

Constantino, Mike

From: Anne Cooper [ACooper@Polsinelli.com]
Sent: Monday, April 16, 2012 2:01 PM
To: Constantino, Mike
Cc: Kara Friedman; Kramer, Pamela
Subject: FW: Crystal Springs Dialysis
Attachments: Executed Bill of Sale – TRC – Seasons Dialysis – Crystal Springs Dialysis.PDFa.PDF; Crystal Springs Revised Completion Date.pdfa.pdf

Mike,

Attached please find a revised page 7 of the Crystal Springs CON application to change the project completion date as well as an email from deal counsel describing the transaction and the document memorializing the transaction. Please let me know if you need any additional information for your review of the Crystal Springs CON application.

Anne



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Add me to your address book.



please consider the environment before printing this email.

From: Kramer, Pamela [mailto:PKramer@mintz.com]
Sent: Wednesday, April 11, 2012 11:22 AM
To: Linda Huang; 'Patricia Ma'
Cc: Anne Cooper; Kara Friedman; David Finn; Daccord, Deborah
Subject: Crystal Springs Dialysis

Dear Kara and Anne,

I am writing to confirm that the CON application for the Crystal Springs Dialysis project is an internal reorganization to change the operating entity from a corporation to a limited liability company. The transaction document that memorializes the reorganization is the attached Assignment and Assumption and Bill of Transfer, which is the same document that was submitted with the CON application. The Assignment and Assumption and Bill of Transfer does not expire and remains in full force and effect.

Please let me know if you have any questions.

Regards,

Pamela

Pamela Kramer | Attorney
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Related Project Costs

Provide the following information, as applicable, with respect to any land related to the project that will be or has been acquired during the last two calendar years:

<p>Land acquisition is related to project <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Purchase Price: \$ _____</p> <p>Fair Market Value: \$ _____</p>
<p>The project involves the establishment of a new facility or a new category of service <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If yes, provide the dollar amount of all non-capitalized operating start-up costs (including operating deficits) through the first full fiscal year when the project achieves or exceeds the target utilization specified in Part 1100.</p> <p>Estimated start-up costs and operating deficit cost is \$ <u>0</u> _____.</p>

Project Status and Completion Schedules

<p>Indicate the stage of the project's architectural drawings:</p> <p><input checked="" type="checkbox"/> None or not applicable <input type="checkbox"/> Preliminary</p> <p><input type="checkbox"/> Schematics <input type="checkbox"/> Final Working</p>
<p>Anticipated project completion date (refer to Part 1130.140): August 1, 2012</p>
<p>Indicate the following with respect to project expenditures or to obligation (refer to Part 1130.140):</p> <p><input type="checkbox"/> Purchase orders, leases or contracts pertaining to the project have been executed.</p> <p><input type="checkbox"/> Project obligation is contingent upon permit issuance. Provide a copy of the contingent "certification of obligation" document, highlighting any language related to CON Contingencies</p> <p><input checked="" type="checkbox"/> Project obligation will occur after permit issuance.</p>
<p>APPEND DOCUMENTATION AS ATTACHMENT-B, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.</p>

State Agency Submittals

<p>Are the following submittals up to date as applicable:</p> <p><input type="checkbox"/> Cancer Registry NOT APPLICABLE</p> <p><input type="checkbox"/> APORS NOT APPLICABLE</p> <p><input checked="" type="checkbox"/> All formal document requests such as IDPH Questionnaires and Annual Bed Reports been submitted</p> <p><input checked="" type="checkbox"/> All reports regarding outstanding permits</p> <p>Failure to be up to date with these requirements will result in the application for permit being deemed incomplete.</p>
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ASSIGNMENT AND ASSUMPTION AND BILL OF TRANSFER

This Assignment and Assumption and Bill of Transfer (the “**Agreement**”), is made and entered into this 16th day of February, 2012 (the “**Execution Date**”) by and among Total Renal Care, Inc., a California corporation (“**Assignor**”) and Seasons Dialysis, LLC, a Delaware limited liability company (“**Assignee**”).

WHEREAS, Assignor operates the freestanding renal dialysis center known as “Crystal Springs Dialysis” and located at 720 Cog Circle, Crystal Lake, Illinois 60014 (the “**Center**”);

WHEREAS, Assignor desires to convey, transfer, assign and deliver to Assignee, all of the tangible and intangible assets used or useable and necessary in connection with the operation of the Center (the “**Assets**”) and the Transferred Liabilities (as define in Section 2(a) below), and Assignee desires to accept and assume the Assets and the Transferred Liabilities; and

WHEREAS, the effective date of this Agreement is subject to the approval of the transfer or reissuance of the certificate of need for the Center by the Illinois Health Facilities and Services Review Board of the Illinois Department of Public Health which is anticipated to take place prior to May 1, 2012 (the “**Effective Date**”).

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements therein and hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Bill of Transfer.

(a) As of the Effective Date, Assignor hereby conveys, transfers, assigns and delivers to Assignee, its successors and assigns, the Assets, and Assignee does hereby acquire from Assignor, all right, title and interest in, to and under the Assets. The Assets shall include all rights, privileges, hereditaments and appurtenances belonging, incident or appertaining to the Assets.

(b) It is understood by both Assignor and Assignee that, contemporaneously with the execution and delivery of this Agreement, Assignor may be executing and delivering to Assignee certain further assignments and other instruments of transfer which in particular cover certain of the property and assets described herein, the purpose of which is to supplement, facilitate and otherwise implement the transfer intended hereby.

2. Assignment and Assumption of Transferred Liabilities.

(a) As of the Effective Date, Assignor hereby assigns to Assignee, its successors and assigns, and Assignee hereby assumes: (i) salaries, wages, benefits and accrued paid time off applicable to the employees of Assignor who were rendering services on behalf of the Center prior to the Effective Date, regardless of whether such employees remain Assignor employees and are leased or otherwise provided to Assignee or if such employees become Assignee employees directly; (ii) any and all existing debts, liens, claims, encumbrances, liabilities and obligations to which the Center or any of the Assets may be subject as of the Effective Date, including all accounts payable incurred or accrued in connection with the

development and, if applicable, the operation of the Center prior to the Effective Date; and (iii) all obligations arising on and after the Effective Date under all contracts and leases relating to the Center and assigned to Assignee (the “Assigned Contracts”). Clauses (i) – (iii) above are hereinafter referred to as the “Transferred Liabilities.”

(b) Any payment that may be received by Assignor to which Assignee is entitled by reason of this Agreement shall be received by Assignor as trustee for Assignee, and will be delivered promptly to Assignee.

(c) In the event that Assignor and/or Assignee determines after execution of this Agreement that one or more contracts or agreements between Assignor and any third party necessary to operate the Assets was not designated as an Assigned Contract (each an “Omitted Agreement”), and the parties consent in writing to the assignment and assumption of such Omitted Agreement, which consent shall not be unreasonably withheld, then, such Omitted Agreement shall be deemed assigned by Assignor to Assignee as of 12:01 a.m. on the Effective Date.

(d) Notice of the assignment under this Agreement may be given at the option of either party to all parties to the Assigned Contracts (other than Assignor) or to such parties’ duly authorized agents.

(e) The assumption by Assignee of any Transferred Liabilities shall not enlarge the rights of any third party with respect to any Transferred Liabilities, nor shall it prevent Assignee, with respect to any party other than Assignor, from contesting or disputing any Transferred Liability.

(f) Assignor hereby grants Assignee a license to use its name, provider numbers and employer identification number on the terms set forth below. From the period of time commencing on the Effective Date and until Assignee’s receipt of written notification from the Center for Medicare and Medicaid Services (“CMS”) and/or Assignor’s fiscal intermediary indicating that CMS has processed and approved Assignee’s change of ownership application (the “Medicare CHOW Approval”), to the extent permitted by law and to ensure cash flow to the Center during such period of time while the change of ownership application is processed, Assignee shall submit claims for services provided at the Center using Assignor’s name, provider numbers, employer identification number and electronic funds transfer arrangements, as permitted by the Medicare Program Integrity Manual. Assignor shall not close or otherwise modify the Assignor’s electronic funds transfer arrangement with third party payors until Assignee has received the Medicare CHOW Approval.

3. Consideration. In consideration of the transfer by Assignor to Assignee of the Assets, Assignee shall assume from Assignor the Transferred Liabilities.

4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

5. Further Assurances. After the Execution Date, each party will from time to time, at the other party’s request and without further cost to the party receiving the request, execute and deliver to the requesting party such other instruments and take such other action as the

requesting party may reasonably request so as to enable it to exercise and enforce its rights under and fully enjoy the benefits and privileges with respect to this Agreement and to carry out the provisions and purposes hereof.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois applicable to contracts made and to be performed in that State without giving effect to conflicts of law principle.

7. Counterparts. This Agreement may be signed in any number of counterparts and all such counterparts shall be read together and construed as one and the same document.

[Signatures on following page.]

IN WITNESS WHEREOF, the undersigned have caused this Assignment and Assumption and Bill of Transfer to be duly executed on their behalf on the date first written above.

ASSIGNOR:

Total Renal Care, Inc.,
a California Corporation

By: DRF
Print: David Finn
Title: Vice President

ASSIGNEE:

Seasons Dialysis, LLC,
a Delaware limited liability company

By its LLC Manager,
Total Renal Care, Inc.

By: DRF
Print: David Finn
Title: Vice President