

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

**VETERINARY CARE, INC.,
D/B/A VITALPET, et al.**

Debtors.¹

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Case No. 19-35736

Jointly Administered

**NOTICE OF EFFECTIVE DATE OF FIRST AMENDED JOINT
COMBINED CHAPTER 11 PLAN AND DISCLOSURE STATEMENT
OF VETERINARY CARE, INC. AND TVET MANAGEMENT LLC**

PLEASE TAKE NOTICE that on December 17, 2020, the United States Bankruptcy Court for the Southern District of Texas, Houston Division (this “Court”) entered an order [ECF #492] (the “Confirmation Order”) confirming the First Amended Joint Combined Chapter 11 Plan and Disclosure Statement of Veterinary Care, Inc. and TVET Management LLC (the “Plan”) in the chapter 11 cases of the above-captioned debtors (the “Debtors”).

PLEASE TAKE FURTHER NOTICE OF THE FOLLOWING:

1. **Effective Date.** Pursuant to the Confirmation Order, the Debtors hereby certify and give notice that the Plan became effective in accordance with its terms. All conditions precedent to the Effective Date have been satisfied, and the effective date occurred on *December 31, 2020* (the “Effective Date”).
2. **Liquidating Trust Agreement.** A fully executed copy of the Liquidating Trust Agreement is attached hereto as **Exhibit A**.
3. **Executory Contracts.** Pursuant to the Plan, all executory contracts and unexpired leases not assumed under the Plan are rejected, unless otherwise dealt with by the Plan, the Confirmation Order, or any other Order of the Court entered prior to the Effective Date. Any Claim for damages arising from the rejection of an executory contract or unexpired lease must be asserted in a proof of claim filed with the

¹ The debtors in these chapter 11 cases (the “Bankruptcy Case(s)”), along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Veterinary Care, Inc. (3844) (“VCI”) and TVET Management LLC (1790) (“TVET,” and, collectively with VCI, the “Debtors”). The Debtors’ mailing address is 2700 Post Oak Blvd., 21st Floor, Houston, Texas 77056.

Bankruptcy Court no later than thirty (30) days following the Effective Date. Any Claims not filed within such time shall be forever barred from assertion against the Debtors.

4. **Professional Compensation Claims.** All applications for compensation for services rendered and reimbursement of expenses incurred by Professionals from the Petition Date through the Effective Date shall be filed no later than sixty (60) days after the Effective Date. Such applications and objections thereto (if any) shall be filed in accordance with and comply in all respects with the Bankruptcy Code, the Bankruptcy Rules and applicable local rules.
5. **Administrative Claims.** All Administrative Claims from the Petition Date through the Effective Date shall be filed no later than thirty (30) days after the Effective Date. Such Administrative Claims shall be filed in accordance with and comply in all respects with the Bankruptcy Code, the Bankruptcy Rules and applicable local rules.
6. **Copies of the Plan and Confirmation Order.** Any party-in-interest who wishes to obtain a copy of the Confirmation Order, the Plan, or any exhibits to the Plan may request an electronic copy of these documents by emailing counsel for the Debtors at info@okinadams.com.

Respectfully submitted on the 31st day of December 2020.

OKIN ADAMS LLP

By: /s/ Johnie A. Maraist

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ATTORNEYS FOR THE DEBTORS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 31, 2020, I caused a copy of the foregoing to be served on all parties eligible to receive service through the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas by electronic mail.

By: /s/ Matthew S. Okin
Matthew S. Okin

LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (this "Agreement") is made as of December 8, 2020, by and among Veterinary Care, Inc. and TVET Management LLC as debtors and debtors in possession (each a "Debtor," and collectively, the "Debtors"), John D. Cornwell as Liquidating Trustee (in such capacity as Liquidating Trustee of the Liquidating Trust, the "Liquidating Trustee") for the benefit of the Beneficiaries (as defined below).

RECITALS

A. Entry of the Confirmation Order confirming the *First Amended Joint Combined Chapter 11 Plan and Disclosure Statement of Veterinary Care, Inc. and TVET Management, LLC* (as may be further amended, supplements or modified, the "Plan") shall constitute a finding that the Liquidating Trust exists and is a valid entity for purposes of all non-bankruptcy law.

B. This trust (the "Trust" or the "Liquidating Trust") is established pursuant to the Plan as a liquidating trust for the sole purpose of liquidating the Liquidating Trust Assets (defined below), with no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of this Trust.

C. Capitalized terms used in this Agreement and not defined herein have the meanings ascribed to them in the Plan, or if not defined in the Plan, the meanings ascribed to them in the Bankruptcy Code.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and in the Plan; the Debtor and the Liquidating Trustee agree as follows:

ARTICLE I **DEFINITIONS**

1.01 Definitions.

"Beneficiaries" means the holder of a beneficial interest in this Liquidating Trust, which shall be distributed in accordance with section 5.02 herein.

"Distribution" means a Distribution of property to a Beneficiary pursuant to this Agreement.

"Liquidating Trust Assets" shall mean, except as otherwise provided in the Plan, all Property of the Debtors or the Estates on the Effective Date, except claims released pursuant to the Shareholder Settlement Releases.

ARTICLE II **PURPOSE OF THE TRUST**

2.01 Purpose. The Trust shall be established for the sole purpose of liquidating the Liquidating Trust Assets, in accordance with Treasury Regulation Section 301.7701-4(d), with no objective to continue or engage in the conduct of any trade or business. Accordingly, the Liquidating Trustee

shall, in an expeditious but orderly manner, administer the Liquidating Trust Assets, by, among other things, liquidating and converting to Cash the Liquidating Trust Assets, making timely Distributions as provided for herein and in the Plan, and not unduly prolonging the duration of the Trust.

ARTICLE III **ESTABLISHMENT OF THE TRUST**

3.01 Name of the Trust. The name of the Trust shall be the VitalPet Liquidating Trust (referred to herein as the "Trust").

3.02 Transfer of Liquidating Trust Assets to the Trust. Except as otherwise provided by the Plan or this Agreement, on the Effective Date, the Liquidating Trust Assets shall be deemed transferred to the Trust free and clear of all Claims and Interests, in accordance with Section 1141 of the Bankruptcy Code.

3.03 Title to the Liquidating Trust Assets. The Liquidating Trustee shall hold title to the Liquidating Trust Assets for the benefit of the Beneficiaries, subject to the terms of the Plan and this Agreement. The Liquidating Trust Assets will be treated for tax purposes as being transferred by the Debtors to the Beneficiaries, and then by such Beneficiaries to the Trust in exchange for interests (the "Liquidating Trust Beneficial Interests") for the benefit of such holders in accordance with the Plan. Accordingly, the holders of the Liquidating Trust Beneficial Interests as of the Effective Date shall be treated for federal income tax purposes as the grantors and owners of their respective shares of the Trust. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local and tax purposes.

3.04 Appointment of the Liquidating Trustee. Pursuant to the Plan, John D. Cornwell has been designated to serve as the Liquidating Trustee, and he hereby accepts such appointment and agrees to serve in such capacity, as of the Effective Date. The Liquidating Trustee shall be deemed to be appointed pursuant to Bankruptcy Code section 1123(b)(3)(B).

3.05 Rights of Debtor. On the Effective Date, the Liquidating Trustee shall succeed to all of the Debtors' right, title, and interest in the Liquidating Trust Assets, but subject to the terms of the Plan and this Agreement, and the Debtors shall have no further interest in, or with respect to, the Liquidating Trust Assets or this Trust, and the Liquidating Trustee shall be vested with all rights and discretion regarding the Liquidating Trust Assets. In no event shall any part of the Liquidating Trust Assets revert to or be distributed to the Debtors.

3.06 Nontransferability. The Liquidating Trust Beneficial Interests shall be nontransferable, except upon the Liquidating Trustee's written consent, which may be withheld for any reason in the Liquidating Trustee's sole and absolute discretion.

ARTICLE IV **THE TRUSTEE**

4.01 Authority of the Liquidating Trustee. The Liquidating Trustee is hereby empowered to, subject to the limitations set forth in this Agreement, take any and all actions to effectuate the purpose of the Trust. Without limiting the generality of the previous sentence, the Liquidating

Trustee shall have the power to, for the benefit of the Beneficiaries and without the need for authorization from the Bankruptcy Court:

(i) receive, hold, manage, sell, prosecute, resolve, invest, supervise, protect, abandon and liquidate the Liquidating Trust Assets;

(ii) withdraw, make Distributions and pay taxes and other obligations owed by the Trust from the funds held by the Trust in accordance with the Plan or applicable law;

(iii) execute, deliver, file, and record contracts, instruments, releases, indentures, certificates, and other agreements or documents, and take such actions, as it may deem reasonably necessary or appropriate to effectuate and implement the terms and conditions thereof or of the Plan;

(iv) calculate and implement Distributions to Beneficiaries out of the Liquidating Trust Assets in accordance with the Plan;

(v) protect and enforce the rights to the Liquidating Trust Assets by any method deemed appropriate, including by judicial proceeding;

(vi) compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise resolve or settle, in accordance with the terms hereof, claims in favor of, or against, the Trust;

(vii) determine and satisfy any and all liabilities created, incurred, or assumed by the Trust, and to establish and maintain appropriate reserves to ensure same, in his sole and absolute discretion;

(viii) pay all expenses of the Trust and make other payments relating to the Liquidating Trust Assets;

(iv) obtain and maintain insurance coverage with respect to the liabilities and obligations of the Liquidating Trustee and the Trust (in the form of an errors and omissions policy, fiduciary policy, or otherwise);

(x) obtain and maintain insurance coverage with respect to real and personal property which may become Liquidating Trust Assets, if any;

(xi) retain and pay such third parties, including one or more paying agents, financial advisors, and/or counsel, as the Liquidating Trustee may deem necessary or appropriate in its sole and reasonable discretion to assist the Trust in carrying out its powers and duties under this Agreement;

(xii) exercise such other powers as may be vested in or assumed by the Trust or the Liquidating Trustee pursuant to the Plan, Bankruptcy Court order, or as may be necessary, proper and appropriate to carry out the provisions of the Plan;

(xiii) prosecute, compromise and otherwise resolve objections to Disputed Claims against the Debtor that are payable from the Liquidating Trust Assets;

(xiv) file all necessary tax returns and other filings with governmental authorities on behalf of the Liquidating Trust and the Liquidating Trust Assets held therein pursuant to the terms of this Agreement.

4.02 Limitations on Liquidating Trustee's Authority.

(i) The Liquidating Trustee is not authorized to engage in any trade or business with respect to the Liquidating Trust Assets and shall engage only in activity reasonably necessary to, and consistent with, the liquidating purpose of the Trust. All actions taken by the Liquidating Trustee shall be consistent with the expeditious but orderly liquidation of the Liquidating Trust Assets as is required by applicable law and consistent with the treatment of the Trust as a liquidating trust under Treasury Regulation Section 301.7701-4(d).

(ii) In all circumstances, the Liquidating Trustee shall act in the best interests of all Beneficiaries and in furtherance of the purpose of the Trust.

(iii) The Liquidating Trustee shall liquidate and convert to Cash the Liquidating Trust Assets in an expeditious but orderly manner, make timely Distributions, and not unduly prolong the duration of the Trust.

(iv) Any investments of the Cash portion of the Liquidating Trust Assets by the Liquidating Trustee must be permitted investments for a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d), or under applicable Internal Revenue Service guidelines, rulings, or other controlling authority.

4.03 Discretion. Subject to express provisions of this Agreement, the Plan, and the Shareholder Settlement, the Liquidating Trustee shall have absolute discretion to pursue, or not pursue, any and all claims, rights, or causes of action, as it determines is in the best interests of the Beneficiaries and consistent with the purposes of the Trust, and shall not have liability for the outcome of his or her decisions. The Liquidating Trustee may incur any reasonable and necessary expenses in liquidating and converting the Liquidating Trust Assets to Cash.

4.04 Retention of Professionals. The Liquidating Trustee may retain and reasonably compensate counsel and other professionals to assist in his duties as Liquidating Trustee on such terms as the Liquidating Trustee deems appropriate without Bankruptcy Court approval. The Liquidating Trustee may retain any professional who represented parties in interest in the Bankruptcy Case. The Liquidating Trustee shall be entitled to rely, in good faith, on the advice of his retained professionals.

4.05 Liability of Liquidating Trustee and His or Her Agents. Neither the Liquidating Trustee, nor the employees, professionals, agents, and representatives of the Trust or the Liquidating Trustee (collectively the "Covered Persons"), shall be held liable for actions taken or omitted in its capacity as, or on behalf of, the Trust or Liquidating Trustee, except those acts arising out of its or their own willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or *ultra vires* acts, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its actions or inactions in its capacity as, or on behalf of, the Trust or Liquidating Trustee, except for any actions or inactions involving willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or *ultra vires* acts. All Persons

dealing with the Liquidating Trustee shall look only to the Liquidating Trust Assets to satisfy any liability incurred by the Liquidating Trustee in carrying out the terms of this Agreement, and, subject to the preceding portions of this section, none of the Covered Persons shall have any personal obligation to satisfy any such liability.

4.06 Compensation of the Liquidating Trustee and Other Employees. The Liquidating Trustee shall be compensated hourly at a rate of \$500.00 / hr., and shall be entitled to reimbursement of all reasonable expenses incurred by the Liquidating Trustee in discharging his duties hereunder. The Liquidating Trustee may pay his or her compensation and other costs and expenses of the Trust before approving or making any Distributions to the Beneficiaries.

4.07 Exculpation; Indemnification. All of the Covered Persons shall be, and hereby are, exculpated by all Persons, including the Beneficiaries, from any and all claims, causes of action, and other assertions of liability arising out of the discharge of the powers and duties conferred upon them by the Plan, this Agreement, or any Order of the Bankruptcy Court entered pursuant to, or in furtherance of, the Plan, or by applicable law, except for actions or omissions that are determined by a Final Order to have arisen out of its or their own willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or *ultra vires* acts. No Person shall have, or be permitted to pursue, any claim or cause of action against any of the Covered Persons for making payments in accordance with the Plan or for implementing any other provision of the Plan. To the fullest extent permitted by applicable law, the Trust shall: (i) indemnify, defend, and hold harmless the Covered Persons from and against any and all losses, claims, damages, liabilities, and expenses, including, without limitation, reasonable attorneys' fees, disbursements, and related expenses that the Covered Persons may incur or to which the Covered Persons may become subject in connection with any actions or inactions in their capacity as such, except for actions or inactions involving willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or *ultra vires* acts; and (ii) the Covered Persons shall be entitled to obtain advances from the Trust to cover their reasonable fees and expenses incurred in defending any such actions or inactions. The foregoing indemnity in respect of any Covered Person shall survive the termination of such Covered Person from the capacity for which they are indemnified.

4.08 Termination. The duties, responsibilities, and powers of the Liquidating Trustee shall terminate on the date the Trust is dissolved, provided that Sections 4.05-4.07 shall survive such termination and dissolution.

4.09 Resignation, Death, or Removal. The Liquidating Trustee or any successor trustee may resign upon thirty (30) days' notice by an instrument in writing signed by the Liquidating Trustee and filed with the Bankruptcy Court. The Liquidating Trustee or any successor may be removed at any time with or without cause by the Bankruptcy Court. Any Beneficiary may apply to the Bankruptcy Court for an order removing the Liquidating Trustee for cause, with the determination of cause left to the reasonable discretion of the Bankruptcy Court. In the event of the removal of the Liquidating Trustee, the Liquidating Trustee shall be entitled to immediate payment of all compensation earned through and including the effective date of such removal.

4.10 Successor Trustee. In the event of resignation, death, or removal, as provided herein; any party in interest, any professional for the Liquidating Trustee, the Liquidating Trustee, and/or the United States Trustee may seek to designate a successor trustee, and the Bankruptcy Court shall

appoint a successor trustee to perform the duties, functions, and obligations, and to exercise the rights and authority of Liquidating Trustee, as described in the Plan. Any successor to the initial Liquidating Trustee shall execute an instrument accepting such appointment and shall file such acceptance with the Trust records and with the Bankruptcy Court.

ARTICLE V

DISTRIBUTIONS

5.01 Distributions to Beneficiaries. The Liquidating Trustee shall distribute Cash in accordance with the Plan (expressly including, without limitation, Article VII of the Plan) and Liquidating Trust Agreement, beginning on the Effective Date or as soon thereafter as is practicable, from the Liquidating Trust Assets on hand (including any Cash received from the Debtor on the Effective Date), except such amounts: (i) as would be distributable to a holder of a Disputed Claim if such Disputed Claim had been Allowed, prior to the time of such Distribution (but only until such Claim is resolved); (ii) as are reasonably necessary to meet contingent liabilities and to maintain the value of the Liquidating Trust Assets during litigation; (iii) to pay reasonable expenses (including, but not limited to, any taxes imposed on the Liquidating Trust or in respect of the Liquidating Trust Assets); and (iv) to satisfy other liabilities incurred by the Liquidating Trust in accordance with this Plan or the Liquidating Trust Agreement. The timing and amount of each Distribution by the Liquidating Trustee shall be determined by the Liquidating Trustee in his sole and absolute discretion and shall be consistent with the terms set forth in the Plan, any applicable order of the Bankruptcy Court, and this Agreement.

5.02 Priority of Distribution of Liquidating Trust Assets. The Liquidating Trust, through the Liquidating Trustee, shall be responsible for distributing Liquidating Trust Assets, or the proceeds thereof, on account of the following Claims or Interests (in the order of priority shown): (i) to satisfy outstanding, Allowed Priority Non-Tax Claims, if any; then (ii) to satisfy outstanding Other Secured Claims, if any; then (iii) to satisfy outstanding Allowed General Unsecured Claims, if any; then (iv) to satisfy Allowed Subordinated Claims, if any; and finally, (v) to satisfy Allowed Equity Interests in accordance with such preferences or priorities as provided in this Plan. For the avoidance of doubt, all expenses of the Liquidating Trust that are directly related to the administration of the Liquidating Trust Assets shall be taxed against the gross proceeds of the Liquidating Trust Assets and shall be satisfied prior to any subsequent Distributions. Other than the enumerated claims, no claims against the Debtors or their Estate shall be charged against the Liquidating Trust.

5.03 Administration of Distributions.

(i) Manner of Payment. At the option of the Liquidating Trustee, any Cash payment to be made hereunder may be made by a check or wire transfer.

(ii) No Fractional Payments. Whenever a payment of a fraction of a dollar would otherwise be called for, the actual payment shall reflect a rounding down to the nearest whole dollar.

(iii) Minimum Distributions. No Cash payment of less than \$50.00 shall be made to any Holder on account of any Allowed Claim or Interest, and such amounts shall be retained by the

Liquidating Trustee and shall revert to the Liquidating Trust and be deemed to constitute a Liquidating Trust Asset.

(iv) Unclaimed Distributions. In the event any Distribution to any Beneficiary is returned as undeliverable, the Liquidating Trustee shall use commercially reasonable efforts to determine the current address of such Beneficiary. No additional Distribution shall be made to such Beneficiary until the Liquidating Trustee has determined the then-current address of such Beneficiary, at which time the Distribution shall be made to such Beneficiary. At the expiration of two (2) years after the Effective Date, all undeliverable Distributions shall be deemed unclaimed property under Section 347(b) of the Bankruptcy Code, and the Claims and beneficial interests of the Beneficiaries that may have been entitled to such Distribution shall be discharged and forever barred. After such date, all undeliverable Distributions shall revert to the Trust and shall be redistributed in accordance with this Agreement. The Liquidating Trustee may, in an exercise of his business judgment, seek an order of the Bankruptcy Court deeming Distributions undeliverable prior to the expiration of two (2) years. Undeliverable Distributions attempted by the Liquidating Trustee as a final Distribution from the Trust but returned to the Liquidating Trustee shall be donated by the Liquidating Trustee to an organization of his choice that is exempt under Internal Revenue Code, § 501(c)(3).

(v) Abandonment. The Liquidating Trustee may abandon, in any commercially reasonable manner, any property that the Liquidating Trustee reasonably concludes is of no benefit to the Beneficiaries.

ARTICLE VI

DISSOLUTION OF TRUST

6.01 Dissolution. The Liquidating Trust shall dissolve upon the date on which all of the following events (each, a "Dissolution Condition," and, collectively, the "Dissolution Conditions") have occurred: (i) the Liquidating Trust Assets, including Causes of Action transferred and assigned to the Liquidating Trust, are fully resolved, abandoned or liquidated in accordance with the Plan and Liquidating Trust Agreement; (ii) all Cash has been completely distributed in accordance with the Plan and Liquidating Trust Agreement; (iii) all tax returns and any other filings or reports have been filed with the appropriate state or federal regulatory authorities; and (iv) the order closing the Bankruptcy Cases is a Final Order. Upon the occurrence of each of the foregoing events, the duties, responsibilities and powers of the Liquidating Trustee shall terminate, and the Liquidating Trustee shall be discharged. Except in the circumstances set forth below, the Liquidating Trustee shall dissolve the Liquidating Trust in accordance with the provisions of this section no later than five (5) years after the Effective Date in accordance with IRS revenue procedures. The Liquidating Trustee, in his sole discretion, shall have the authority to seek to close the Bankruptcy Cases, or any of them, at any appropriate time.

The Bankruptcy Court may extend the term of the Liquidating Trust one or more times (not to exceed a total of four extensions, unless the Liquidating Trustee receives a favorable ruling from the IRS that any further extension would not adversely affect the status of the Liquidating Trust as a grantor trust for federal income tax purposes) for a finite period, not to exceed six (6) months per extension, upon a showing of good cause and based on the particular circumstance at issue. Each

such extension must be approved by the Bankruptcy Court with notice thereof to all unpaid Liquidating Trust Beneficiaries.

Notwithstanding any other section of this Plan or the Liquidating Trust Agreement, it is the express intent that the Liquidating Trust shall survive until each of the Dissolution Conditions have either occurred or determined to be impracticable or impossible. To the extent that the Liquidating Trust shall be deemed terminated pursuant to applicable law at any time prior to the occurrence of each Dissolution Condition, the Liquidating Trustee shall not be discharged, but shall have such "wind-up" powers, both express and implied, as are necessary to achieve all outstanding Dissolution Conditions, including, but, not limited to the authority to: (i) continue prosecuting any Causes of Action belonging to the Liquidating Trust; (ii) continue Claim administration responsibilities set forth in Article VII section A paragraph 2 of the Plan; and (iii) distribute the Cash proceeds of the Liquidating Trust Assets in a manner consistent with the Liquidating Trust Agreement. In no event shall the Liquidating Trust Beneficiaries be entitled to receive in-kind distributions from the Liquidating Trust.

6.02 Post-Dissolution. Upon dissolution, the Liquidating Trustee shall retain the books, records, and files that shall have been created by the Liquidating Trustee for a period of five (5) years, provided that at his or her sole discretion, all of such records and documents may be destroyed at any time following the dissolution of the Trust as the Liquidating Trustee deems appropriate (unless the records and documents are necessary to fulfill the Liquidating Trustee's obligations pursuant to this Agreement, in which case they shall be retained for such five (5) year period).

ARTICLE VII

AMENDMENT AND WAIVER

7.01 Amendment; Waiver. The Liquidating Trustee may amend, supplement, or waive any provision of this Agreement, without notice to or the consent of any Beneficiary or the approval of the Bankruptcy Court, in order to: (i) cure any ambiguity, omission, defect, or inconsistency in this Agreement; provided that such amendments, supplements or waivers shall not adversely affect the Distributions to any of the Beneficiaries or adversely affect the U.S. federal income status of the Trust as a "liquidating trust"; or (ii) comply with any requirements in connection with the U.S. federal income tax status of the Trust as a "liquidating trust." Any substantive provision of this Agreement may be amended or waived by the Liquidating Trustee, with the approval of the Bankruptcy Court; *provided, however*, that no change may be made to this Agreement that would (i) adversely affect (a) the Debtors (absent the Debtors' consent), (b) the Distributions to any of the Beneficiaries, or (d) the U.S. federal income tax status of the Trust as a "liquidating trust" or (ii) expand, add to, or modify the original stated purpose of the Trust. Notwithstanding this section, any amendments to this Agreement shall not be inconsistent with the purpose and intention of the Trust to liquidate in an expeditious but orderly manner the Liquidating Trust Assets in accordance with Treasury Regulation Section 301.7701-4(d).

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.01 Intention to Establish Grantor Trust. This Agreement is intended to create a grantor trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed

in all respects as a grantor trust, and any ambiguity herein shall be construed consistent with that intent, and, if necessary, this Agreement may be amended to comply with such federal income tax laws, which amendments may apply retroactively.

8.02 Laws as to Construction. Except as to formation of the Trust, which shall be deemed effective upon entry of the Confirmation Order, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to the rules governing the conflict of law which would require the application of the law of another jurisdiction. In the event of any conflict between the terms of this Agreement and the terms of the Plan or Confirmation Order, the terms of the Plan shall govern, *provided, however*, that to the extent that the terms of this Agreement conflict with any provision of the Shareholder Settlement, then the Shareholder Settlement shall govern.

8.03 Severability. If any provision of this Agreement or application thereof to any person or circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

8.04 Notices. Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office box, or transmitted by telex, facsimile or other telegraphic means, or sent by a nationally recognized overnight delivery service, addressed to the person for whom such notice is intended at the appropriate address set forth below, or such other address as may be provided to the other parties in writing.

If to the Debtors:

Veterinary Care, Inc.
Attn: Douglas J. Brickley
711 Louisiana St., Suite 2100
Houston, TX 77002

With copies to:

Okin Adams LLP
Matthew S. Okin
Texas Bar No. 00784695
mokin@okinadams.com
David L. Curry, Jr.
Texas Bar No. 24065107
dcurry@okinadams.com
Johnie A. Maraist
State Bar No. 24109505
jmaraist@okinadams.com
1113 Vine St., Suite 240
Houston, Texas 77002
Tel: (713) 228-4100
Fax: (888) 865-2118

Counsel for Debtor

If to the Liquidating Trustee:

John D. Cornwell
Munsch Hardt Kopf & Harr, P.C.
700 Milam Street, Suite 2700
Houston, TX 77002

With copies to:

Jay H. Ong
Munsch Hardt Kopf & Harr, P.C.
Hartland Plaza
1717 W. 6th Street, Suite 250
Austin, Texas 78703

10.05 Notices if to a Beneficiary. Subject to any transfer recognized by the Liquidating Trustee as set forth in Section 3.06 of this Agreement, any notice or other communications hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office box, or transmitted by telex, facsimile or other telegraphic means, or sent by a nationally recognized overnight delivery service, addressed to the person for whom such notice is intended to the name and address set forth in the case of a Beneficiary, on such Beneficiary's proof of claim, or if no proof of claim is filed, the address listed on the Debtor's Schedules or as listed in any other notice filed with the Bankruptcy Court and, if applicable, the Trust or such other means reasonably calculated to appraise the Beneficiary.

10.06 Headings. The section headings contained herein are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or any term or provision hereof.

10.07 Plan. The terms of this Agreement are intended to supplement the terms provided by the Plan and the Confirmation Order. However, in the event of any direct conflict or inconsistency between any provision of this Agreement, on the one hand, and the provisions of the Plan and the Confirmation Order, on the other hand, the provisions the Plan and Confirmation Order shall govern and control; *provided, however*, that to the extent that the terms of this Agreement conflict with any provision of the Shareholder Settlement, the Shareholder Settlement shall govern.

10.08 Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior and contemporaneous agreements or understanding between the parties with respect to the subject matter hereof.

10.09 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same instrument. A facsimile or electronic mail signature of any party shall be considered to have the same binding legal effect as an original signature.

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

Veterinary Care, Inc., *et. al*

Signature: 

Name: Douglas J. Brickley

As its: CRO

John D. Cornwell, Liquidating Trustee

Signature: 