

## Constantino, Mike

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**From:** Green, Edward [EGreen@foley.com]  
**Sent:** Saturday, April 09, 2011 11:48 AM  
**To:** Constantino, Mike  
**Subject:** RE: Trinity Health Corporation - Loyola University Health System, Project Nos. E-003-11, E-004-11, E-005-11, and E-006-11  
**Attachments:** Trinity Exhibits and Schedules.pdf

<<Trinity Exhibits and Schedules.pdf>>

Mike:

Please see the attached relative to the above-referenced transaction.

Best regards,

Ed

Edward J. Green, JD, MBA  
National Partner in Charge of Business Development  
Regulated Industries Department  
Foley & Lardner LLP  
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Chicago, Illinois 60654-5313  
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April 8, 2011

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CLIENT/MATTER NUMBER  
048544 0201

Mr. Michael Constantino  
Supervisor, Project Review Section  
Illinois Health Facilities and Services  
Review Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

Re: Trinity Health Corporation – Loyola University Health System  
Project Numbers: E-003-11, E-004-11, E-005-11, E-006-11

Dear Mike:

As you know, we are counsel to Trinity Health Corporation ("Trinity"). As you also know, we filed four Certificate of Exemption Applications (the "COE Applications") in early March relating to the proposed transaction (the "Transaction") between Trinity and Loyola University of Chicago (the "University"), whereby Trinity will replace the University as the sole member of Loyola University Health System. And last week, we filed the signed Definitive Agreement for the Transaction. I am now attaching the following draft Exhibits and Schedules to the Definitive Agreement:

- Exhibit 2.1.1 A (Articles of Incorporation)
- Exhibit 2.1.1 B (Bylaws)
- Exhibit 2.2 (Form of Assignment & Assumption Agreement for Transferred Assets)
- Exhibit 2.3 (Form of Assignment & Assumption Agreement for Excluded Assets & Liabilities)
- Exhibit 4.1.2 (Form of Indemnification Escrow Agreement)
- Schedule 2.2 (Transferred Assets)
- Schedule 2.3 (Excluded Assets & Liabilities)
- Schedule 2.4 (Real Property & Leases)

Please feel free to contact me if you have any questions.

Sincerely,

Edward J. Green

EJG:xxc  
Enclosures

BOSTON  
BRUSSELS  
CHICAGO  
DETROIT  
JACKSONVILLE

LOS ANGELES  
MADISON  
MILWAUKEE  
NEW YORK  
ORLANDO

SACRAMENTO  
SAN DIEGO  
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SAN FRANCISCO  
SILICON VALLEY

TALLAHASSEE  
TAMPA  
TOKYO  
WASHINGTON, D.C.

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Exhibit 2.1.1 A  
Articles of Incorporation

See attached.

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Exhibit 2.1.1 A

Articles of Incorporation Summary – Key Provisions

The Amended and Restated Articles of Incorporation (the "Articles") of Loyola University Health System ("LUHS"), Loyola University Medical Center ("LUMC") and Gottlieb Memorial Hospital ("GMH") will be based upon the form of Articles used for nonprofit health care provider organizations operated within the Trinity Health System ("Trinity"). The Articles of LUHS and LUMC will describe the charitable and Catholic purpose, mission and Catholic identity of those entities as well as provisions consistent with the Definitive Agreement, dated March 31, 2011 (the "Definitive Agreement"), and as otherwise required by Illinois law. The Articles of GMH will be consistent with those of LUHS, taking into consideration prior agreements between LUHS and GMH.

More specifically, a summary of the key provisions of the Articles is as follows:

1. Corporate Purpose.
  - a. The purposes of LUHS will be, among other things:
    - i. To further any and all charitable, scientific, religious and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time, or comparable provisions of subsequent legislation (the "Code");
    - ii. To carry out the purposes of Trinity, and the Trinity Health Corporation ("THC"), or any successor organization, which is the sole member of LUHS, and to further the apostolate of Catholic Health Ministries on behalf of and as an integral part of the Roman Catholic Church in the United States;
    - iii. To engage in the delivery of and to carry on, sponsor or participate in, directly or through one or more affiliates, any activities related to the delivery of health care and health care related services of every kind, nature and description which, in the opinion of the Directors of LUHS, are appropriate in carrying out the purposes of LUHS and Trinity and the health care mission of Catholic Health Ministries. LUHS shall take all such actions as may be necessary or desirable to accomplish the foregoing purpose within the restrictions and limitations of the Articles, the Bylaws of LUHS or applicable law;
    - iv. To provide management assistance and funds to further improve and advance the science of health care delivery and knowledge, practice and teaching of medicine and nursing in all their branches, and to assist in the advancement of medical research and investigation and in the improvement of medical teaching facilities and methods, furthering the erection, establishment,

organization, equipment, operation, management and maintenance of hospital facilities for the treatment of those who are sick, infirm, injured or in any way afflicted with disease, including the promotion and advancement of medical aid, medical research, medical education, standards of medical care and health;

v. To coordinate and oversee the activities of subsidiaries and affiliates;

vi. To acquire, purchase, own, loan and borrow, erect, maintain, hold, use, control, manage, invest, exchange, convey, transfer, sell, mortgage, lease and rent all real and personal property of every kind and nature, which may be necessary or incidental to the accomplishment of any and all of the above purposes;

vii. To accept, receive and hold, in trust or otherwise, all contributions, legacies, bequests, gifts and benefactions which may be devised, made or given to LUHS, or its predecessor or constituent corporations, by any person, persons or organizations;

viii. To provide benefit to Trinity in conformity with the purposes of LUHS; and

ix. To take all such actions as may be necessary or desirable to accomplish the foregoing purposes within the restrictions and limitations of these Amended and Restated Articles of Incorporation, the Bylaws of LUHS and applicable law.

b. The corporate purposes of both LUMC and GMH will be consistent with the corporate purpose of LUHS as described above, and will be subject to the terms and conditions of the Definitive Agreement.

## 2. Reserve Powers.

a. The Articles of LUHS will contain certain reserve powers such that LUHS may not take any of the following actions without the approval of THC:

i. Approval of the strategic plan of LUHS;

ii. Any change to the structure or operation of LUHS which would affect its status as a nonprofit entity, exempt from taxation under the applicable sections of the Code;

iii. The appointment and reappointment of all persons to the Board of Directors (consistent with the Bylaws of LUHS), evaluation and removal of Directors, and the ratification of the Chair of the Board;

iv. Adoption or modification of the Articles of Incorporation or Bylaws, consistent with the provisions of the Definitive Agreement;

v. Appointment, evaluation, reappointment and removal of the President and Chief Executive Officer;

vi. The transfer or encumbrance of assets by purchase, sale, capital lease, mortgage, disposition or hypothecation in excess of limits established by THC;

vii. Incurrence of long or short-term debt in excess of limits established by THC;

viii. Dissolution, winding up or abandonment of its business enterprises or liquidation of its assets or the filing of any action in bankruptcy, receivership or similar action;

ix. The sale or transfer of member interest or stock or other ownership interest in LUHS, sale or transfer of all or substantially all of the assets of LUHS, merger or consolidation of LUHS or formation of partnerships, cosponsorship arrangements or other joint ventures between or among LUHS and third parties;

x. Approval of the annual capital plan and operating budget;

xi. THC shall have the power to transfer assets, or to require LUHS to transfer assets, to THC or an entity controlled by, controlling or under common control with THC, whether within or without the state of domicile of LUHS, to the extent necessary to accomplish the goals and objectives of Trinity, as may be consistent with the provisions of Illinois law and any applicable covenants (This provision is required by the debt structure of Trinity);

xii. Neither LUHS, nor any of its subsidiary corporations, shall transfer assets to entities other than THC without the approval of THC except for (A) transfers previously approved by THC, either individually or as part of the budget process of Trinity, (B) transfers to any entity which is a direct or indirect subsidiary of THC and that is subject to the reserved powers held by THC similar to those articulated in LUHS's Bylaws, or (C) transfers in the ordinary course of business; and

xiii. All other matters reserved to members of not-for-profit corporations by the laws of Illinois or as reserved in the Articles of Incorporation or Bylaws of LUHS.

b. The powers reserved to LUHS as the sole member of both LUMC and GMH will be consistent with the reserve powers of THC as described above, and the reserve powers held by LUHS under the current Bylaws of LUHS and GMH, and will be subject to the terms and conditions of the Definitive Agreement.

3. Indemnification.

a. The Articles of LUHS, LUMC and GMH will provide that each company will, to the maximum extent allowed by law, indemnify those persons who are serving or have served as members, trustees, directors, officers, employees, committee members, or agents of such entity, and those who are serving or have served at the request of such entity as a trustee, director, officer, employee, committee member, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit, or proceeding.

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Exhibit 2.1.1 B  
Bylaws

See attached.

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Exhibit 2.1.1 B

Bylaws Summary—Key Governance Provisions

The Bylaws of Loyola University Health System (“LUHS”), Loyola University Medical Center (“LUMC”) and Gottlieb Memorial Hospital (“GMH”) will be based upon the form of Bylaws used for nonprofit health care provider organizations operated within the Trinity Health System. The Bylaws of LUHS and LUMC will describe the charitable and Catholic purpose, mission and Catholic identity of those entities as well as provisions consistent with the Definitive Agreement, dated March 31, 2011 (“the Definitive Agreement”), and as otherwise required by Illinois law. Bylaws of GMH will be consistent with those of LUHS, taking into consideration prior agreements between LUHS and GMH.

More specifically, at closing the Bylaws will include the following material provisions:

1. Sole Member.
  - a. The sole member of LUHS will be Trinity.
  - b. The sole member of LUMC will be LUHS.
  - c. The sole member of GMH will be LUHS.
2. Reserve Powers.
  - a. LUHS may not take any of the following actions without the approval of Trinity:
    - i. Approval of the strategic plan of LUHS;
    - ii. Any change to the structure or operation of LUHS which would affect its status as a nonprofit entity, exempt from taxation under the applicable sections of the Internal Revenue Code;
    - iii. The appointment and reappointment of all persons to the Board of Directors (consistent with the composition provisions set forth below), evaluation and removal of Directors, and the ratification of the Chair of the Board;
    - iv. Adoption or modification of the Articles of Incorporation or Bylaws, consistent with the provisions of the Definitive Agreement;
    - v. Appointment, evaluation, reappointment and removal of the President and Chief Executive Officer;

vi. The transfer or encumbrance of assets by purchase, sale, capital lease, mortgage, disposition or hypothecation in excess of limits established by Trinity;

vii. Incurrence of long or short-term debt in excess of limits established by Trinity;

viii. Dissolution, winding up or abandonment of its business enterprises or liquidation of its assets or the filing of any action in bankruptcy, receivership or similar action;

ix. The sale or transfer of member interest or stock or other ownership interest in LUHS, sale or transfer of all or substantially all of the assets of LUHS, merger or consolidation of LUHS or formation of partnerships, cosponsorship arrangements or other joint ventures between or among LUHS and third parties;

x. Approval of the annual capital plan and operating budget;

xi. Trinity shall have the power to transfer assets, or to require LUHS to transfer assets, to Trinity or an entity controlled by, controlling or under common control with Trinity, whether within or without the state of domicile of LUHS, to the extent necessary to accomplish the goals and objectives of Trinity, as may be consistent with the provisions of Illinois law and any applicable covenants (This provision is required by the debt structure of Trinity Health);

xii. Neither LUHS nor any of its subsidiary corporations shall transfer assets to entities other than Trinity without the approval of Trinity except for (A) transfers previously approved by Trinity, either individually or as part of the budget process of Trinity, (B) transfers to any entity which is a direct or indirect subsidiary of Trinity and that is subject to the reserved powers held by Trinity similar to those articulated in LUHS's Bylaws, or (C) transfers in the ordinary course of business; and

xiii. All other matters reserved to members of not-for-profit corporations by the laws of Illinois or as reserved in the Articles of Incorporation or Bylaws of LUHS.

b. The powers reserved to LUHS as the sole member of both LUMC and GMH will be consistent with the reserve powers of Trinity as described above, and the reserve powers held by LUHS under the current Bylaws, and will be subject to the terms and conditions of that certain Definitive Agreement.

### 3. Board Composition.

a. The Board of Directors of LUHS will have nine to fifteen members. The Boards of Directors of LUHS, LUMC and Gottlieb shall each consist of individuals in the following categories:

i. Designated Directors – The following four (4) individuals shall be designated by Trinity or serve ex-officio by virtue of their office on the Boards of Directors and shall serve with full voting rights: (A) two (2) representatives of Trinity, determined by Trinity, (B) the President and Chief Executive Officer of LUHS, and (C) the Senior Vice President for Health Sciences of Loyola University of Chicago (or any successor title to this office as determined by the President of Loyola University of Chicago);

ii. Congregation Directors – At least two (2) individuals who: (A) are vowed members of a religious congregation of the Roman Catholic Church; or (B) have willingly entered into a formal commitment with a religious congregation to share in the mission of the congregation and who are recognized as being formally associated with a religious congregation of the Roman Catholic Church;

iii. Clinical Faculty Directors – Three (3) members of the Clinical Faculty (as defined in the LUHS Bylaws as of March 31, 2011) who have clinical privileges at LUMC and an academic appointment to the faculty of the Stritch School of Medicine. The three (3) individuals will be appointed by Trinity after they are proposed by the medical faculty and approved by the President of LUHS consistent with the requirements of the Definitive Agreement;

iv. Gottlieb Directors – Three (3) individuals to be appointed by Trinity from a slate of candidates proposed by the Gottlieb Memorial Foundation and recommended to Trinity by the President of LUHS consistent with the requirements of the Definitive; and

v. Other Community Directors – Individuals appointed by Trinity who are not Designated Directors, Congregation Directors, Clinical Faculty Directors and Gottlieb Directors.

4. Medical Care.

a. The Bylaws of LUHS will provide that its Board of Directors will be responsible to develop a process for assuring the quality of care provided in the health care facilities and programs owned and operated by LUHS and its subsidiaries.

b. The Bylaws of LUMC and GMH will provide for the establishment of a Medical Staff and Medical Staff Bylaws consistent with the provisions of Illinois law, and the reserve powers of the Member, as well as the procedures in place under the applicable LUMC and GMH Bylaws, and the terms and conditions of the Definitive Agreement.

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Exhibit 2.2  
Form of Assignment & Assumption Agreement for Transferred Assets

See attached.

**ASSIGNMENT AND ASSUMPTION AGREEMENT OF TRANSFERRED ASSETS**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT OF TRANSFERRED ASSETS (this "Agreement") is made and entered into as of \_\_\_\_\_, 2011, by and among Trinity Health Corporation, an Indiana nonprofit corporation ("Trinity"), Loyola University Health System, an Illinois not-for-profit corporation ("LUHS"), and Loyola University of Chicago, an Illinois not-for-profit corporation ("LUC").

**RECITALS**

A. WHEREAS, LUC and Trinity have entered into that certain Definitive Agreement, dated March 31, 2011 (the "Definitive Agreement"), pursuant to which Trinity shall become the sole member of LUHS and, as such, shall assume authority for the affairs of LUHS and the LUHS Entities; and

B. WHEREAS, to consummate the transactions contemplated by the Definitive Agreement, LUC desires to assign its rights and delegate certain of its obligations with respect to the Transferred Assets to LUHS (or its designee), and LUHS (or its designee) desires to assume such rights and obligations related to the Transferred Assets.

**AGREEMENT**

NOW, THEREFORE, Trinity, LUHS and LUC hereby agree as follows:

**1. ASSIGNMENT AND ASSUMPTION.**

(a) LUC does hereby sell, transfer, convey, assign and deliver to LUHS (or its designee), all of LUC's rights, title and interest in and to the Transferred Assets pursuant to the Definitive Agreement, and LUC hereby accepts such sale, transfer, conveyance, assignment and delivery. The Transferred Assets shall consist of those assets listed on attached Schedule 2.2.

(b) LUHS and LUC agree to execute or cause the execution of such instruments or deeds of assignment or transfer as are necessary to effectuate the transfer and assignment of the Transferred Assets to Trinity, LUHS or its designee at the Closing.

**2. MISCELLANEOUS.**

(a) This Agreement is further defined by and will be construed consistently with the Definitive Agreement.

(b) Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Definitive Agreement.

(c) This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and will become effective when counterparts have

been signed by all parties.

(d) This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, excluding any conflicts of law rules or principles that would refer the governance or interpretation, construction or enforcement of this Agreement to the laws of another jurisdiction.

(f) Nothing contained in this Agreement shall be deemed to supersede or amend any of the obligations, agreements, provisions, covenants, warranties or representations of Trinity, LUHS or LUC as set forth in the Definitive Agreement. In the event of any conflict between this Agreement and the terms and provisions of the Definitive Agreement, the terms and provisions of the Definitive Agreement shall control.

*The remainder of this page intentionally left blank.*

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement effective the date first written above.

**TRINITY HEALTH CORPORATION**

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

**LOYOLA UNIVERSITY HEALTH  
SYSTEM**

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

**LOYOLA UNIVERSITY OF CHICAGO**

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

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Exhibit 2.3

Form of Assignment & Assumption Agreement for Excluded Assets & Liabilities

See attached.

**ASSIGNMENT AND ASSUMPTION AGREEMENT OF EXCLUDED ASSETS  
AND LIABILITIES**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT OF EXCLUDED ASSETS AND LIABILITIES (this "Agreement") is made and entered into as of \_\_\_\_\_, 2011, by and among Trinity Health Corporation, an Indiana nonprofit corporation ("Trinity"), Loyola University Medical Center, an Illinois not-for-profit corporation ("LUMC"), and Loyola University of Chicago, an Illinois not-for-profit corporation ("LUC").

**RECITALS**

A. WHEREAS, LUC and Trinity have entered into that certain Definitive Agreement, dated March 31, 2011 (the "Definitive Agreement"), pursuant to which Trinity shall become the sole member of Loyola University Health System ("LUHS") and, as such, shall assume authority for the affairs of LUHS and the LUHS Entities, including LUMC;

B. WHEREAS, in furtherance of the transactions contemplated by the Definitive Agreement, LUMC desires to assign its rights and delegate certain of its obligations with respect to the Excluded Assets and Liabilities to LUC, and LUC desires to assume such rights and obligations related to such Assets.

**AGREEMENT**

NOW, THEREFORE, Trinity, LUMC and LUC hereby agree as follows:

1. ASSIGNMENT AND ASSUMPTION.

(a) LUMC does hereby sell, transfer, convey, assign and deliver to LUC (or its designee), all of LUMC's rights, title and interest in and to the Excluded Assets and Liabilities pursuant to the Definitive Agreement and LUC hereby accepts such sale, transfer, conveyance, assignment and delivery. The Excluded Assets and Liabilities shall consist of those assets and liabilities listed on attached Schedule 2.3.

(b) LUMC and LUC agree to execute, or cause the execution of, such instruments of assignment, transfer and/or assumption as are necessary to effectuate the transfer and assignment of the Excluded Assets and Liabilities to LUC and the assumption by LUC of the Excluded Assets and Liabilities at the Closing.

2. MISCELLANEOUS.

(a) Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Definitive Agreement.

(b) This Agreement is further defined by and will be construed consistently with the Definitive Agreement.

(c) This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and will become effective when counterparts have been signed by all parties.

(d) This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, excluding any conflicts of law rules or principles that would refer the governance or interpretation, construction or enforcement of this Agreement to the laws of another jurisdiction.

(f) Nothing contained in this Agreement shall be deemed to supersede or amend any of the obligations, agreements, provisions, covenants, warranties or representations of Trinity or LUC set forth in the Definitive Agreement. In the event of any conflict between this Agreement and the terms and provisions of the Definitive Agreement, the terms and provisions of the Definitive Agreement shall control.

*The remainder of this page intentionally left blank.*

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement effective the date first written above.

**TRINITY HEALTH CORPORATION**

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

**LOYOLA UNIVERSITY MEDICAL  
CENTER**

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

**LOYOLA UNIVERSITY OF CHICAGO**

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

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Exhibit 4.1.2  
Form of Indemnification Escrow Agreement

See attached.

**INDEMNIFICATION ESCROW AGREEMENT**

This Indemnification Escrow Agreement (the "Agreement") is dated as of \_\_\_\_\_, 2011, by and among Trinity Health Corporation, an Indiana nonprofit corporation ("Trinity"), Loyola University of Chicago ("LUC"), an Illinois not for profit corporation, and The Bank of New York Mellon Trust Company, N.A. (the "Escrow Agent").

**RECITALS**

A. LUC and Trinity are parties to that certain Definitive Agreement dated March 31, 2011 (the "Definitive Agreement"), a copy of which is attached hereto as *Exhibit A*. Terms used herein and not otherwise defined, shall have the meaning in the Definitive Agreement.

B. Under the terms of the Definitive Agreement, Trinity shall cause to be deposited with Escrow Agent on the date hereof, the sum of Twenty Million Dollars (\$20,000,000) (the "Indemnification Escrow Amount") to secure the obligations of LUC to indemnify Trinity in accordance with the provisions of the Definitive Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants set forth below, and for their mutual reliance, Trinity, LUC and Escrow Agent agree as follows:

1. Escrow Deposit.

On the date hereof, Trinity shall cause to be delivered to Escrow Agent the Indemnification Escrow Amount by wire transfer and, thereafter, any additional amounts as provided in the Definitive Agreement within such time frames as mutually agreed upon by the parties. The Escrow Agent shall invest such funds, as soon as practicable on or after the date hereof, in money market funds of U.S. Treasury securities (the "Escrow Account").

2. Obligations of LUC, Trinity and Escrow Agent.

(a) The Escrow Agent shall hold the Indemnification Escrow Amount in accordance with the Definitive Agreement and this Agreement in order to secure LUC's obligations under the terms of the Definitive Agreement, including, without limitation, the payment of any unrecorded, misstated or under-reserved pre-Closing liabilities or the breach of any representations, warranties or covenants made by LUC.

(b) Payments out of the Escrow Account shall be in accordance with the terms and conditions of Articles IV and XVI of the Definitive Agreement. More specifically:

(1) If at any time prior to the date this Agreement is terminated (the "Expiration Date"), Trinity is entitled to a payment pursuant to Article XVI of the Definitive Agreement, Trinity shall deliver to the Escrow Agent a written notice in such form as reasonably acceptable to the Escrow Agent (the "Notice of Request for Disbursement") signed by duly authorized officers of LUC and Trinity. Upon receipt of the Notice of Request for Disbursement, the Escrow Agent shall disburse the funds to Trinity no later than the \_\_\_ day following the Escrow Agent's receipt of

*Draft Agreement for  
Purposes of Exhibit 4.1.2*

such Notice. Any disputes between LUC and Trinity regarding the execution of a Notice of Request for Disbursement shall be resolved in accordance with the provisions of Section 17.20 of the Definitive Agreement.

(2) The Indemnification Escrow Amount and any Gain Contingencies shall be released to LUC as follows: (a) an amount equal to Ten Million Dollars (\$10,000,000) on the third (3<sup>rd</sup>) anniversary of the Closing Date; and (b) an amount equal to all of the then remaining Indemnification Escrow Amount still being held by the Escrow Agent, together with all accrued earnings and interest thereon, on the fourth (4<sup>th</sup>) anniversary of the Closing Date: *provided however*, that, at all times, the Escrow Agent shall retain amounts equal to the aggregate of all pending indemnification claims made by Trinity or any Trinity Indemnified Party pursuant to Section 16.5 of the Definitive Agreement.

(c) The Escrow Agent shall be fully authorized to rely upon the Notice of Request for Disbursement and the attachments thereto and shall have no obligation to inquire further into the accuracy of any matters stated therein.

3. Escrow Agent.

(a) The Escrow Agent, by reason of its consent to and execution of this Agreement, hereby agrees to accept the foregoing Agreement and instructions, to be bound by said Agreement in the performance of its duties hereunder. The Escrow Agent shall not, however, assume any responsibility or liability for any transaction between LUC and Trinity, other than for the performance of its obligations with respect to the Indemnification Escrow Amount held by it and the Escrow Account managed by it in accordance with this Agreement. The duties and responsibilities of Escrow Agent shall be limited to those expressly set forth herein. The Escrow Agent shall not be personally liable for any act taken or omitted hereunder or taken by it in good faith and in the exercise of its own best judgment.

(b) The Escrow Agent shall be under no responsibility in respect of the Escrow Account other than faithfully to follow the instructions contained herein. The Escrow Agent may consult with counsel of its own choosing and shall be fully protected in any action taken in good faith, in accordance with such consultation. The Escrow Agent shall not be required to defend any legal proceedings that may be instituted unless requested so to do by Trinity and LUC, and shall be indemnified by Trinity and LUC, jointly and severally, to its satisfaction against the cost and expense of such defense. The Escrow Agent shall have no responsibility for the genuineness or validity of any document or other item deposited with the Escrow Agent, and it shall be fully protected in acting in accordance with written instructions to it hereunder and believed by the Escrow Agent to have been signed by the proper parties.

(c) Except for claims, liabilities, judgments or expenses incurred by the parties due to a negligent act, error or omission of the Escrow Agent in the performance of its obligations hereunder, Trinity and LUC shall jointly and severally indemnify, protect and save the Escrow Agent harmless from any claims, liabilities, judgments, reasonable attorneys' fees,

*Draft Agreement for  
Purposes of Exhibit 4.1.2*

and other expenses of any kind and nature that may be incurred by the Escrow Agent by reason of its acceptance of, and its good faith performance under, this Agreement; *provided*, this indemnification shall not extend to any negligent or reckless acts or omissions of the Escrow Agent. All of the terms and conditions in connection with the Escrow Agent's duties and responsibilities, and the rights of the parties or any third party, are contained in this Agreement. The Escrow Agent is not required to be familiar with the provisions of any other instrument or agreement and shall not be charged with any responsibility or liability in connection with the observance or nonobservance by any person having duties or obligations under any such instrument or agreement, except as expressly provided herein.

4. Termination. Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall terminate upon disbursement in full of the Indemnification Escrow Amount, including all accrued interest thereon, in accordance with the terms of this Agreement and the Definitive Agreement.

5. Fees and Other Charges. Fees and other charges for services rendered by the Escrow Agent for ordinary services as contemplated by this Agreement shall be payable in accordance with a fee letter among the parties hereto. If the Escrow Agent renders any service not provided for in this Agreement, the Escrow Agent shall be reasonably compensated for such extraordinary services and shall be reimbursed, by either Trinity or LUC, to be mutually decided upon.

6. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed to have been delivered to a party upon personal delivery to that party or: (a) on the second (2<sup>nd</sup>) business day following delivery by facsimile transmission or email to the telephone number or email address provided by the Party for such purposes, if simultaneously mailed as provided herein; (ii) on the second (2<sup>nd</sup>) business day following deposit for overnight delivery with a bonded courier holding itself out to the public as providing such services, with charges prepaid; or (iii) on the fourth (4<sup>th</sup>) business day following deposit with the United States Postal Service, postage prepaid, and in any case addressed to the Party's address set forth below, or to any other address that the Party provides by notice, in accordance with this Section 6 to the other Party:

If to LUC, to:

Loyola University of Chicago  
820 N. Michigan Avenue  
Chicago, Illinois 60611  
Fax: (312) 915-6208  
Attention: Senior Vice President and General Counsel

*Draft Agreement for  
Purposes of Exhibit 4.1.2*

With a Copy to:

Jones Day  
100 High Street  
Boston, Massachusetts 02110  
Fax: (617)449-6999  
Attention: Travis F. Jackson

If to Trinity, to:

Trinity Health Corporation  
27870 Cabot Drive  
Novi, Michigan 48377  
Fax: (248) 489-6775  
Attention: General Counsel

With a Copy to:

Foley & Lardner LLP  
111 Huntington Ave., Suite 2600  
Boston, Massachusetts 02199  
Fax: (617) 342-4001  
Attention: J. Mark Waxman, Esq.

If to the Escrow Agent, to:

Attention:

With a Copy to:

Attention:

7. General. The rights and obligations of this Agreement shall be binding upon, and inure to the benefit of, the successors, assigns and legal representatives of the parties hereto. This Agreement may not be modified except by a writing signed by Escrow Agent, Trinity and LUC. This Agreement may be executed in one or more counterparts, each of which shall be considered an original. This Agreement shall be governed by the laws of the State of Illinois.

*Draft Agreement for  
Purposes of Exhibit 4.1.2*

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

**TRINITY HEALTH CORPORATION**

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

**LOYOLA UNIVERSITY OF CHICAGO**

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

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.**

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

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Schedule 2.2  
Transferred Assets

On the Effective Date, as more particularly set forth in the Definitive Agreement, Trinity shall become the sole member of LUHS. Additionally, in furtherance of the transactions contemplated by the Definitive Agreement, any real property listed on the books and records of LUC as of the Effective Date that is currently utilized by LUHS or any LUHS Entity and necessary for the continued operations of LUHS or such LUHS Entity shall either be conveyed by LUC to LUHS (or such LUHS Entity) or made available to LUHS (or such LUHS Entity) pursuant to a lease containing mutually agreed upon terms and conditions. Transferred Assets shall also include any property, assets and other items as mutually agreed upon by LUC and Trinity.

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Schedule 2.3  
Excluded Assets and Liabilities

Excluded Assets shall include the following:

- (i) Any real property listed on the books and records of LUHS or any LUHS Entity as of the Effective Date that is currently utilized by LUC and necessary for the operations of LUC shall either be conveyed by LUHS (or such LUHS Entity) to LUC or made available to LUC pursuant to a lease containing mutually agreed upon terms and conditions.
- (ii) The remaining amount of the R&E Funds transferred by LUC to LUMC pursuant to the Agreement to Transfer Research and Education Funds, dated June 30, 2009, by and among LUC, LUHS, LUMC and LUPF. The term "R&E Funds" shall have the meaning ascribed to it in such agreement.
- (iii) Any gifts, grants, bequests and other funds, including without limitation, endowment funds (collectively, the "Misclassified Funds"), that have been erroneously classified as gifts, grants, bequests and funds of LUHS or LUMC but which are the property of LUC.
- (iv) Any other property, assets or other items mutually agreed to by LUC and Trinity.

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Schedule 2.4  
Real Property & Leases

Any real property listed on the books and records of LUC as of the Effective Date that is currently utilized by LUHS or any LUHS Entity and necessary for the continued operations of LUHS or such LUHS Entity shall either be conveyed by LUC to LUHS (or such LUHS Entity) or made available to LUHS (or such LUHS Entity) pursuant to a lease containing mutually agreed upon terms and conditions.

Any real property listed on the books and records of LUHS or any LUHS Entity as of the Effective Date that is currently utilized by LUC and necessary for the operations of LUC shall either be conveyed by LUHS (or such LUHS Entity) to LUC or made available to LUC pursuant to a lease containing mutually agreed upon terms and conditions.