

If to Zimmerman Reed, to:

Carolyn Anderson
Managing Partner
Zimmerman Reed LLP
1100 IDS Center, 80 South 8th Street
Minneapolis, MN 55402

If to Escrow Agent, to:

Amegy Bank, a division of ZB, N.A.
440 Post Oak Parkway
5th Floor
Houston, TX 77027

If to Administrator, to:

Scott Freeman
The Settlement Alliance
5847 San Felipe Street
Suite 4550
Houston, TX 77057

or to such other address or to such other person as any Party shall have last designated by notice to the other Party. Each such notice or other communication shall be deemed received hereunder; (1) if given by telecommunication, when transmitted to the applicable number as specified in (or pursuant to) this Section; (2) if given by mail or courier service, five business days after such communication is dispatched, addresses as aforesaid; or (3) if given by any other means, when actually received at such address.

B. Jurisdiction. The Parties acknowledge that the Court shall retain jurisdiction over the implementation, enforcement, and performance of this Escrow Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Escrow Agreement or to the applicability of this Escrow Agreement shall be governed by and interpreted according to the substantive laws of the State of West Virginia without regard to its choice of law or conflict of laws principles.

C. Entire Agreement. This Escrow Agreement constitutes the entire agreement and understanding of the Parties hereto in respect of the matters discussed herein. Any modification of this Escrow Agreement or any additional obligations

assumed by any party hereto shall be binding only if evidenced by a writing signed by each of the parties hereto. This Escrow Agreement shall be construed so as to be consistent with the terms of the Settlement Agreement and, in the event of any conflict between the terms of this Escrow Agreement and the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.

D. Assignment. This Agreement is binding upon and will inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but will not be assignable, by operation of law or otherwise, by any Party hereto without the prior written consent of the other Party.

E. Sections and Other Headings. Sections or other headings contained in this Escrow Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Escrow Agreement.

F. Amendments; Waivers. All Parties must approve any amendment to this Escrow Agreement in writing. Any waiver of any right or remedy provided for in this Escrow Agreement requires the consent of the Party waiving such right or remedy. Every amendment or waiver of any provision of this Escrow Agreement must be made in writing and designated as an amendment or waiver, as appropriate. No failure by any party to insist on the strict performance of any provision of this Escrow Agreement or to exercise any right or remedy hereunder, will be deemed a waiver of such performance right or remedy or of any other provision of this Escrow Agreement. This Escrow Agreement shall not be modified or amended in any way that could jeopardize, impair, or modify the Escrow Account's qualified settlement fund status.

G. Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Escrow Agreement.

H. Severability. If any provision of this Escrow Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties to the extent possible. In any event, all other provisions of this Escrow Agreement will be deemed valid and enforceable to the extent possible.

I. Force Majeure. Notwithstanding anything contained in the Escrow Agreement to the contrary, the Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, without limitation, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility).

J. Confidentiality. All information disclosed by any Party (or its representatives), whether before or after the date hereof, in connection with the transactions contemplated by or the discussion and negotiations preceding this Escrow Agreement, to any other Party (or its representatives) will be kept confidential by such other Party and its representatives and will not be used by any such persons other than as contemplated by this Escrow Agreement, expect to the extent that such information: (a) was known by the recipient when received; (b) is or hereafter becomes lawfully obtainable from other sources; (c) is necessary or appropriate to disclose to a governmental entity having jurisdiction over the Parties, or as may otherwise be required by applicable law or by the Court; or (d) to the extent such duty as to confidentiality is waived in writing by the other Party.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Escrow Agreement to be executed on the day and year first above written.

SO AGREED ON BEHALF OF ZIMMERMAN REED ~~LLC~~ LLP:

By: Carolyn Anderson

Carolyn Anderson
Managing Partner
1100 IDS Center, 80 South 8th Street
Minneapolis, MN 55402

SO AGREED ON BEHALF OF AMEGY BANK, a division of ZB, N.A., AS ESCROW AGENT

By: Julie Gaston
Name: Julie Gaston
Title: SVP/Manager
Address: 4400 Post Oak Parkway
Houston, Tx 77027

SO AGREED ON BEHALF OF SCOTT FREEMAN, AS ADMINISTRATOR

By: Scott A. Freeman

Scott Freeman
The Settlement Alliance
5847 San Felipe Street
Suite 4550
Houston, TX 77057